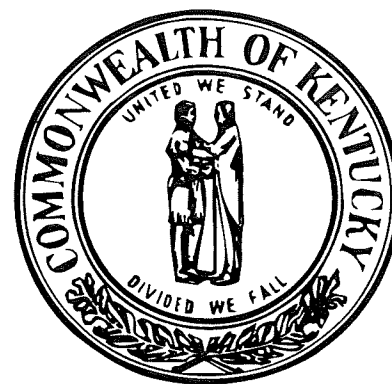


ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 25, NUMBER 11
SATURDAY, MAY 1, 1999

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MEETING NOTICE

The Administrative Regulation Review Subcommittee is **tentatively** scheduled to meet on May 11, 1999, at 10:30 a.m. in Room 149 of the Capitol Annex. See **tentative agenda** on pages 2495-2498 of this Administrative Register.

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

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

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VOLUME 25, NUMBER 11 – MAY 1, 1999

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA – May 11, 1999 at 10:30 a.m. in Room 149, Capitol Annex**

KENTUCKY LEGISLATIVE ETHICS COMMISSION

Commission

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

COUNCIL ON POSTSECONDARY EDUCATION

Public Educational Institutions

13 KAR 2:045. Determination of residency status for admission and tuition assessment purposes. (Amended After Hearing)

**DEPARTMENT FOR LOCAL GOVERNMENT
Office of the Governor**

Development Finance

109 KAR 9:010. Area Development Fund. (Not Amended After Hearing)

**FINANCE AND ADMINISTRATION CABINET
Office of Financial Management and Economic Analysis**

Underwriter and Bond Counsel Selection Process

200 KAR 21:010E. Procedure for prequalification of underwriters and bond counsel for state bond issues. (Deferred from April)

Division of Occupations and Professions

Directory of Registered Athlete Agents

200 KAR 30:010E. Definitions.
200 KAR 30:020E. Complaint review
200 KAR 30:030E. Requirements for registration.
200 KAR 30:040E. Fees.
200 KAR 30:050E. Reinstatement.
200 KAR 30:060E. Annual contact report.
200 KAR 30:070E. Records retention.

GENERAL GOVERNMENT CABINET

Board of Pharmacy

201 KAR 2:030. License transfer. (Deferred from April)
201 KAR 2:040. Registration of interns. (Deferred from April)
201 KAR 2:050. Licenses and permits; fees. (Deferred from April)

Board of Medical Licensure

201 KAR 9:084. Fee schedule.
201 KAR 9:175. Physician assistants; certification and supervision.
201 KAR 9:310. Continuing medical education.
201 KAR 9:320. Procedures for physician training and/or supervision of noncertified individuals in the use of automatic external defibrillators (AEDs). (Not Amended After Hearing) (Deferred from November)
201 KAR 9:330 & E. Determination of death by a paramedic. (Deferred from April)
201 KAR 9:335 & E. Discontinuance of resuscitation by a paramedic. (Deferred from April)
201 KAR 9:340 & E. Training of paramedics in determination of death and discontinuance of resuscitation. (Deferred from April)

Board of Barbering

201 KAR 14:040. Inspection of shops and schools.
201 KAR 14:055. Permanent license after apprenticeship.
201 KAR 14:090. School curriculum.

Board of Nursing

201 KAR 20:420 & E. Determination of death by a registered nurse employed by an ambulance service. (Deferred from April)
201 KAR 20:430 & E. Discontinuance of resuscitation by a registered nurse employed by an ambulance service. (Deferred from April)
201 KAR 20:440 & E. Training of registered nurses employed by an ambulance service in determination of death and discontinuance of resuscitation. (Deferred from April)

Board of Physical Therapy

201 KAR 22:135. Fees.

Board of Podiatry

201 KAR 25:031. Continuing education. (Deferred from March)

Board of Certification of Fee-Based Pastoral Counselors

201 KAR 38:010E. Definitions.
201 KAR 38:020E. Application.
201 KAR 38:030E. Equivalent course of study.
201 KAR 38:040E. Fees.
201 KAR 38:050E. Travel expenses of board members.
201 KAR 38:060E. Code of ethics.

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Protection**

Solid Waste Facilities

401 KAR 47:110. Registered permit-by-rule.

Standards for Solid Waste Facilities

401 KAR 48:320. Operating requirements for less-than-one acre construction/demolition debris landfills.

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General Administrative Procedures (Deferred from March)

401 KAR 50:010. Definitions and abbreviations of terms used in 401 KAR Chapter 50. (Not Am. After Hear.)

Hazardous Pollutants

401 KAR 57:002. 40 CFR Part 61 national emission standards for hazardous air pollutants. (Amended After Hearing)

401 KAR 57:019. Repeal of 401 KAR 57:005, 57:015, 57:021, 57:025, 57:030, 57:035, 57:040, 57:045, 57:050, 57:055, 57:130, 57:270, 57:300, 59:450, 59:455, 59:460, 59:465, 59:485, 59:490, 59:495, 59:500, 59:505, 59:535, 59:540, 59:545, 59:550, 59:555, 59:570, 59:575, 59:580, 59:585, 59:590, 59:595, 59:635, 59:705, 59:725, 59:740, 59:745, 59:750, 59:755, 60:042, 60:043, 60:100, 60:110, 60:111, 60:150, 60:160, 60:170, 60:180, 60:190, 60:250, 60:260, 60:330, 60:340, 60:370, 60:380, 60:390, 60:400, 60:420, 60:440, 60:450, 60:460, 60:470, 60:480, 60:490, 60:500, 60:540, 60:560, 60:580, 60:590, 60:600, 60:620, 60:630, 60:640, 60:680, 60:700, 60:730, 60:750, 63:070, 63:100, 63:101, 63:104, 63:110, 63:160, 63:190, 63:300, 63:320, 63:340, 63:360, 63:400, 63:420, 63:460, 63:520, 63:541, 63:560, 63:640, 63:680, 63:701, 63:920, 63:940, and 63:960. (Amended After Hearing)

New Source Standards (Deferred from March)

401 KAR 59:001. Definitions and abbreviations of terms used in 401 KAR Chapter 59. (Not Am. After Hear.)

New Source Performance Standards

401 KAR 60:005. 40 CFR Part 60 standards of performance for new stationary sources. (Amended After Hearing)

Existing Source Standards (Deferred from March)

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

General Standards of Performance

401 KAR 63:001. Definitions and abbreviations of terms used in 401 KAR Chapter 63. (Not Am. After Hear.) (Deferred from March)

401 KAR 63:002. 40 CFR Part 63 national emission standards for hazardous air pollutants. (Amended After Hearing)

Mobile Source-related Emissions (Deferred from March)

401 KAR 65:001. Definitions and abbreviations of terms used in 401 KAR Chapter 65. (Not Am. After Hear.)

Chemical Accident Prevention (Amended After Hearing) (Deferred from April)

401 KAR 68:010. General provisions.

401 KAR 68:020. Hazard assessment.

401 KAR 68:048. Program 2 prevention program.

401 KAR 68:065. Program 3 prevention program.

401 KAR 68:090. Emergency response.

401 KAR 68:100. Regulated substances for accidental release prevention.

401 KAR 68:150. Risk management plan.

401 KAR 68:200. Other requirements.

Department for Surface Mining Reclamation and Enforcement

General Provisions

405 KAR 7:097. Reclamation in lieu of cash payment of civil penalties. (Amended After Hearing)

Bond and Insurance Requirements

405 KAR 10:010E. General requirements for performance bond and liability insurance. (Deferred from February)

PUBLIC PROTECTION AND REGULATION CABINET

Office of the Petroleum Storage Tank Environmental Assurance Fund

Petroleum Storage Tank Environmental Assurance Fund

415 KAR 1:090. Ranking system. (Amended After Hearing) (Deferred from February)

415 KAR 1:100. Third-party claims. (Not Amended After Hearing) (Deferred from February)

415 KAR 1:114. Contractor certification. (Not Amended After Hearing) (Deferred from February)

415 KAR 1:120. Hearings. (Not Amended After Hearing) (Deferred from February)

415 KAR 1:130. Small owners tank removal account. (Not Amended After Hearing) (Deferred from February)

415 KAR 1:135. Financial audits. (Not Amended After Hearing) (Deferred from February)

415 KAR 1:140. Laboratory certification. (Not Amended After Hearing)

JUSTICE CABINET

Abuse Investigations

500 KAR 13:010E. Appeals hearings for substantiated abuse investigations. (Deferred from March)

Department of Corrections

Office of the Secretary

501 KAR 6:020. Corrections policies and procedures.

501 KAR 6:090. Frankfort Career Development Center.

501 KAR 6:110. Roederer Correctional Complex.

501 KAR 6:140. Bell County Forestry Camp.

501 KAR 6:181. Repeal of 501 KAR 6:180, infectious diseases.

501 KAR 6:190 & E. Certification procedures for mental health professionals performing sex offender risk assessments. (Deferred from March)

501 KAR 6:200 & E. Sex offender risk assessment procedure. (Deferred from March)

501 KAR 6:210 & E. Sex offender community notification. (Deferred from March)

Department of State Police

Sexual Assault Nurse Examiner Medical Protocol

502 KAR 12:010. Sexual assault nurse examiner medical protocol.

Department of Criminal Justice Training

Kentucky Law Enforcement Council

503 KAR 1:140E. Peace officer professional standards. (Deferred from April)

General Training Provisions

503 KAR 3:040. Telecommunications academy trainee requirements; misconduct; penalties; discipline procedures. (Deferred from March) (Deferral Requested)

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Department of Fiscal Management**

Property Acquisition and Uniform Relocation

603 KAR 3:030. Relocation or reconstruction of utility and rail facilities; recordkeeping and audit requirements. (Public Hearing)

**Department of Vehicle Regulation
Division of Vehicle Enforcement**

Division of Motor Carriers

601 KAR 1:040E. Application for operating authority and registration of motor carriers. (Deferred from February)

**Department of Highways
Division of Traffic**

Right-of-Way

603 KAR 4:035. Logo signs; placement along fully-controlled and partially controlled access highways. (Not Amended After Hearing)

603 KAR 4:045. Cultural and recreational supplemental guide signs. (Amended After Hearing)

603 KAR 4:055. Scenic highways and byways. (Amended After Hearing) (Deferred from April)

Mass Transportation

603 KAR 7:080 & E. Human service transportation delivery. (Emergency Expired December 18, 1998) (Not Amended After Hearing) (Deferred from February)

EDUCATION, ARTS AND HUMANITIES CABINET

**Board of Education
Department of Education
Office of District Support Services**

Learning Results Services

703 KAR 4:021. Repeal of 703 KAR 4:020 and 703 KAR 4:050. (Deferred from April)

Office of Learning Programs Development

Office of Instruction

704 KAR 3:410. Preschool education program for four (4) year old children. (Deferred from April)

704 KAR 3:420. Preschool associate teachers. (Deferred from April)

Exceptional and Handicapped Programs

707 KAR 1:150. Preschool education program for children with disabilities. (Deferred from April)

**Department of Libraries and Archives
Division of Public Records**

Archives

725 KAR 1:070E. Standards for documents presented for recording. (Deferred from March)

PUBLIC PROTECTION AND REGULATION CABINET

Kentucky Board of Tax Appeals

Tax Appeals

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

LABOR CABINET

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

Occupational Safety and Health

803 KAR 2:307. Hazardous materials.

803 KAR 2:309. General environmental controls.

803 KAR 2:310. Medical services and first aid.

803 KAR 2:311. Fire protection.

803 KAR 2:313. Materials handling and storage.

803 KAR 2:317. Special industries.

803 KAR 2:320 & E. Air contaminants.

803 KAR 2:402. General safety and health provisions.

803 KAR 2:403. Occupational health and environmental controls.

803 KAR 2:405. Fire protection and prevention.

803 KAR 2:420. Blasting and use of explosives.

803 KAR 2:425 & E. Toxic and hazardous substances.

803 KAR 2:500 & E. Maritime employment.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance

Health Insurance Contracts

806 KAR 17:066E. Medicare supplement insurance policies.

Department of Financial Institutions

Mortgage Loan Companies and Mortgage Loan Brokers

808 KAR 12:011. Repeal of 808 KAR 12:010.

Department of Housing, Buildings and Construction

Standards of Safety

815 KAR 10:051. Repeal of 815 KAR 10:050.

815 KAR 10:060. Kentucky standards of safety.

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Division of Plumbing

Plumbing

815 KAR 20:030. License application; qualifications for examination, examination requirements, expiration, renewal, revival or reinstatement of licenses.

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

Health Services and Facilities

902 KAR 20:091. Facilities specifications, operation and services; community mental health-mental retardation center.

Kentucky Board of Family Health Care Providers

902 KAR 22:040. Charitable health care providers. (Not Amended After Hearing)

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

Public Assistance

904 KAR 2:006 & E. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP). (Amended After Hearing) (Emergency Expired 4/19/99)

904 KAR 2:016. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP). (Amended After Hearing)

904 KAR 2:017. Kentucky Works supportive services. (Amended After Hearing)

904 KAR 2:370 & E. Technical requirements for Kentucky Works. (Amended After Hearing) (Emergency Expired 4/19/99)

904 KAR 2:500. Family Alternatives Diversion (FAD). (Deferred from March)

904 KAR 2:510. Relocation Assistance Program. (Deferred from March)

Day Care

905 KAR 2:090. Child care facility licensure. (Deferred from February)

CABINET FOR HEALTH SERVICES

Medicaid Services

907 KAR 1:002. Definitions. (Deferred from February)

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 1:780. Converted dual-licensed hospital-based nursing facility beds. (Amended After Hearing)

Payment and Services

907 KAR 3:090E. Acquired brain injury services. (Deferred from March)

907 KAR 3:100E. Payments for acquired brain injury services. (Deferred from March)

Kentucky Children's Health Insurance Program

907 KAR 4:020E. Kentucky Children's Health Insurance Program. (Deferred from March)

**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. (Amended After Hearing)

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

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

Division of Mental Health

Institutional Care

908 KAR 3:160E. Policies and procedures of Kentucky Correctional Psychiatric Center.

**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. (Deferred from March)

Adult Services

922 KAR 5:070. Adult protective services.

**EDUCATION ASSESSMENT AND ACCOUNTABILITY REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - May 6, 1999, at 10:00 a.m. EST in Room 131 of the Capitol Annex**

Kentucky Department of Education

703 KAR 5:040 Statewide Assessment and Accountability Program: Relating Accountability Index to School Classification (A1-A6). (Amended After Hearing)

703 KAR 5:060 Interim Accountability Model. (Amended After Hearing)

ADMINISTRATIVE REGULATION REVIEW PROCEDUREError! Bookmark not defined.
(See KRS Chapter 13A for specific provisions)

Notice of Intent

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

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

Filing and Publication

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

Public Hearing

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

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

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

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

Review Procedure

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

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

GENERAL GOVERNMENT CABINET
Office of the Kentucky State Treasurer

April 13, 1999

- (1) **20 KAR 1:040.** Unclaimed properties; claims.
- (2) The Kentucky State Treasurer intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed amendments to the administrative regulation has been scheduled for May 24, 1999 at 10 a.m., EST, at the offices of the Kentucky State Treasurer, Capitol Annex, Room 183, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by a least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 24, 1999 the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should file their written request with the State Treasurer at the following address: John Kennedy Hamilton, Kentucky State Treasurer, Capitol Annex, Room 183, Frankfort, Kentucky 40601, Phone: (502) 564-4722, Fax: (502) 564-6545.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the State Treasurer at the Kentucky State Treasurer at the address above.
- (7) Information relating to the proposed amendments to the administrative regulation.
 - (a) The statutory authority for the amendment of an administrative regulation relating to the hearing procedures and appeal for unclaimed property is KRS 393.280.
 - (b) The administrative regulation the Kentucky State Treasurer intends to amend will set forth the procedures determining by either the Office of the State Treasurer or the holder of the unclaimed property the rightful owner of such property.
 - (c) The necessity and function of the proposed amendment to the administrative regulation is as follows: This amended administrative regulation will fulfill a statutory mandate governing the return of unclaimed property to the rightful owner.
 - (d) The benefit expected from this administrative regulation is a more efficient and fair process to unite unclaimed property with its owner.
 - (e) The regulation will be implemented by the Kentucky State Treasurer, by claimant of unclaimed property and by holders of unclaimed property. The Kentucky State Treasurer will implement this regulation by merely adhering to the procedures contained within the regulation.

April 13, 1999

- (1) **20 KAR 1:070.** Unclaimed property; administrative hearing; appeals process.
- (2) The Kentucky State Treasurer intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed amendments to the administrative regulation has been scheduled for May 24, 1999 at 10 a.m., EST, at the offices of the Kentucky State Treasurer, Capitol Annex, Room 183, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by a least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 24, 1999 the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should file their written request with the State Treasurer at the following address: John Kennedy Hamilton, Kentucky State Treasurer, Capitol Annex, Room 183, Frankfort, Kentucky 40601, Phone: (502) 564-4722, Fax: (502) 564-6545.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the State Treasurer at the Kentucky State Treasurer at the address above.
- (7) Information relating to the proposed amendments to the administrative regulation.
 - (a) The statutory authority for the amendment of an administrative regulation relating to the hearing procedures and appeal for unclaimed property is KRS Chapter 13B, 393.110 and 393.280.
 - (b) The administrative regulation the Kentucky State Treasurer intends to amend will bring the administrative hearing process into compliance with KRS Chapter 13B.
 - (c) The necessity and function of the proposed amendment to the administrative regulation is as follows: This amended administrative regulation will fulfill a statutory mandate governing administrative hearings for claimants of unclaimed property.
 - (d) The benefit expected from this administrative regulation is a more efficient and fair administrative hearing procedure.
 - (e) The regulation will be implemented by the Kentucky State Treasurer. The Kentucky State Treasurer will implement this regulation by merely adhering to the procedures contained within the regulation.

April 13, 1999

- (1) **20 KAR 1:080.** Reports to be filed by the holders of unclaimed property.
- (2) The Kentucky State Treasurer intends to promulgate the administrative regulation cited above.

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(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 24, 1999 at 10 a.m., EST, at the offices of the Kentucky State Treasurer, Capitol Annex, Room 183, Frankfort, Kentucky 40601.

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

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

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

(5)(a) Persons wishing to request a public hearing should file their written request with the State Treasurer at the following address: John Kennedy Hamilton, Kentucky State Treasurer, Capitol Annex, Room 183, Frankfort, Kentucky 40601, Phone: (502) 564-4722, Fax: (502) 564-6545.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the administrative regulation relating to the reports to be filed by holders of unclaimed property is KRS 393.110 and 393.280.

(b) The administrative regulation the Kentucky State Treasurer intends to promulgate will set out the requirements for the reports to be filed by holders of unclaimed property.

(c) The necessity and function of the proposed amendment to the administrative regulation is as follows: This administrative regulation will fulfill a statutory mandate governing reports to be filed by holders of unclaimed property.

(d) The benefit expected from this administrative regulation is a more efficient and fair reporting procedure in order to protect the public's interest in unclaimed property.

(e) The regulation will be implemented by the Kentucky State Treasurer. The Kentucky State Treasurer will implement this regulation by merely adhering to the procedures contained within the regulation.

PERSONNEL CABINET

April 13, 1999

(1) **101 KAR 2:020**. Classification plan.

(2) The Personnel Cabinet intends to promulgate an amendment to the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 21, 1999 at 1:30 p.m. at 200 Fair Oaks Lane, Suite 516, 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 May 21, 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: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, Telephone: (502) 564-4460, Fax: (502) 564-7603, e-mail: Dan.egbers@mail.state.ky.us.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the classification plan for the classified service is KRS 18A.110.

(b) The administrative regulation that the Personnel Cabinet intends to promulgate will amend 101 KAR 2:020, Classification plan. It will update the language of the regulation in conformity with House Bill 727 and clarify the difference between a class specification and a position description.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The regulation will govern the classification plan for all positions in the classified service of state government so that the same or similar qualifications may be required for and the same schedule of pay may be equitably applied to all positions in the same job classification, as required by law.

(d) The benefits expected from administrative regulation are: Clarification of the distinctions between a class specifications and a position description.

(e) The administrative regulation will be implemented as follows: Upon review by the State Personnel Board, the proposed changes will amend the classification plan for the classified service as soon as administratively feasible.

April 13, 1999

(1) **101 KAR 2:034**. Classified compensation administrative regulations.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 21, 1999 at 1:30 p.m. at 200 Fair Oaks Lane, Suite 516, 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.

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(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 May 21, 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: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, Telephone: (502) 564-4460, Fax: (502) 564-7603, e-mail: Dan.egbers@mail.state.ky.us.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the classification plan for the classified service is KRS 18A.110.

(b) The administrative regulation that the Personnel Cabinet intends to promulgate will replace 101 KAR 2:036, Compensation Plan. It will:

1. Update the language of the regulation in conformity with House Bill 727.
2. Provide authority for agencies to appoint employees above the minimum salary.
3. Provide for equal treatment of similarly qualified employees in the same type of job and in the same agency and location who make less than the new appointee.
4. Differentiate the setting of salaries of former employees who are rehired by the state based on whether the former service was in the classified service, the unclassified service or a combination of the services.

5. Provide more fairness in the setting of salary advancements for employees who are promoted, reclassified, reallocated or detailed to special duty by basing that advancement on the number of grades advanced rather than by a flat percentage.

6. Clarify and provide more fairness in the treatment of employees when systemic changes are made through pay grade changes or special entrance rates and standardize the treatment of employees whose salaries are adjusted after, rather than at the time of the adjustment.

7. Provide for addition to base pay, rather than lump sum award in the case of educational achievement awards.

8. Provide authority for salary premiums for employees who are regularly scheduled to work on weekends.

9. Abolish the Distinguished Service Award and replace it with two different types of incentives for employees:

a. Employee Recognition Award (ERA), a one time, lump sum payment of up to five (5) percent for employees whose ideas result in savings to the Commonwealth or for distinguished service during participation on a special project resulting in improved government operations. Employees receiving an ERA would not be eligible for an Employee Suggestion System award for the same idea.

b. Adjustment for Continuing Excellence Award (ACE), provides for up to ten (10) percent, added to base pay for successfully assuming additional duties consistent with the employee's current classification, completion of agency-directed job-related training for improved skills. Employees would not be eligible for both an ACE Award and an Educational Achievement Award for the same training.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The Secretary of Personnel, with the approval of the Governor is required to promulgate comprehensive administrative regulations, consistent with the provisions of KRS Chapter 18A, which govern the pay plan for all employees in the classified service of state government. This new regulation replaces the former compensation plan (101 KAR 2:036) and provides for uniformity and equity in the administration of the pay plan in accordance with statutory requirements in KRS 18A.110.

(d) The benefits expected from administrative regulation are stated in item 7(b) 1 through 9, above.

(e) The administrative regulation will be implemented as follows: Upon approval by the Governor and review by the State Personnel Board, the proposed changes will amend the classification plan for the classified service as soon as administratively feasible.

April 13, 1999

(1) **101 KAR 2:037.** Repeal of 101 KAR 2:036 and 101 KAR 2:100.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 21, 1999 at 1:30 p.m. at 200 Fair Oaks Lane, Suite 516, 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 May 21, 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: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, Telephone: (502) 564-4460, Fax: (502) 564-7603, E-Mail: Dan.egbers@mail.state.ky.us.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the classification plan for the classified service is KRS 18A.110.

(b) The administrative regulation that the Personnel Cabinet intends to promulgate will repeal 101 KAR 2:036, Compensation plan and 101 KAR 2:100, Leave administrative regulations which will be replaced by simultaneously promulgated new regulations.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The regulation will repeal the current regulations governing the compensation plan and leave for the classified service of state government in order to permit the replacement of these regulations with new ones.

(d) The benefits expected from administrative regulation are: Improved clarity and fairness in the compensation and leave regulations that are being proposed simultaneously with this regulation.

(e) The administrative regulation will be implemented as follows: Upon approval by the Governor and review by the State Personnel

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Board, the proposed changes will amend the Compensation Plan and the leave regulations for the classified service as soon as administratively feasible.

April 13, 1999

- (1) **101 KAR 2:046.** Applications, qualifications and examinations.
- (2) The Personnel Cabinet intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 21, 1999 at 1:30 p.m. at 200 Fair Oaks Lane, Suite 516, 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 May 21, 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: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, Telephone: (502) 564-4460, Fax: (502) 564-7603, E-Mail: Dan.egbers@mail.state.ky.us.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Personnel Cabinet at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the applications, qualifications and examinations for the Classified service is KRS 18A.110.
- (b) The administrative regulation that the Personnel Cabinet intends to promulgate will amend 101 KAR 2:046, Applications, qualifications and examinations. It will update the language of the regulation in conformity with House Bill 727 and implement changes to testing and qualifications in the classified service authorized by that bill.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The regulation will govern the application process for all positions in the classified service of state government as required by law.
- (d) The benefits expected from administrative regulation are: Clarification of the rules with respect to applications and testing for positions in the classified service.
- (e) After review by the State Personnel Board, the proposed changes will amend 101 KAR 2:046, Applications, qualifications and examinations as soon as administratively feasible.

April 13, 1999

- (1) **101 KAR 2:056.** Registers.
- (2) The Personnel Cabinet intends to promulgate an amendment to the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for May 21, 1999 at 1:30 p.m. at 200 Fair Oaks Lane, Suite 516, 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 May 21, 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: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, Telephone: (502) 564-4460, Fax: (502) 564-7603, e-mail: Dan.egbers@mail.state.ky.us.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Personnel Cabinet at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to registers for the classified service is KRS 18A.110.
- (b) The administrative regulation that the Personnel Cabinet intends to promulgate will amend 101 KAR 2:056, Registers. It will update the language of the regulation in conformity with House Bill.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The regulation will govern registers and eligibility lists for all positions in the classified service of state government and for rejection of applicants who do not meet reasonable requirements established by the Secretary of Personnel for Merit System positions, as required by law.
- (d) The benefits expected from administrative regulation are: Updating the language of the regulation to conform with the requirements of House Bill 727.
- (e) The administrative regulation will be implemented as follows: Upon review by the State Personnel Board, the proposed changes will amend the classification plan for the classified service as soon as administratively feasible.

April 13, 1999

- (1) **101 KAR 2:066.** Certification and selection of eligibles for appointment.
- (2) The Personnel Cabinet intends to promulgate an amendment to the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled.

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uled for May 21, 1999 at 1:30 p.m. at 200 Fair Oaks Lane, Suite 516, 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 May 21, 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: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, Telephone: (502) 564-4460, Fax: (502) 564-7603, e-mail : Dan.egbers@mail.state.ky.us.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to certification and selection of eligibles for appointment is KRS 18A.110.

(b) The administrative regulation that the Personnel Cabinet intends to promulgate will amend 101 KAR 2:066, Certification and selection of eligibles for appointment. It will update the language of the regulation in conformity with House Bill 727 and extend the life of a register from 45 to 60 days.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The regulation will govern certification and selection of eligibles for appointment, as required by law.

(d) The benefits expected from the amendment to the administrative regulation are an enlargement of the life of the register from 45 to 60 days to enhance selection methods.

(e) The amendment to the administrative regulation will be implemented as follows: Upon review by the State Personnel Board, the proposed changes will amend the regulation governing certification and selection of eligibles for appointment as soon as administratively feasible.

April 13, 1999

(1) **101 KAR 2:076.** Vacancies, detail to special duty and temporary overlap.

(2) The Personnel Cabinet intends to promulgate an amendment to the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for May 21, 1999 at 1:30 p.m. at 200 Fair Oaks Lane, Suite 516, 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 May 21, 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: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, Telephone: (502) 564-4460, Fax: (502) 564-7603, e-mail: Dan.egbers@mail.state.ky.us.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the vacancies, detail to special duty and temporary overlap is KRS 18A.110.

(b) The administrative regulation that the Personnel Cabinet intends to promulgate will amend 101 KAR 2:076, Vacancies, detail to special duty and temporary overlap. It will update the language of the regulation in conformity with House Bill 727 and set forth notification requirements when an employee is detailed to special duty.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The regulation will govern the temporary placement of employees in assignments to special duty and set out rules for notification by the agencies, as required by law.

(d) The benefits expected from administrative regulation are: Clarification of notice procedures for detail to special duty.

(e) The administrative regulation will be implemented after review by the State Personnel Board and the proposed changes will amend the regulation as soon as administratively feasible.

April 13, 1999

(1) **101 KAR 2:095.** Classified service administrative regulations.

(2) The Personnel Cabinet intends to promulgate an amendment to the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for May 21, 1999 at 1:30 p.m. at 200 Fair Oaks Lane, Suite 516, 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 May 21, 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: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, Telephone: (502) 564-4460, Fax: (502)

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564-7603, e-mail: Dan.egbers@mail.state.ky.us.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the general rules for the classified service is KRS 18A.110.

(b) The administrative regulation that the Personnel Cabinet intends to promulgate will amend 101 KAR 2:095, Classified service administrative regulations. It will:

1. Update the language of the regulation in conformity with House Bill 727.
2. Clarify the number of hours to be worked by full time employees, statewide.
3. Clarify the authority of the appointing authority to require an employee to work overtime.
4. Allows the Secretary of Personnel to approve the extension of temporary reassignments of employees to different work counties.
5. Clarifies the requirement of notice of resignation.
6. a policy governing telecommuting.
7. Creates rules for the Kentucky Employees Charitable Campaign.
8. Establishes a policy on workplace violence.
9. Establishes a policy on the issuance of paychecks.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 18A.110 authorizes the Secretary of Personnel to promulgate administrative regulations governing attendance, hours of work and other policies consistent with generally accepted personnel practices. This regulation is amended to conform to House Bill 727 and to outline those rules, as required by law.

(d) The benefits expected from administrative regulation are: Establishment of uniform rules governing attendance, hours of work, telecommuting, workplace violence, charitable campaigns and paychecks.

(e) The administrative regulation will be implemented as follows: Upon review by the State Personnel Board, the proposed changes will amend the classified service administrative regulations as soon as administratively feasible.

April 13, 1999

(1) **101 KAR 2:102.** Classified leave administrative regulations.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 21, 1999 at 1:30 p.m. at 200 Fair Oaks Lane, Suite 516, 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 May 21, 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: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, Telephone: (502) 564-4460, Fax: (502) 564-7603, e-mail: Dan.egbers@mail.state.ky.us.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the classified leave administrative regulations is KRS 18A.030, 18A.110, 18A.155, 344.030, 29 USC §201, et seq. and 29 USC §2601, et seq.

(b) The administrative regulation that the Personnel Cabinet intends to promulgate will replace 101 KAR 2:100, Leave administrative regulations. It will:

1. Update the language of the regulation in conformity with House Bill 727.
2. Provide an additional 3 annual leave days per year for employees with 20 or more years of service.
3. Provide that retired employees who return to state service shall begin new service credit for leave accumulation purposes.
4. Allow agencies to require the use of compensatory time before annual time under certain circumstances.
5. Clarify the basis for withholding payment for annual leave upon resignation or retirement.
6. Provide a one-time award of 10 days of sick leave when an employee completes 20 years of service.
7. Clarify the circumstances for granting or requiring the use of sick leave.
8. Provide for fairness in using family and medical leave.
9. Allow approval of sick leave without pay for employees not eligible for family and medical leave.
10. Clarify eligibility for health and life insurance benefits.
11. Establishes a policy on leave in the event of adverse weather conditions.
12. Establishes a policy on leave for blood donation.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The regulation will govern leave for all positions in the classified service of state government and provide recognition for longevity. The regulation will also clarify the circumstances in which family and medical leave may be used.

(d) The benefits expected from administrative regulation are: Elimination of conflicts in the current regulation and clarification and establishment of the benefits noted in paragraph 7(b) 1 through 12, above.

(e) The administrative regulation will be implemented as follows: Upon approval by the Governor and review by the State Personnel Board, the proposed changes will replace 101 KAR 2:100, Leave administrative regulations, as soon as administratively feasible.

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- (1) **101 KAR 2:105.** Sick leave sharing procedures.
- (2) The Personnel Cabinet intends to promulgate an amendment to the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for May 21, 1999 at 1:30 p.m. at 200 Fair Oaks Lane, Suite 516, 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 May 21, 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: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, Telephone: (502) 564-4460, Fax: (502) 564-7603, e-mail: Dan.egbers@mail.state.ky.us.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Personnel Cabinet at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the sick leave sharing procedures is KRS 18A.030, 18A.110, 18A.196, 18A.197.
- (b) The administrative regulation that the Personnel Cabinet intends to promulgate will amend 101 KAR 2:105, Sick leave sharing procedures. It will update the language of the regulation in conformity with House Bill 727 and make technical changes in the meaning of "immediate family".
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The regulation will govern sick leave sharing for all positions in the classified service of state government as required by law.
- (d) The benefits expected from administrative regulation are: Clarification of the meaning of "immediate family" for purposes of sick leave sharing.
- (e) The administrative regulation will be implemented as follows: Upon approval by the Governor and review by the State Personnel Board, the proposed changes will amend the 101 KAR 2:105, Sick leave sharing procedures, as soon as administratively feasible.

April 13, 1999

- (1) **101 KAR 2:120.** Incentive programs.
- (2) The Personnel Cabinet intends to promulgate an amendment to the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation amendment has been scheduled for May 21, 1999 at 1:30 p.m. at 200 Fair Oaks Lane, Suite 516, 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 May 21, 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: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, Telephone: (502) 564-4460, Fax: (502) 564-7603, e-mail: Dan.egbers@mail.state.ky.us.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Personnel Cabinet at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the 101 KAR 2:120, Incentive programs is KRS 18A.110 and 18A.202.
- (b) The administrative regulation that the Personnel Cabinet intends to promulgate will amend 101 KAR 2:120, Incentive programs. It will update the language of the regulation in conformity with House Bill 727 and implement the Governor's Adoption Benefit Program.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The amended regulation will update and clarify various incentive programs and establish an adoption benefit program.
- (d) The benefits expected from administrative regulation are needed technical changes and incentives for state employees to adopt children.
- (e) The administrative regulation will be implemented as follows: Upon review by the State Personnel Board, the proposed changes will amend the regulation governing incentive programs as soon as administratively feasible.

April 13, 1999

- (1) **101 KAR 2:140.** Workers' compensation fund and program.
- (2) The Personnel Cabinet intends to promulgate an amendment to the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for May 21, 1999 at 1:30 p.m. at 200 Fair Oaks Lane, Suite 516, 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

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2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 21, 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: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, Telephone: (502) 564-4460, Fax: (502) 564-7603, e-mail: Dan.egbers@mail.state.ky.us.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Personnel Cabinet at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to 101 KAR 2:140, Workers' compensation fund and program is KRS 18A.030 and 18A.110.
- (b) The administrative regulation that the Personnel Cabinet intends to promulgate will amend 101 KAR 2:140, Workers' compensation fund and program. It will update the language of the regulation in conformity with House Bill 727 and contain technical changes to assure the confidentiality of medical records relating to workers' compensation.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The amended regulation will govern the workers' compensation program as required by law.
- (e) The benefits expected from administrative regulation are: Clarification of the confidentiality of medical records.
- (e) The administrative regulation will be implemented as follows: Upon review by the State Personnel Board, the proposed changes will amend the regulation governing the workers' compensation fund and program as soon as administratively feasible.

April 13, 1999

- (1) **101 KAR 2:150.** State Safety Program.
- (2) The Personnel Cabinet intends to promulgate an amendment to the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for May 21, 1999 at 1:30 p.m. at 200 Fair Oaks Lane, Suite 516, 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 May 21, 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: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, Telephone: (502) 564-4460, Fax: (502) 564-7603, e-mail: Dan.egbers@mail.state.ky.us.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Personnel Cabinet at the address listed above.
- (7) Information relating to the proposed amendment to the administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to 101 KAR 2:150, State Safety Program is KRS 18A.110 and 18A.155.
- (b) The administrative regulation that the Personnel Cabinet intends to promulgate will amend 101 KAR 2:150, State Safety Program. It will update the language of the regulation in conformity with House Bill 727.
- (c) The necessity, function, and conformity of the proposed administrative regulation is to provide conformity with House Bill 727.
- (d) The benefits expected from administrative regulation are technical corrections.
- (e) The administrative regulation will be implemented as follows: Upon review by the State Personnel Board, the proposed changes will amend the State Safety Program for the classified service as soon as administratively feasible.

April 13, 1999

- (1) **101 KAR 3:011.** Repeal of 101 KAR 3:010.
- (2) The Personnel Cabinet intends to promulgate an amendment to the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for May 21, 1999 at 1:30 p.m. at 200 Fair Oaks Lane, Suite 516, 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 May 21, 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: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, Telephone: (502) 564-4460, Fax: (502) 564-7603, e-mail: Dan.egbers@mail.state.ky.us.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

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

(7) Information relating to the proposed amendment to the administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the leave for the Unclassified Service is KRS 18A.030, 18A.155, 18A.195 and 344.030.

(b) The administrative regulation that the Personnel Cabinet intends to promulgate will repeal 101 KAR 3:010, Leave for the unclassified service.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The regulation will repeal 101 KAR 3:010 governing leave for the unclassified service of state government.

(d) The benefits expected from administrative regulation are that the regulation will be replaced by a new administrative regulation consistent with that being simultaneously promulgated for the classified service.

(e) The administrative regulation will be implemented as follows: Upon approval by the Governor and review by the State Personnel Board, the proposed changes will repeal the compensation plan for the unclassified service as soon as administratively feasible.

April 13, 1999

(1) **101 KAR 3:015.** Unclassified leave administrative regulations.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 21, 1999 at 1:30 p.m. at 200 Fair Oaks Lane, Suite 516, 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 May 21, 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: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, Telephone: (502) 564-4460, Fax: (502) 564-7603, e-mail: Dan.egbers@mail.state.ky.us.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the unclassified leave administrative regulations is KRS 18A.030, 18A.110, 18A.155, 344.030, 29 USC §201, *et seq.* and 29 USC §2601, *et seq.*

(b) The administrative regulation that the Personnel Cabinet intends to promulgate will replace 101 KAR 3:010, Leave administrative regulations. It will:

1. Update the language of the regulation in conformity with House Bill 727.

2. Provide an additional 3 annual leave days per year for employees with 20 or more years of service.

3. Provide that retired employees who return to state service shall begin new service credit for leave accumulation purposes.

4. Allow agencies to require the use of compensatory time before annual time under certain circumstances.

5. Clarify the basis for withholding payment for annual leave upon resignation or retirement.

6. Provide a one-time award of 10 days of sick leave when an employee completes 20 years of service.

7. Clarify the circumstances for granting or requiring the use of sick leave.

8. Provide for fairness in using family and medical leave.

9. Allow approval of sick leave without pay for employees not eligible for family and medical leave.

10. Clarify eligibility for health and life insurance benefits.

11. Establish a policy on leave in the event of adverse weather conditions.

12. Establish a policy on leave for blood donation.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The regulation will govern leave for all positions in the unclassified service of state government and provide recognition for longevity. The regulation will also clarify the circumstances in which family and medical leave may be used.

(d) The benefits expected from administrative regulation are: Elimination of conflicts in the current regulation and clarification and establishment of the benefits noted in paragraph 7(b) 1 through 12, above.

(e) The administrative regulation will be implemented as follows: Upon approval by the Governor the proposed changes will replace 101 KAR 3:010, Leave administrative regulations, as soon as administratively feasible.

April 13, 1999

(1) **101 KAR 3:045.** Compensation plan and pay incentives.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 21, 1999 at 1:30 p.m. at 200 Fair Oaks Lane, Suite 516, 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 May 21, 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: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, Telephone: (502) 564-4460, Fax: (502) 564-7603, e-mail: Dan.egbers@mail.state.ky.us.

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

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

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

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- (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 Personnel Cabinet at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the classification plan for the unclassified service is KRS 18A.155.
- (b) The administrative regulation that the Personnel Cabinet intends to promulgate will amend 101 KAR 3:045, Compensation plan and compensation incentive systems. It will:
1. Update the language of the regulation in conformity with House Bill 727.
 2. Provide authority for agencies to appoint employees above the minimum salary.
 3. Provide for equal treatment of similarly qualified employees in the same type of job and in the same agency and location who make less than the new appointee.
 4. Differentiate the setting of salaries of former employees who are rehired by the state based on whether the former service was in the classified service, the unclassified service or a combination of the services.
 5. Provide more fairness in the setting of salary advancements for employees who are promoted, reclassified, reallocated or detailed to special duty by basing that advancement on the number of grades advanced rather than by a flat percentage.
 6. Clarify and provide more fairness in the treatment of employees when systemic changes are made through pay grade changes or special entrance rates and standardize the treatment of employees whose salaries are adjusted after, rather than at the time of the adjustment.
 7. Provide for addition to base pay, rather than lump sum award in the case of educational achievement awards.
 8. Provide authority for salary premiums for employees who are regularly scheduled to work on weekends.
 9. Abolish the Distinguished Service Award and replace it with two different types of incentives for employees:
 - a. Employee Recognition Award (ERA), a one time, lump sum payment of up to 5 percent for employees whose ideas result in savings to the Commonwealth or for distinguished service during participation on a special project resulting in improved government operations. Employees receiving an ERA would not be eligible for an Employee Suggestion System award for the same idea.
 - b. Adjustment for Continuing Excellence Award (ACE), provides for up to 10 percent, added to base pay for successfully assuming additional duties consistent with the employee's current classification, completion of agency-directed job-related training for improved skills. Employees would not be eligible for both an ACE Award and an Educational Achievement Award for the same training.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The Secretary of Personnel, with the approval of the Governor is required to promulgate comprehensive administrative regulations, consistent with the provisions of KRS Chapter 18A, which govern the pay plan for all employees in the unclassified service of state government. This new regulation amends 101 KAR 3:045 and provides for uniformity and equity in the administration of the pay plan in accordance with statutory requirements in KRS 18A.155.
- (d) The benefits expected from administrative regulation are stated in item 7(b) 1 through 9, above.
- (e) The administrative regulation will be implemented as follows: Upon approval by the Governor the proposed changes will amend the Compensation Plan for the unclassified service as soon as administratively feasible.

DEPARTMENT FOR LOCAL GOVERNMENT

March 25, 1999

- (1) Regulation number and title: **109 KAR 7:021**. Repeal of 109 KAR 7:020, Energy conservation project.
- (2) The Department for Local Government intends to repeal the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 21, 1999, at 9 a.m., at Department for Local Government, 1024 Capital Center Drive #340, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to May 21, 1999 the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Thomas M. Troth, Attorney, Department for Local Government, 1024 Capital Center Drive #340, Frankfort, Kentucky 40601; telephone (502) 573-2382; fax (502) 573-2939.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department for Local Government at the address listed above.
- (7) Information relating to the proposed administrative regulation:
- (a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of the administrative regulation has been repealed as a result of House Bill 375 passed by the 1998 Kentucky General Assembly.
- (b) The administrative regulation that the Department for Local Government intends to promulgate will repeal 109 KAR 7:020. Energy conservation projects.
- (c) The necessity and function of the proposed administrative regulation is as follows: Adopting the provisions of the model procurement code for local governments is optional. With the adoption of 1998 Kentucky Acts, Chapter 375, it appears that the General Assembly intended that administrative regulations for local governments would no longer be authorized or needed. The authority to promulgate administrative regulations was deleted.
- (d) The benefits expected from administrative regulation are: Repeal of this administrative regulation will totally eliminate the requirements contained in the administrative regulation which were made unnecessary with the passage of Chapter 375 of the 1998 Kentucky Acts.

April 15, 1999

- (1) Regulation number and title: **109 KAR 15:030**. Special district budget.
- (2) The Department for Local Government 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 May 25, 1999, at 11 a.m., at Department for Local Government, 1024 Capital Center Drive #340, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to May 25, 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: Bob Arnold, Commissioner, Department for Local Government, 1024 Capital Center Drive #340, Frankfort, Kentucky 40601; Phone (502) 573-2382; Fax (502) 573-2939.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is: KRS 65.065.

(b) The administrative regulation that the Department for Local Government intends to promulgate will not amend an existing regulation. It will incorporate by reference the special district budget form.

(c) The necessity and function of the proposed administrative regulation is as follows: To allow the various special districts to function in a more effective and uniform manner in implementation of their special district budgets.

(d) The benefits expected from administrative regulation are: Will allow for better use of budget funds by the various special districts, so as to allow special districts to be run in a more efficient and professional manner.

(e) The administrative regulation will be implemented as follows: By disseminating copies of the incorporated forms to the various special districts by the Department for Local Government.

KENTUCKY REAL ESTATE COMMISSION

April 5, 1999

(1) **201 KAR 11:215.** Qualifications for exemptions from continuing education.

(2) Kentucky Real Estate Commission 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 May 26, 1999, at 1 p.m., at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223.

(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, provided that a minimum of 5 persons 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 May 26, 1999, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing or make written comments should mail their written request or written comments to the following address: Jeffrey C. Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223; or fax their written request or written comments to the following fax number: (502) 426-2717. The commission's phone number is (502) 425-4273.

(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 Real Estate Commission at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 324.045(5)(b).

(b) The administrative regulation that the Kentucky Real Estate Commission intends to promulgate will be a new regulation and will allow all licensees who have not been continually licensed since June 19, 1976 to know the exact qualifications that he must follow in order to be exempted from continuing education.

(c) The necessity and function of the proposed administrative regulation is as follows: To define specific qualifications that must be met in order for a licensee who has not been continually licensed since June 19, 1976 so that all exemption decisions will be based upon well-defined, objective criteria.

(d) The benefits expected from administrative regulation are: The regulation will allow all licensees to be treated equally in exemption decisions and will also allow all licensees to look to well-defined, objective criteria to determine whether an exemption can be obtained.

(e) The administrative regulation will be implemented as follows: The regulation will go into effect immediately upon approval.

KENTUCKY LOTTERY CORPORATION

April 15, 1999

(1) **202 KAR 3:020.** Procurement procedures.

(2) The Kentucky Lottery Corporation intends to amend the existing administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for Friday, May 21, 1999, at 10 a.m. at the corporate offices of the Kentucky Lottery Corporation, 1011 West Main Street, Louisville, Kentucky 40202-2623.

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- (4)(a) The public hearing will be held if:
1. It is requested in writing by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and
 2. A minimum of five (5) persons, or the administrative body or association, agree, in writing, to be present at the hearing.
- (b) If a request for a public hearing and agreement to attend the hearing are not received from the required number of people at least ten (10) days prior to May 21, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should fax or mail their written requests to: Camille Bathurst, General Counsel, Kentucky Lottery Corporation, 1011 West Main Street, Louisville, Kentucky 40202-2623. Phone (502) 560-1576; Fax (502) 560-1532.
- (b) On a request for a public hearing, a person shall state the following:
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 request to be informed by the administrative body.
- (b) Persons who wish to file a request may obtain a request form from the Kentucky Lottery Corporation at the address listed above.
- (7) Information relating to the proposed administrative regulation is as follows:
- (a) The statutory authority for the promulgation of the above-cited administrative regulation is contained in KRS 154A.050(1)(d) and 154A.120(1).
- (b) The proposed amendment to the administrative regulation will make revisions to the existing procurement procedures of the Kentucky Lottery Corporation. The revisions will allow the Kentucky Lottery Corporation to award contracts on the basis of best value, allow posting of notice of bids on the Internet, modify the small purchase policy, define "disadvantaged businesses" which are eligible for assistance, enhance provisions relating to ethics in contracting, and various other internal administrative changes.
- (c) The necessity and function of the proposed administrative regulation is as follows: Pursuant to KRS 154A.120(1), the Kentucky Lottery Corporation is authorized to adopt administrative regulations establishing its procurement procedures. The proposed amendment will revise the Kentucky Lottery Procurement Procedures, January 26, 1996 edition, which were incorporated by reference into 202 KAR 3:020, effective May 16, 1996.
- (d) The benefits expected from the proposed amendment to the administrative regulation are as follows: By adopting the proposed amendment to the administrative regulation, the Kentucky Lottery Corporation will streamline its procurement procedures and make them more consistent with the Kentucky Model Procurement Code and Finance & Administration Cabinet regulations, policies and procedures.
- (e) The proposed amendment to the administrative regulation will be implemented by the Board of Directors, the President and Chief Executive Officer, the General Counsel, and the Director of Purchasing of the Kentucky Lottery Corporation.

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources

February 26, 1999

- (1) Regulation number and title: **301 KAR 2:111**. Deer and turkey hunting on federal areas.
- (2) The Department of Fish and Wildlife Resources intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 21, 1999, at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
 2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten days prior to May 21, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to John Wilson, Assistant Director, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601. Phone (502) 564-3400 or FAX (502) 564-6508.
- (b) In a request for a public hearing, a person shall state:
1. "I agree to attend the public hearing"; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request from the department at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of this administrative regulation is KRS 150.025(1).
- (b) The administrative regulation that the department intends to promulgate will amend 301 KAR 2:111 as follows: It will add the Ohio River Islands and Clark's River national wildlife refuges to the areas covered by the provisions of this administrative regulation.
- (c) The necessity and function of the proposed administrative regulation is to allow deer and turkey hunting on federal areas on dates that may fall outside normal season frameworks.
- (d) The benefits expected from the administrative regulation are granting federal areas the flexibility to schedule hunting seasons around other priority uses of the areas.
- (e) The Administrative regulation will be implemented as follows: Its provisions will be publicized through departmental publications and mass media outlets; it will be enforced by the department's Division of Law Enforcement.

February 26, 1999

- (1) Regulation number and title: **301 KAR 2:182**. Repeal of 301 KAR 2:181.
- (2) The Department of Fish and Wildlife Resources intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 21, 1999, at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
 2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation an administrative regulation governing quota deer hunting is KRS 150.025(1) and 150.620

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will repeal 301 KAR 2:181, Quota deer hunt procedures.

(c) The necessity and function of the proposed administrative regulation is to repeal an administrative regulation whose provisions have been incorporated into another administrative regulation (301 KAR 2:178).

(d) The benefits expected from the administrative regulation are the elimination of an unnecessary administrative regulation.

(e) The administrative regulation will be implemented as follows: Its provisions will be publicized through departmental publications and mass media outlets; it will be enforced by the department's Division of Law Enforcement.

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

April 7, 1999

(1) **415 KAR 1:080** Claims procedure. The subject matter of the proposed amended administrative regulation is the requirements and conditions for the processing and payment of claims by the fund.

(2) The Office of the Petroleum Storage Tank Environmental Assurance Fund intends to promulgate an amended 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 May 28, 1999, at 1:30 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund offices at 911 Leawood Drive, Frankfort, Ky. in the second floor conference room.

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the fund intends to promulgate will amend 415 KAR 1:080. The amendments will conform to the statutory changes resulting from HB 282 (1998), specifically, the procedure for field audits, the prior approval of certain activities, and the prohibition of paying for tank removals. The administrative regulation will also address procedures to be used during the bankruptcy of an owner or operator or their third-party designee.

(c) The necessity and function of the proposed amended administrative regulation is as follows: The amendment will conform with the statutory changes and reorganization made in HB 282 (1998) and the requirements of KRS 224.60-130. The amendments will reduce unnecessary cost to the fund and reduce the incentive for fraud, and provide relief to those vendors and subcontractors who have provided labor, supplies, and materials for the purpose of corrective action prior to and after the filing of a bankruptcy petition by an owner, operator or a third-party designee.

(d) The benefit expected from the administrative regulation is to reduce the cost of corrective action by increased oversight and prior approval of cost, to protect the fund from fraudulent claims, and provide relief to those effected by the bankruptcy of an owner, operator or a designated third party.

(e) The regulation will be implemented upon passage.

KENTUCKY JUSTICE CABINET

April 5, 1999

(1) Regulation number and title: **500 KAR 13:020**, Internal investigations unit.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 24, 1999, at 9 a.m., in the Conference Room, in the 2nd Floor of the Bush Building at 403 Wapping Street, Frankfort, Kentucky 40601.

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

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

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2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 24, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Barbara W. Jones, General Counsel, 403 Wapping Street, 2nd Floor Bush Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-3279, Facsimile Number (502) 564-5244.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Justice Cabinet at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 15A.160 and U.S. vs. Commonwealth, Civil Action No. 3:95 CV-7575.
 - (b) The administrative regulation that the Justice Cabinet intends to promulgate will not amend an existing administrative regulation. The administrative regulation that the cabinet intends to promulgate will establish the procedure to conduct investigations of all special incidents at all residential treatment and youth development centers, group homes, and detention centers operated by or contracted with the Department for Juvenile Justice and any other investigations within the cabinet as authorized by the Secretary of the Justice Cabinet.
 - (c) The necessity and function of the proposed administrative regulation is to develop and implement a procedure for the conduct of investigations as statutorily required.
 - (d) The benefits expected from this administrative regulation are: The establishment of a uniform procedure for investigations.
 - (e) This administrative regulation shall be implemented as follows: With an ordinary administrative regulation.

Department of Corrections

April 14, 1999

- (1) Regulation number and title: **501 KAR 6:070**, Kentucky Correctional Institution for Women.
- (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 May 21, 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 May 21, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 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 6:070, as follows:
 1. Inventory and Control of Stores (KCIW 02-03-02) shall be amended to reflect current practice and to bring the policy into compliance with Corrections Policies and Procedures and Third Edition ACA Standards.
 2. Accounting Procedures (KCIW 02-04-01) shall be amended to reflect current practice and to bring the policy into compliance with Corrections Policies and Procedures and Third Edition ACA Standards.
 3. Inmate Records (KCIW 06-01-01) shall be amended to reflect current practice and to bring the policy into compliance with Corrections Policies and Procedures.
 - (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 Kentucky Correctional Institution for Women 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.

TRANSPORTATION CABINET

April 15, 1999

- (1) Regulation number and title: **601 KAR 1:018**. Overweight or overdimensional permits.
- (2) The Kentucky Transportation Cabinet intends to promulgate a new administrative regulation regarding overweight and overdimensional

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permits.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 26, 1999 at 9 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room of the State Office Building, Frankfort, Kentucky 40622.

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

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

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

(5)(a) Persons wishing to request a public hearing should contact Charles Harman at: phone (502) 564.7650, fax (502) 564.5238, and e-mail charman@mail.kytc.state.ky.us. A written request may be mailed to 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the overweight and overdimensional permitting process is KRS 174.080, 189.222, 189.270, 189.2717, 189.273 and 189.274.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will create 601 KAR 1:018. It will consolidate 11 existing regulations into 1 new regulation.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 174:080, 189.222, 270, 2717, 273 and 274 permit the Transportation Cabinet to promulgate regulations that govern the overweight and overdimensional permitting process. This new regulation will clarify the overweight and overdimensional permitting process.

(d) The benefits expected from the administrative regulation are increased efficiency through the consolidation of regulations.

(e) The administrative regulation will be implemented as follows: In accordance with KRS Chapter 13A.

(8) Any person with a disability for which the Transportation Cabinet needs to make an accommodation in order for the person to participate in the public comment hearing should notify Charles Harman at the above-mentioned address no later than 10 days prior to the scheduled hearing date.

April 15, 1999

(1) **603 KAR 5:120.** Access control of highways.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation regarding access control of highways.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 26, 1999, at 1:30 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room of the State Office Building, Frankfort, Kentucky 40622.

(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 May 26, 1999, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should contact Charles Harman at: phone 502.564.7650, fax 502.564.5238, and e-mail charman@mail.kytc.state.ky.us. A written request may be mailed to 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to access control of highways is KRS 177.230, 177.240, 177.315.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend 603 KAR 5:120. It will amend an existing regulation. It will set forth procedures to designate and/or modify the type of control to be utilized.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: The need exists to define, design, construct, and maintain highways whereby the access (ingress and egress) is controlled. This administrative regulation sets forth procedures to designate and/or modify the type of control to be utilized.

(d) The benefits expected from the administrative regulation are to provide standards and procedures regulating access control of highways.

(e) The administrative regulation will be implemented as follows: By the Transportation Cabinet in accordance with KRS Chapter 13A.

(8) Any person with a disability for which the Transportation Cabinet needs to make an accommodation in order for the person to participate in the public comment hearing should notify Charles Harman at the above-mentioned address no later than 10 days prior to the scheduled hearing date.

KENTUCKY BOARD OF EDUCATION

April 14, 1999

(1) **704 KAR 3:285.** Programs for the gifted and talented.

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

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation is scheduled for May 21, 1999, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, 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 May 21, 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: Kevin M. Noland, General Counsel, Office of Legal Services, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Phone (502) 564-4474, Fax (502) 564-9321.
- (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 Education at the address listed above.
- (7)(a) The statutory authority for amendment of the administrative regulation relating to programs for the gifted and talented KRS 156.070, 157.220, 157.224, and 157.196.
- (b) The administrative regulation that the Kentucky Board of Education intends to 704 KAR 3:285.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: Effective July 15, 1998, KRS 157.196 requires each exceptional student to have an individual education plan that shall serve as the centerpiece of the student's educational career and the communication vehicle between the parents and school personnel. The plan is to enable parents and school personnel to determine the student's educational needs, necessary services to achieve those needs, and anticipated results. The plan is also to be used as a document to monitor the student's progress which is to be reported to parents. This requirement under KRS 157.196 includes the provision of services to gifted and talented students, which is a category of exceptional children. 704 KAR 3:285 sets forth the guidelines for identifying and providing services to gifted and talented children.
- (d) The benefits expected from the administrative regulation is to include amendments to conform to KRS 157.196, as enacted by the 1998 Kentucky General Assembly.
- (e) The administrative regulation will be implemented as follows: Once enacted, the amended regulation will be distributed to all school districts, with consulting and training available by the Department of Education and its regional service centers.

April 14, 1999

- (1) **704 KAR 4:020**, Comprehensive school health.
- (2) The Kentucky Board of Education intends to amend an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 21, 1999, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be as scheduled.
- (c) If a request for a public hearing is not received from the required number of people at least 10 days prior to May 21, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to: Mr. Kevin Noland, General Counsel, Office of Legal Services, Kentucky Department of Education, 500 Mero Street, 1st Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, fax (502) 564-9321, phone (502) 564-4474.
- (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 amend 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 amendment of an administrative regulation relating to school health services is KRS 156.160.
- (b) The administrative regulation that the Kentucky Board of Education intends to amend is 704 KAR 4:020.
- (c) The necessity, function, and conformity of the proposed administrative regulation is to adopt amendments governing medical inspection, and other rules and regulations deemed necessary or advisable for the physical health, safety, and welfare of public school children.
- (d) The benefits expected from the administrative regulation are improved student health, reduction of health problems, and improved attendance.
- (e) The administrative regulation will be implemented as follows: Information about the provisions of the amended regulation will be distributed to each local school district.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
Miner Training, Education and Certification

April 15, 1999

- (1) Regulation number and title: **805 KAR 7:010**. Definitions.
- (2) The Department of Mines and Minerals intends to amend the regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for May 26, 1999, at 1 p.m., (ET), in the First Floor Hearing Room, Department of Mines and Minerals, 1025 Capital Center Drive, 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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Stephan L. Taylor, General Counsel, Department of Mines and Minerals, PO Box 2244, Frankfort, Kentucky 40602-2244, telephone (502) 573-0140, or facsimile the request to (502) 573-0152.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the miner training, education and certification is KRS 351.106.

(b) The administrative regulation that the Department of Mines and Minerals intends to promulgate amends 805 KAR 7:010, as follows: The 1996 and 1998 General Assembly amended Kentucky's mine safety laws substantially. This proposed amendment defines new and amended terminology now found in KRS Chapter 351 and terminology used by the Department of Mines and Minerals.

(c) The necessity and function of the proposed administrative regulation is: The proposed amended regulation will conform the definitions to the recent changes in KRS Chapter 351. Also, the proposed regulation more clearly and accurately describes the persons and conduct covered by KRS Chapter 351.

(d) The benefits expected from this administrative regulation are: The proposed amendment assures conformity with recent amendments to KRS Chapter 351. Also, these revisions clarify the categories of miner training and the requirements for certification.

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

April 15, 1999

(1) Regulation number and title: **805 KAR 7:020**. Training and certification of inexperienced miners.

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

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for May 26, 1999, at 1 p.m., (ET), in the First Floor Hearing Room, Department of Mines and Minerals, 1025 Capital Center Drive, 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, or 1 person representing the administrative body or association, agree, in writing, to be present at the public hearing.

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Stephan L. Taylor, General Counsel, Department of Mines and Minerals, PO Box 2244, Frankfort, Kentucky 40602-2244, telephone (502) 573-0140, or facsimile the request to (502) 573-0152.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the miner training, education and certification is KRS 351.106.

(b) The administrative regulation that the Department of Mines and Minerals intends to promulgate amends 805 KAR 7:020, as follows: The proposed amended regulation adds areas in which inexperienced miners are to be trained, identifies the new procedure for obtaining certification to be a coal miner, and identifies the Mining Board as the entity which oversees and controls the certification and training programs.

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

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

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

April 15, 1999

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

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

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for May 26, 1999, at 1 p.m., (ET), in the First Floor Hearing Room, Department of Mines and Minerals, 1025 Capital Center Drive, Frank-

fort, 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, or 1 person representing the administrative body or association, agree, in writing, to be present at the public hearing.

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Stephan L. Taylor, General Counsel, Department of Mines and Minerals, PO Box 2244, Frankfort, Kentucky 40602-2244, telephone (502) 573-0140, or facsimile the request to (502) 573-0152.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the miner training, education and certification is KRS 351.106.

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

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

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

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

April 15, 1999

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

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

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for May 26, 1999, at 1 p.m., (ET), in the First Floor Hearing Room, Department of Mines and Minerals, 1025 Capital Center Drive, 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, or 1 person representing the administrative body or association, agree, in writing, to be present at the public hearing.

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Stephan L. Taylor, General Counsel, Department of Mines and Minerals, PO Box 2244, Frankfort, Kentucky 40602-2244, telephone (502) 573-0140, or facsimile the request to (502) 573-0152.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the miner training, education and certification is KRS 351.106.

(b) The administrative regulation that the Department of Mines and Minerals intends to promulgate amends 805 KAR 7:040, as follows: The proposed amended regulation identifies the Mining Board as the entity which oversees the training of newly employed miners. Also, the amendment adds areas of training for newly employed miners and specifies who can give that training.

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

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

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

April 15, 1999

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

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

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(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for May 26, 1999, at 1 p.m., (ET), in the First Floor Hearing Room, Department of Mines and Minerals, 1025 Capital Center Drive, 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, or 1 person representing the administrative body or association, agree, in writing, to be present at the public hearing.

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Stephan L. Taylor, General Counsel, Department of Mines and Minerals, PO Box 2244, Frankfort, Kentucky 40602-2244, telephone (502) 573-0140, or facsimile the request to (502) 573-0152.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the miner training, education and certification is KRS 351.106.

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

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

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

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

April 15, 1999

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

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

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for May 26, 1999, at 1 p.m., (ET), in the First Floor Hearing Room, Department of Mines and Minerals, 1025 Capital Center Drive, 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, or 1 person representing the administrative body or association, agree, in writing, to be present at the public hearing.

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Stephan L. Taylor, General Counsel, Department of Mines and Minerals, PO Box 2244, Frankfort, Kentucky 40602-2244, telephone (502) 573-0140, or facsimile the request to (502) 573-0152.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the miner training, education and certification is KRS 351.106.

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

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

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

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

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April 15, 1999

- (1) Regulation number and title: **805 KAR 7:070**. Training of miners for new work assignments.
- (2) The Department of Mines and Minerals intends to amend the regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for May 26, 1999, at 1 p.m. (ET), in the First Floor Hearing Room, Department of Mines and Minerals, 1025 Capital Center Drive, 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, or 1 person representing the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing is not received from the required number of people at least 10 days prior to May 26, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Stephan L. Taylor, General Counsel, Department of Mines and Minerals, PO Box 2244, Frankfort, Kentucky 40602-2244, telephone (502) 573-0140, or facsimile the request to (502) 573-0152.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Mines and Minerals at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the miner training, education and certification is KRS 351.106.
 - (b) The administrative regulation that the Department of Mines and Minerals intends to promulgate amends 805 KAR 7:070, as follows: The proposed amended regulation sets out the requirements for maintaining records of miner training by the licensee. It abolishes the requirements concerning monthly reports regarding miner training.
 - (c) The necessity and function of the proposed administrative regulation is: This proposed amended regulation conforms training record maintenance to KRS Chapter 351 as recently amended and relieves licensees and the Department of Mines and Minerals of unnecessary and burdensome paperwork.
 - (d) The benefits expected from this administrative regulation are: The proposed amended regulation simplifies the requirements with regard to miner training records, while still enabling the Department of Mines and Minerals to monitor compliance with the miner training laws.
 - (e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Department of Mines and Minerals, Division of Training and Education, through authorized classes, and the Division of Mine Safety and Health and the Division of Mine Safety Analysis through their inspections.

April 15, 1999

- (1) Regulation number and title: **805 KAR 7:090**. Hazard training.
- (2) The Department of Mines and Minerals intends to propose the regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 26, 1999, at 1 p.m., (ET), in the First Floor Hearing Room, Department of Mines and Minerals, 1025 Capital Center Drive, 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, or 1 person representing the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing is not received from the required number of people at least 10 days prior to May 26, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Stephan L. Taylor, General Counsel, Department of Mines and Minerals, PO Box 2244, Frankfort, Kentucky 40602-2244, telephone (502) 573-0140, or facsimile the request to (502) 573-0152.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Mines and Minerals at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the miner training, education and certification is KRS 351.106.
 - (b) The summary of the administrative regulation that the Department of Mines and Minerals intends to promulgate as 805 KAR 7:090 is as follows: The proposed regulation sets out the required training for non-coal miners or persons not regularly exposed to the hazards of coal mines before such persons are allowed into coal extraction or production areas of a mine. It also sets out requirements concerning documentation of such training.
 - (c) The necessity and function of the proposed administrative regulation is: Visitors and other persons who have rare occasion to be at a coal mine need a certain amount of training in order to make their visit as safe as possible.
 - (d) The benefits expected from this administrative regulation are: The proposed regulation will save people from injury and death.
 - (e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Department of Mines and Minerals, Division of Training and Education, through authorized classes, and the Division of Mine Safety and Health and the Division of Mine Safety Analysis through their inspections.

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PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

April 9, 1999

- (1) **806 KAR 9:190**, Disclosure requirements for financial institutions authorized to engage in insurance agency activities.
- (2) The Department of Insurance intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive written and oral comments on the proposed administrative regulation has been scheduled for May 25, 1999, at 2 p.m. (ET), at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at a public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 25, 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: Sharron S. Burton, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602. Phone - (502) 564-6032, Fax - (502) 564-1456.
- (b) On a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing"; or,
 2. "I will not attend the public hearing".
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Insurance at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of this administrative regulation is KRS 304.9-135(2)(f).
 - (b) The administrative regulation that the department intends to promulgate will not amend an existing regulation. It will specify the disclosure forms required by KRS 304.9-135.
 - (c) The necessity and function of the proposed administrative regulation is as follows: KRS 304.9-135(2)(f) requires the commissioner to promulgate administrative regulations to specify the disclosure forms required by KRS 304.9-135(2)(b), (c), and (e). This administrative regulation is necessary to specify those disclosure forms and comply with the mandates of KRS 304.9-135(2).
 - (d) The benefits expected from the administrative regulation are as follows: This administrative regulation will provide disclosure forms that contain the information required by KRS 304.9-135(2) for use by financial institutions authorized to engage in insurance agency activities.
 - (e) The administrative regulation will be implemented as follows: Financial institutions authorized to engage in insurance agency activities are required, pursuant to KRS 304.9-135(2), to disclose specific information to consumers who purchase an insurance product through the financial institution. The financial institutions will be required to use the disclosure statements incorporated by reference into this administrative regulation.

April 15, 1999

- (1) **806 KAR 17:205**, High-cost condition codes and severity questionnaire.
- (2) The Department of Insurance 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 May 27, 1999, at 10 a.m. (ET), at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at 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 May 27, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sharron S. Burton, Kentucky Department of Insurance, 215 West Main Street, PO Box 517, Frankfort, Kentucky 40602. Phone - (502) 564-6032. Fax - (502) 564-1456.
- (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 Insurance at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of the administrative regulation is KRS 304.17A-005(19)(b).
 - (b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. By designating an International Classification of Diseases (ICD) code for each high-cost condition and incorporating an underwriting questionnaire to assign a severity score, this administrative regulation will establish a mechanism whereby an insurer may identify a Guaranteed Acceptance Program (GAP) qualified individual.
 - (c) The necessity and function of the proposed administrative regulation is as follows: KRS 304.17A-005(19)(b) requires the Commissioner of Insurance to establish uniform underwriting standards and a score or rating above which a condition is considered to be high-cost. The commissioner is required to use the most recent version of the ICD to identify a high-cost condition of an individual who is a GAP qualified individual. This administrative regulation is necessary in order to establish guidelines for the identification of a high-cost condition by using an ICD code and a severity rating for each high-cost condition.
 - (d) The benefits expected from administrative regulation is as follows: By designating a severity rating, above which a condition is considered to be high-cost, this administrative regulation will provide guidance in determining who among insureds is eligible for GAP participation.
 - (e) The administrative regulation will be implemented as follows: This administrative regulation is informational in that it provides codes that identify high-cost conditions. In addition, the administrative regulation establishes an underwriting questionnaire that, when completed, will designate the severity of the high-cost condition.

April 15, 1999

- (1) **806 KAR 17:230**, Patient protection and health care quality.
- (2) The Department of Insurance intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive written and oral comments on the proposed administrative regulation has been scheduled for May 26, 1999, at 10 a.m. (ET), at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at a public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 26, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sharron S. Burton, Kentucky Department of Insurance, 215 West Main Street, PO Box 517, Frankfort, Kentucky 40602. Phone - (502) 564-6032. Fax - (502) 564-1456.
- (b) On a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing"; or
 2. "I will not attend the public hearing".
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Insurance at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of this administrative regulation is KRS 304.17A-565.

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will clarify the patient protection provisions as enacted in KRS 304.17A-500 through 304.17A-570 and establish requirements for implementation of the statutory provisions by insurers. The requirements established by this administrative regulation will relate to provider access and availability in- and out-of-network; provider selection criteria for a special services network; internal procedures for resolution of an enrollee appeal; continuity of care in a managed care plan; and disclosure of information to an enrollee. Additionally, the administrative regulation will establish requirements for submission of information necessary for the commissioner to evaluate and enforce compliance with the patient protection provisions.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 304.17A-565 requires the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS 304.17A-500 through 304.17A-570. It is necessary for the Commissioner of Insurance to define certain terms unique to a managed-care plan, collect information, and establish requirements relating to provider access and availability in- and out-of-network; internal procedures for resolution of an enrollee appeal; continuity of care in a managed care plan; and disclosure of information to an enrollee. This administrative regulation defines terms, establishes requirements related to patient protections, and establishes guidelines for the submission of information to the department, including the criteria for approving or disapproving special services networks. The information submitted pursuant to this administrative regulation will assist the department in verifying that the insurer and managed care plan have properly implemented and complied with the statutory patient protection provisions.

(d) The benefits expected from the administrative regulation are as follows: Insurers, including managed care plans, will benefit from this administrative regulation by receiving clarification of the provisions of KRS 304.17A-500 through 304.17A-570 regarding patient protections. This administrative regulation will specify for insurers and managed care plans the procedures required for implementation and compliance with KRS 304.17A-500 through 304.17A-570.

(e) The administrative regulation will be implemented as follows: An insurer or managed care plan that offers health benefits in the state of Kentucky shall be required to comply with the patient protection provisions established by KRS 304.17A-500 through 304.17A-570 and, in order for the department to verify compliance, report the information required by this administrative regulation to the Commissioner of Insurance. In addition, insurers and managed care plans will be required to implement patient protection provisions as directed by this administrative regulation.

April 14, 1999

- (1) **806 KAR 38:100**, Filing requirements for health maintenance organization provider agreements.
- (2) The Department of Insurance intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive written and oral comments on the proposed administrative regulation has been scheduled for May 26, 1999, at 2 p.m. (ET), at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at a public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 26, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sharron S. Burton, Kentucky Department of Insurance, 215 West Main Street, PO Box 517, Frankfort, Kentucky 40602. Phone - (502) 564-6032. Fax - (502) 564-1456.
- (b) On a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing"; or
 2. "I will not attend the public hearing".
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Insurance at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of this administrative regulation is KRS 304.38-150.

(b) The administrative regulation that the department intends to promulgate will not amend an existing regulation. It will establish requirements for health maintenance organizations to file, with the department, any agreement with providers for the provision of health care services.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 304.38-060(1) permits the commissioner to consider any agreement with providers for the provision of health care services in order to assure compliance with the Kentucky insurance laws as well as to assist him in making a determination as to whether or not a health maintenance organization is financially responsible and

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may reasonably be expected to meet its obligations to enrollees and prospective enrollees. In order to review the agreements between a provider and a health maintenance organization, it is necessary to require the health maintenance organization to file the agreements with the commissioner. This administrative regulation establishes this filing requirement.

(d) The benefits expected from the administrative regulation are as follows: The filing requirement in this administrative regulation will clarify the commissioner's right to access to agreements between providers and health maintenance organizations. Easier access to these agreements will assist the commissioner in determining whether or not a health maintenance organization is financially responsible and able to meet its obligations to current and prospective enrollees.

(e) The administrative regulation will be implemented as follows: Health maintenance organizations will be required, pursuant to this administrative regulation, to file with the department any agreement with a provider for the provision of health care services.

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

May 5, 1999

(1) Regulation number and title: **815 KAR 20:073**. Installation standards for water and waste piping material of types K, L, M and DWV copper; types R-K, R-L, R-DWV brass tubing and seamless stainless steel tubing, G or H.

(2) The Department of Housing, Buildings and Construction intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Tuesday, May 25, 1999 at 10 a.m., local time, in the Department of Housing's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) days prior to May 25, 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: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Suite #1, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 318.130.

(b) The department intends to amend 815 KAR 20:073 by amending Section 4(5) by allowing drawn T's to be used on smaller diameter pipe and to bring into compliance with revised manufacturer's recommendations.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation relates to the proper installation of copper pipe and fittings.

(d) The benefits expected from this administrative regulation are: small reduction in costs in buildings utilizing this type waster distribution system.

(e) This administrative regulation will be implemented by the Division of Plumbing and state plumbing inspectors.

May 5, 1999

(1) Regulation number and title: **815 KAR 20:110**. Water supply and distribution.

(2) The Department of Housing, Buildings and Construction intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Tuesday, May 25, 1999 at 10 a.m., local time, in the Department of Housing's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) days prior to May 25, 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: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Suite #1, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 318.130.

(b) The department intends to amend 815 KAR 20:110 by amending Section 8 to reduce the number of clean-outs required in smaller buildings by revising the section to specify the necessity of clean-outs in buildings served by stacks over 45 feet in height.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation relates to the quality, location and the placing of traps and clean-outs to prevent harmful gases and odors from entering buildings and homes that are served by plumbing systems. This administrative regulation also identifies the manufacturer's specification number of the material accepted in those installations.

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(d) The benefits expected from this administrative regulation are: Eliminating unnecessary clean-outs due to the physical characteristics of plastic pipe.

(e) This administrative regulation will be implemented by the Division of Plumbing and state plumbing inspectors.

April 15 1999

(1) Regulation number and title: **815 KAR 35:015**, Certification of electrical inspectors.

(2) The Department of Housing, Buildings and Construction intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 10 a.m., local time, on Tuesday, May 25, 1999, in the Department of Housing's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

1. It is requested, in writing, by at least 1 person, 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 May 25, 1999, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 227.489 and 13A.100.

(b) The department intends to amend 815 KAR 35:015 to address issues in KRS 211.350 so as to not penalize the electrical contractors who have installed a wiring system properly from having their work approved when completed. This proposed amendment will clarify that the official approval by the electrical inspector for electrical power to be supplied by the utility company will be the issuance of the certification of compliance, not the placement of an inspection sticker.

(c) The necessity and function of the proposed administrative regulation is as follows: The Commissioner of the Department of Housing, Buildings and Construction is required by KRS 227.489 to certify electrical inspectors based on standards of the National Electrical Code. This administrative regulation was previously amended to include compliance with Senate Bill 18 as one of the responsibilities of the electrical inspector and violation would subject the inspector to disciplinary action.

(d) The benefits expected from this administrative regulation are: Facilitate the enforcement of KRS 211.350 without unnecessarily penalizing electrical contractors.

(e) This administrative regulation will be implemented by the Division of Fire Prevention; Electrical Section.

April 5, 1999

(1) Regulation number and title: **815 KAR 35:030**. Kentucky certification of electrical contractors.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 10 a.m., local time, on Tuesday, May 25, 1999, in the Department's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least ten (10) days prior to May 25, 1999, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 227.4901.

(b) The department intends to amend 815 KAR 35:030 to change the examination name to reflect the correct name of the testing organization and the examination itself.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 227.4901 requires that the Department of Housing, Buildings and Construction select and approve an examination designed to determine the competency of electrical contractors under the National Electrical Code, to certify those individuals passing the examination and to collect and compile reports on disciplinary actions taken against licensed electrical contractors by cities and counties. This administrative regulation is necessary to specifically identify the test which must be taken in order to be certified.

(d) The benefits expected from this administrative regulation are: Use of an examination approved by several states will result in the ability to cross borders and work without having to take additional examinations.

(e) This administrative regulation will be implemented by the Division of Fire Prevention; Electrical Section.

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- (1) Regulation number and title: **815 KAR 45:080**, Volunteer fire department aid.
- (2) The Commission on Fire Protection Personnel Standards and Education intends to amend the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 10 a.m., local time, on Tuesday, May 25, 1999, in the Department's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 1 person 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 May 25, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U. S. Highway 127 South, Suite #1, Frankfort, Kentucky 40601, Phone: (502) 564-8044, Fax: 502/564-6799.
- (b) On a request for public hearing, a persons shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the department's general counsel at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of this administrative regulation is KRS 95A.262(2).
 - (b) The department intends to amend Section 2 of the administrative regulation to grandfather fire departments already using certified firefighters to certify more than 1 fire department through March 31, 1999. Effective April 1, 1999, any new fire department applying to be recognized by the Fire Commission for funding and benefits must have at least 12 members and a chief that are not listed to qualify another fire department for volunteer fire department aid. This amendment has been requested by Senator Paul Heron and Representative Steve Riggs of the Interim Committee on Local Government and was authorized by the Fire Commission.
 - (c) The necessity and function of the proposed administrative regulation is as follows: To increase the funds to local volunteer fire departments in order to promote better fire protection facilities and equipment.
 - (d) The benefits expected from this administrative regulation are: Better fire protection through better facilities and equipment.
 - (e) This administrative regulation will be implemented by Commission on Fire Protection Personnel Standards and Education.

CABINET FOR HEALTH SERVICES Office of Certificate of Need

April 15, 1999

- (1) **900 KAR 6:050**. Certificate of need administrative regulation.
- (2) The Cabinet for Health Services, Office of Certificate of Need, intends to promulgate an administrative regulation governing the subject matter cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for May 28, 1999, at 9 a.m. in the Cabinet for Health Services Auditorium, Health Services Building, 1st Floor, 275 East Main Street, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least five members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 28, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Hiren Desai, Cabinet Regulation Coordinator, Cabinet for Health Services, 275 East Main Street, 4 West, (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 Public Health, Commissioner's Office, 275 East Main Street, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans with Disabilities Act. Persons requesting assistance regarding the Cabinet for Health Services regulations may call toll free 1-800-372-2973 (V/TDD).
- (7) Information relating to the proposed administrative regulations:
 - (a) The statutory authority for the promulgation of is administrative regulation relating the subject matter listed above is found at KRS 216B.040(2)(a) and (3).
 - (b) The administrative regulation that the Cabinet for Health Services, intends to promulgate concerns the certificate of need process.
 - (c) The necessity, function and conformity of the proposed administrative regulation is as follows: 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 amends the provisions that relate to the transfer of surgical services to provide that such transfers shall be subject to formal review.
 - (d) The benefits expected from the administrative regulation are a check on the proliferation of surgical services.
 - (e) The administrative regulation will be implemented as follows: The Office of Certificate of Need will be responsible for the implementation of this administrative regulation.

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Office of Inspector General

April 5, 1999

- (1) **902 KAR 20:275**. Mobile health 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 May 28, 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 May 28, 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 promulgation of administrative regulations relating to health facilities and health services is KRS 216B.010, 216B.040, and 216B.042
 - (b) The cabinet intends to amend this administrative regulation to include requirements for agencies providing private duty nursing services. Section 3(3)(e) will be amended to require a current negative tuberculin skin test or chest x-ray for an employee having direct contact with a patient. Sections 5(1)(a), (2)(c)5, and (d) will recognize that clinical personnel may order services within the limits of their statutory scope of practice. Other amendments will comply with drafting requirements of KRS Chapter 13A.
 - (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To comply with the mandate of KRS 216B.042 in the establishment of licensure requirements for the operation of mobile health services.
 - (d) The benefits expected from these proposed amendments are that they will permit clinical personnel to perform tasks within the limits of their statutory scope of practice.
 - (e) The administrative regulation will be implemented as follows: By the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Health Services.

Department for Medicaid Services

April 15, 1999

- (1) **907 KAR 1:060**, Medical transportation.
- (2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 28, 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 May 28, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Hiren B. Desai, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Administration and Development, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to medical transportation is KRS 194A.030 and 194A.050.
 - (b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:060 to revise and clarify definitions, to make formatting and drafting amendments in order to comply with KRS Chapter 13A, and to make minor clarifications to current policy.
 - (c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth

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the provisions relating to the service of transportation for access to medical services for which payment shall be made by the Medicaid program on behalf of both the categorically needy and the medically needy.

(d) The benefits expected from administrative regulation are: To revise and clarify licensure requirements and restrictions to comply with appropriate licensing agency requirements.

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

April 15, 1999

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

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 28, 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 May 28, 1999, the public hearing will be canceled.

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to payments for medical transportation are KRS 194A.030 and 194A.050.

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

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

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

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

Department for Mental Health/Mental Retardation Services

(1) **908 KAR 2:210**, Domestic violence offender treatment certification standards.

(2) The Department for Mental Health/Mental Retardation 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 May 28, 1998 at 9 a.m. in the Department for Public Health Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

2. A minimum of 5 persons or the administrative body, or association, 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 prior to May 18, 1997, the public hearing will be canceled:

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

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

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

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

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations 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 Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 100 Fair Oaks Dr. (4th Floor) 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 American With Disabilities Act. Persons requesting assistance with Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

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(a) The statutory authority for the promulgation of an administrative regulation relating supported living is KRS 403.7505. That statute empowers the Cabinet for Health Services to promulgate regulations establishing certification standards for mental health professionals providing court-mandated treatment services for domestic violence offenders.

(b) The amendment to the administrative regulation that the Department for Mental Health/Mental Retardation Services intends to promulgate will revise the definition of domestic violence, add provisions authorizing the cabinet to establish a review committee to assist in the review of applications for certification, revise provisions for denial and revocation of certification, amend required qualifications for certification of providers, amend domestic violence treatment program assessment and admission procedures, amend treatment standards, and amend requirements for involuntary discharge from a domestic violence treatment program.

(c) The necessity and function of the administrative regulation is as follows: To amend certification standards for providers of court ordered treatment to perpetrators of domestic violence and program operational standards to assure appropriate treatment of perpetrators. This amendment is necessary to assure adequate protection for victims and to expedite the provider certification process.

(d) The benefits expected from this administrative regulation are: To expedite the review of applications for provider certification and thereby increase the availability of certified domestic violence treatment providers. Amendments to provisions for admission and discharge of offenders and associated judicial and victim notification requirements are made to increase the safety of victims.

(e) The administrative regulation will be implemented as follows: By the Department for Mental Health and Mental Retardation Service, Cabinet for Health Services.

Department for Mental Health/Mental Retardation Services

April 15, 1999

(1) **908 KAR 3:050.** Per diem rate pursuant to the Patient Liability Act of 1978.

(2) The Department for Mental Health/Mental Retardation Services intends to promulgate the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 28, 1999 at 9 a.m. in the Department for Public Health Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

2. A minimum of 5 persons or the administrative body, or association, 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 by May 18, 1999, at least 10 days prior to May 28, 1999, the public hearing will be canceled.

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

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

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

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

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations 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 Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 100 Fair Oaks Dr. (4th Floor), 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 American With Disabilities Act. Persons requesting assistance with 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 related to charge rates for state psychiatric hospitals is KRS 210.720(2).

(b) The administrative regulation that the Department for Mental Health/Mental Retardation Services intends to promulgate will fix the patient cost per day for board, maintenance and treatment at facilities controlled by the cabinet.

(c) The necessity and function of the administrative regulation is as follows: To establish standardized rates for the patient cost per day for board, maintenance, and treatment at psychiatric facilities controlled by the Cabinet for Health Services.

(d) The benefits expected from the amendments to this administrative regulation are: To limit the amounts deemed payable for in-patient care by all consumers within the mental health system. Setting rates in relation to cost will maximize reimbursement from all sources and offset cost to the Commonwealth.

(e) The administrative regulation will be implemented as follows: By the Department for Mental Health and Mental Retardation, Cabinet for Health Services.

April 15, 1999

(1) **908 KAR 3:060.** Means Test pursuant to the Patient Liability Act of 1978.

(2) The Department for Mental Health/Mental Retardation Services intends to promulgate the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 28, 1999 at 9 a.m. in the Department for Public Health Auditorium, Health Services Building, First floor, 275 East Main Street, Frankfort, Kentucky.

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

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

2. A minimum of 5 persons or the administrative body, or association, 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 by May 18, 1999, at least 10 days prior to May 28, 1999, the public hearing will be canceled.

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

(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 desire to be informed of the intent of an administrative body to promulgate administrative regulations 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 Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 100 Fair Oaks Dr. (4th Floor), 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 American With Disabilities Act. Persons requesting assistance with 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 related to a means test to determine payment liability for patients or persons responsible for patients is KRS 210.720 (3).

(b) The administrative regulation that the Department for Mental Health/Mental Retardation Services intends to promulgate will establish a means test for determining payment liability of patients or persons responsible for patients.

(c) The necessity and function of the administrative regulation is as follows: KRS 210.720(3) authorizes the Secretary for Health Services to adopt a means test for determining the ability to pay of the patient or person responsible for the patient for board, maintenance and treatment at a facility operated or utilized by the cabinet for the mentally ill or mentally retarded. The function of this administrative regulation is to adopt a means test.

(d) The benefits expected from the amendments to this administrative regulation are: To limit the amounts deemed payable for in-patient care in relation to the patient's ability to pay and the actual costs of in-patient care.

(e) The administrative regulation will be implemented as follows: By the Department for Mental Health and Mental Retardation, Cabinet for Health Services.

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

(NOTE: Emergency administrative regulations expire 170 days from publication or upon replacement, repeal, or withdrawal)

STATEMENT OF EMERGENCY
415 KAR 1:080E

Due to the recent filing for bankruptcy protection of a large environmental remediation contractor, owners and operators of petroleum storage tanks have been placed in a position of being subject to liens and litigation from vendors or subcontractors that performed corrective action services, or provided labor, materials or supplies for the corrective action. These vendors or subcontractors are seeking payment for services already provided. These same vendors and subcontractors also face financial hardship if action is not taken immediately. The Office of the Petroleum Storage Tank Environmental Assurance Fund has become aware that changes to the current payment procedure must be made to pay these vendors and subcontractors directly. This emergency administrative regulation allows owners and operators to resubmit claim requests and allows the vendor or subcontractor to be paid directly. Under current administrative regulations, payment cannot be made directly to the vendor or subcontractor. An ordinary administrative regulation would not be sufficient as the time is of the essence in protecting owners and operators from continued liens or litigation and to insure that the welfare of the owners, operator, vendors and subcontractors is not endangered. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler on April 12, 1999.

PAUL E. PATTON, Governor
RONALD B. MCCLOUD, Secretary

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

415 KAR 1:080. Claims procedures.

RELATES TO: KRS 224.60-110, 224.60-115, 224.60-120(5), 224.60-130(2), 224.60-140, 40 CFR Parts 280, 281

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

EFFECTIVE: April 12, 1999

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(2)(a)-(e) require [requires] the fund to establish the procedures [necessary] to administer the fund. This administrative regulation establishes the procedures for an eligible [to be followed by] a petroleum storage tank owner or operator [who is certified as eligible to participate in the financial responsibility account or is eligible to participate in the petroleum storage tank account] to make a claim to the office [fund] for reimbursement or payment of the cost [costs] of corrective action.

Section 1. Application for Assistance. (1) An owner or operator eligible to participate in the financial responsibility account or the petroleum storage tank account shall apply for assistance with the office [fund].

(2) Application shall be made on the Application for Assistance form [dated June 1996, hereby incorporated by reference. This form may be inspected and obtained at the Office of Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the fund are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday]. The eligible owner or operator shall demonstrate:

(a) The eligibility requirements of 415 KAR 1:060 or 415 KAR 1:070 have been met; and

(b) A release requiring corrective action from an eligible facility has occurred and has been reported to the cabinet. The necessity for corrective action shall be demonstrated by analytical sample results. If closure can be issued by the cabinet without the performance of cor-

rective action, the facility is not eligible for reimbursement of corrective actions costs from the fund [participation].

(3)(a) If the owner or operator meets the requirements of subsection (2) of this section the office shall:

1. [fund may] Approve the Application for Assistance; and

2. Establish the amount to be obligated by the appropriate account.

(b) Reimbursement pursuant to an approved Application for Assistance shall be [is] restricted to documented costs approved by the secretary or the secretary's designee.

(c) The approved Application for Assistance may be used as a guarantee of payment by the owner or operator to a contractor performing corrective action to the extent of the amount obligated and approved by the secretary [fund].

(4) The office shall amend an approved Application for Assistance to provide an additional obligation of funds to guarantee payment of eligible corrective actions costs if:

(a) A written request and supporting documentation is submitted to the office by the eligible owner or operator;

(b) It is demonstrated to the office that an additional obligation of funds is necessary to guarantee payment of eligible costs of corrective action;

(c) The office determines that the additional costs of corrective action are necessary to comply with the written directions and administrative regulations of the cabinet;

(d) The office notifies the eligible applicant in writing that an additional obligation of funds has been approved.

Supporting documentation shall fully explain the need for the additional corrective action and set forth the unit costs, in compliance with the requirements of 415 KAR 1:110, for the performance of the additional corrective action including, but not limited to:

1. The costs of personnel;

2. Sampling;

3. Laboratory testing;

4. Excavation;

5. Haulage;

6. Treatment or disposal of contaminated soil or water;

7. Other expenses necessary to comply with the requirements of 401 KAR Chapter 42.

(e) The office may request additional information and documentation to determine that the additional costs of corrective action are eligible, necessary and reasonable. Additional requested information and documentation shall be provided to the office by the owner or operator within thirty (30) days of the receipt of request unless otherwise agreed to in writing by both parties within the thirty (30) day period. A request by the office for additional information and documentation shall be made by certified mail. If the owner or operator fails to provide the requested additional information and documentation, the office shall deny the owner's or operator's request for an additional obligation of funds.

(f) Payment shall not exceed the amount obligated by the office, and the office shall not reimburse any additional corrective action costs incurred prior to approval. [The fund may amend the approved Application for Assistance upon application by the eligible owner or operator, upon a demonstration that the amendment is necessary to guarantee payment of eligible costs of corrective action and that the additional costs are necessary to comply with the written directions and administrative regulations of the cabinet. Payment shall not exceed the amount obligated by the fund.]

(5) Payment under the terms of the approved Application for Assistance may be made when the eligible owner or operator submits a claim form, and a certification that the cost was reasonable [costs were consistent with the bid] and necessary to comply with [the administrative regulations of the cabinet at] 401 KAR Chapter 42. The requirement for the use of a certified contractor shall be enforced after March 1, 1995 pursuant to 415 KAR 1:114 (1994).

(6) The office [fund] may request additional information and

documentation from the applicant necessary to verify eligibility or account placement. Failure by the applicant to provide the requested information and documentation within sixty (60) days of the receipt of the request shall cause the application to be denied. The office shall ~~[fund may]~~ grant an extension of thirty (30) days for good cause demonstrated by the applicant. Denial of the Application for Assistance under this subsection shall not prevent the owner or operator from reapplying if ~~[once]~~ the requested information becomes available.

Section 2. Submittal of Claim. (1) A petroleum storage tank owner or operator eligible for participation in the office [fund] shall submit a claim for reimbursement or payment from the fund for the costs of corrective action on the Claim Request form and Listing of Invoices form ~~[dated June 1996, hereby incorporated by reference. These forms may be inspected and obtained at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leewood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the fund are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday].~~ The claim shall contain:

- (a) Original invoices for all costs for which payment is sought;
- (b) A copy of the contract executed by the owner or operator and the person contracting to perform the corrective action;
- (c) Documentation that the release has been reported to the cabinet; and

(d) Laboratory analysis substantiating:

1. The necessity of the corrective action ~~[to be or having been performed]~~ except for initial abatement and free product recovery as required by 401 KAR 42:060; and

2. ~~[laboratory analysis substantiating]~~ The necessity of off-site disposal of contaminated soil; and

(e) Documentation to establish that the owner or operator has complied with the administrative regulations or written directions of the cabinet.

(2) Reimbursement sought through the use of the Soil Disposal/Treatment Claim Request form shall be limited to the cost of:

(a) Transportation and disposal of contaminated soil at a contained landfill or treatment facility, permitted by the cabinet's Solid Waste Branch; and

(b) Material, including transportation, for backfill material;

(3) Reimbursement sought through use of the Capital Equipment Claim form shall be limited to the purchase price, less determined salvage value, as approved under Section 8(1)(m) of this administrative regulation;

(4) The office [fund] may require additional information and documentation to determine the eligibility, necessity and reasonableness of a cost or costs contained in a request for payment.

(5)(a) A claim received by the office shall be reviewed in accordance with the following unless an extension of time is agreed to by the applicant and the office:

1. A Claim Request form shall be reviewed within ninety (90) days of receipt;

2. A Soil Disposal/Treatment Claim Request form shall be reviewed within thirty (30) days of receipt, if the costs has been obligated and preapproved, if necessary, prior to submission;

3. Capital Equipment Claim Request forms shall be reviewed within thirty (30) days of receipt, if costs have been obligated and preapproved, if necessary, prior to submission;

4. A Soil Disposal/Treatment Claim Request or Capital Equipment Claim Request submitted prior to securing an obligation or preapproval shall be reviewed within ninety (90) days of the receipt of an obligation and, if necessary, a preapproval.

~~[(3)(a) The fund shall review a claim requesting payment within ninety (90) days of its receipt by the fund, unless an extension of time is agreed to by the applicant, and subject to subsection (5) of this section;]~~

(b) If the claim is determined to be deficient, the office [fund] shall notify the applicant, by certified mail, of the deficiencies. Supplemental information to correct the deficiencies shall be submitted by the applicant and received by the office [fund] within fifteen (15) days of the notice of receipt by the applicant. The office [fund] may grant the applicant a thirty (30) day extension if the written request is received within fifteen (15) days of receipt of the notice of deficiency;

(c) If the applicant fails to correct the deficiency or to supply the

additional information required by the office [fund] staff, that portion of the claim shall be denied.

(6) ~~[(4)]~~ The office [fund] shall issue a determination pursuant to KRS 224.60-140(7) as to whether the costs submitted in the claim are eligible for payment.

(7) ~~[(5)]~~ The claim may be submitted with the application for assistance but shall [will] not be considered received for review until the application has been approved by the secretary or the secretary's designee. If a claim request exceeds the amount currently obligated for the facility, the claim shall [will] not be considered received for review until a sufficient additional obligation has been approved by the secretary.

(8) ~~[(6)]~~ An owner or operator of a facility with an approved Application for Assistance shall submit to the office [fund], a copy of all reports required by administrative regulation or requested, in writing, by the cabinet detailing the status of remedial action at the facility, including site check, site investigation, corrective action plans, quarterly reports, closure assessment reports, site classification documents and any correspondence with the cabinet addressing remedial measures or regulatory requirements pertaining to the facility.

(9) If prior approval of a cost is required pursuant to 415 KAR 1:110, and not obtained by the owner or operator, in writing, prior to that cost being incurred, the office shall not reimburse any portion of that cost.

Section 3. Contracts. (1) An owner or operator contracting for the performance of corrective action, including permanent closure, change-in-service, release investigation, site check, or site investigation, shall obtain a contract from a certified contractor or contracting company to be eligible for reimbursement or payment from the fund. The contract shall be obtained prior to commencing the activity except emergency response measures as directed by the cabinet. The contract shall set forth the unit costs, in compliance with the requirements of 415 KAR 1:110, for the performance of the activity, including, but not limited to, the costs of personnel, sampling, excavation, treatment or disposal of contamination, and other necessary expenses to comply with the provisions of 401 KAR Chapter 42.

(2) A copy of the contract shall be submitted with an Application for Assistance.

(3) An owner or operator who has submitted an application for assistance received prior to the effective date of this administrative regulation shall be required to submit a copy of a contract setting forth the scope of the services to be performed and detailing the unit costs in order to be eligible for continued reimbursement or payment from the fund. If a contract is changed or revised, a copy of that contract shall be submitted to the office.

Section 4. Signatures. (1) A claim form or an Application for Assistance shall be signed by an eligible owner or operator as follows:

(a) For a corporation, by:

1. A principle executive officer of at least the level of vice-president;

2. ~~[or]~~ The duly authorized representative or agent of the executive officer if the representative or agent is responsible for overall operation of the facility; or

3. A person designated by [whom] the board of directors ~~[designates]~~ by means of a corporate resolution;

(b) For a partnership, sole proprietorship or individual, by a general partner, the proprietor or individual respectively; or

(c) For a municipality, state or federal agency by either a principle, executive officer or ranking elected official.

(2) A claim request or application for assistance shall also be signed by:

(a) The contractor certified pursuant to 415 KAR 1:114 who is responsible for the overseeing of the corrective action;

(b) An authorized representative of the contracting company certified pursuant to 415 KAR 1:116.

(3) ~~All signatories [The authorized representative]~~ shall make the following certification on a claim form:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision, that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based upon my inquiry of

those individuals immediately responsible for obtaining the information, I believe that this submitted information, is true, accurate, and complete. I certify that all costs are necessary and were actually incurred in the performance of corrective action. I further certify that, if not the owner or operator, I am authorized by the owner or operator as an agent to make this certification, or I am the person certified under 415 KAR Chapter 1 and my (our) certification is in good standing.

(4) (f3) The owner or operator signing the certification shall submit documentary evidence as requested by the office [fund] to substantiate the legality of the authorized representatives power of agency.

Section 5. Criteria For Approval of a Claim. (1) A claim with an [The fund shall review all claims with] approved Applications for Assistance for the Financial Responsibility Account or the Petroleum Storage Tank Account shall be reviewed in the time period specified at Section 2(5)(a) of this administrative regulation; [in the order in which they are received.]

(2) The claims shall be reviewed to determine whether:

(a) The corrective action activities comply with 401 KAR Chapter 42 [the administrative regulations of the cabinet];

(b) Each cost is [The costs are] necessary, reasonable and consistent with the requirements of 401 KAR Chapter 42;

(c) The claim form is properly completed and accurate, and all necessary information has been supplied; and

(d) The applicant has complied with Section 11 of this administrative regulation.

(3) (All) Claims from owners or operators for a facility eligible to participate in the petroleum storage tank account shall be ranked as provided in 415 KAR 1:090.

Section 6. Payment. (1) A claim [Claims] shall be reviewed by the office [fund] to determine eligibility for payment and compliance with the administrative regulations of the office [fund].

(2) Requests for payment covering cost incurred by an owner or operator under an approved Application for Assistance may be submitted to the office [fund] thirty (30) days following initiation of corrective action required by law. Subsequent requests for payment may be made at thirty (30) day intervals thereafter until completion of the authorized activities. All requests for payment, except a final request for payment, shall equal or exceed \$1,000. A claim shall not be submitted for reimbursement until the value of the claim meets or exceeds the applicant's entry level. Any request not meeting the requirements of this section will be returned unprocessed to the applicant.

(3) A payment [All payments] shall be subject to final recommendation by the executive director and approval by the secretary or the secretary's designee.

Section 7. Payment Procedures. (1)(a) When an owner or operator has submitted a claim for payment by the office [fund], payment shall be made by a check written to the eligible owner or operator, or to a designated third-party. A designation made by power of attorney may be revoked at any time by notice to the attorney-in-fact and to the office [fund].

(b) A request for an interim partial payment shall be accompanied by documentation required by Section 2(8) [(6)] of this administrative regulation;

(c) A request for final payment shall be accompanied by a closure letter issued by the cabinet; or

(d) A request for one (1) time payment in full shall be accompanied by a closure letter issued by the cabinet.

(2) Prior to payment being issued, the eligible owner or operator shall submit documentary evidence verifying that an amount equal to the entry level has been paid by the owner or operator.

(3)(a) Any claim which has been submitted by an owner/operator or by a third party designated for payment on behalf of an owner/operator, shall not be considered for payment if the owner/operator or third party, at any time prior to the payment of the claim, has been named as a debtor in any voluntary or involuntary proceeding under Title 11 (Bankruptcy), USC. To be eligible for reimbursement, each person who supplied labor, material or supplies to the project, or who performed required testing of material on the project, or who transported or received waste from said project,

shall submit a new payment request on behalf of the owner/operator. Documentary evidence shall be submitted with the payment request identifying each individual, corporation or partnership and the value of labor, materials or services provided by that person. The same level of documentation shall be required for these claims as required by Sections 2 and 5 of this administrative regulation.

(b) All payment requests submitted under this subsection shall be submitted within ninety (90) days of the filing of the bankruptcy petition under 11 USC or within ninety (90) days of the effective date of this administrative regulation, whichever is later.

(c) The payment request shall not be considered received for review until the applicable time given in subsection (b) of this section has expired. The payment request will be reviewed within ninety (90) days after it has been received for review.

(d) Payment for the eligible costs claimed under this subsection shall be by a check written directly to the party identified in the payment request.

(e) Payment under this subsection shall only be made for corrective action costs that have not been reimbursed in a previously approved claim request.

(f) Payment requests shall be made on the Vendor or Subcontractor Payment Request Form, PSTCAF #11.

Section 8. Eligible and Ineligible Costs. The office's [fund's] reimbursement for costs of corrective action shall be made in accordance with 415 KAR 1:110 and limited to reasonable and necessary costs, expenses and other obligations incurred for corrective action or site investigation required by law under the provisions of KRS Chapter 224 and administrative regulations pursuant thereto, as the result of a motor fuel release into the environment from a petroleum storage tank. The office [fund] may require the submission of a report of analytical laboratory results to substantiate the need for corrective action and may require other information and documentation needed to determine the reasonableness and necessity of corrective action. For corrective action to be necessary for office [fund] purposes, contamination exceeding the levels for which the cabinet will allow closure shall [must] be established by the applicant.

(1) Eligible costs shall include:

(a) Testing to determine tightness of tanks and lines in response to a suspected release due to tank or delivery line failure if a release of motor fuel is detected or upon written direction of the cabinet;

(b) [Removal, treatment, and disposal of petroleum products from petroleum storage tank systems necessary to perform site investigation or corrective action];

(c) Performance of site checks, and site investigation to assess the extent of contamination caused by a motor fuel release from a petroleum storage tank system in compliance with the administrative regulations of the cabinet or pursuant to the written directions of the cabinet;

(c) [(d)] Preparation of corrective action plans;

(d) [(e)] Necessary monitoring of the environment performed pursuant to the written direction of the cabinet or in compliance with the administrative regulations of the cabinet;

(e) [(f)] Necessary laboratory services to analyze samples taken as part of the site check, site investigation, corrective action, or maintenance of the corrective action system if [where] a release has occurred at the facility, or at the written direction of the cabinet;

(f) [(g)] Restoration or replacement of a private or public drinking water supply;

(g) [(h)] Removal, treatment, and disposal of contaminated liquids, other than those liquids and sludges contained in the tank, and soils resulting from corrective action;

(h) [(i)] The cost of material [costs of materials] purchased to perform the site check, site investigation or corrective action, including but not limited to, bailers, sample containers, and similar equipment;

(i) [(j)] The cost [costs] of implementation of corrective action technology [technologies] such as soil venting or bioremediation, or [and] groundwater treatment system [systems], if accepted by the cabinet for the facility and prior approval is received from the office pursuant to 415 KAR 1:110;

(j) The cost of [(k) Costs for] replacing blacktop or concrete if removal was necessary to perform the corrective action;

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(k) ~~[(f)]~~ Attorney fees integral to the performance of off-site corrective action, such as preparation of an off-site access agreement; agreements; and

(l) ~~[(m)]~~ Other costs requested by the applicant and approved by the office [fund], demonstrated to be necessary to the performance of a site check, site investigation or corrective action, or maintenance of the corrective action system.

(m) A purchase [fn- Purchases] of capital equipment in excess of \$1,000 if the lease or rental for the equipment will exceed the purchase price. Prior approval for purchases of capital equipment in excess of \$1,000 shall be obtained from the executive director of the office, in accordance with Section 12 of this administrative regulation.

(2) The following costs shall not be eligible for payment or reimbursement from the fund:

(a) Replacement, repair, maintenance, or retrofitting of tanks or piping;

(b) New or replacement fill material for tanks and piping;

(c) Equipment such as drill rigs and earth moving equipment;

(d) Loss of business, income or profits;

(e) Attorneys fees related to:

1. Any judicial or administrative litigation;

2. Consultation on [regulatory] administrative regulations;

3. Consultation on office [fund] administrative regulations;

4. Preparation or submittal of office [fund] documentation; and

5. Any other services determined by the office [fund] not to be integral to the performance of corrective action.

(f) Decreased property values for the facility;

(g) Facility improvements;

(h) Payment of the owner or operator's personnel for overtime or staff time in planning or implementing a site check, site investigation or corrective action plan, except as allowed under 415 KAR 1:116;

(i) An aesthetic improvement [improvements] to the facility;

(j) Interest on an overdue account or loan [accounts and loans];

(k) A cost [Costs] covered by insurance payable to the owner or operator;

(l) A contractor surcharge [surcharges] implemented because the owner or operator failed to act in a timely fashion;

(m) [Any] Work performed that is not in compliance with safety codes;

(n) A cost [Any costs] associated with a release [releases] from an aboveground tank [tanks] or aboveground piping;

(o) Contractor markup expenses for normally expected overhead items and in-stock materials;

(p) Contractor markup expenses for personnel costs;

(q) A rush laboratory rush fee [fees] unless directed by the cabinet;

(r) A cost or [Costs and] cost recovery for governmental emergency services;

(s) Preparation and implementation of a corrective action plan [plans] once a written notice of closure is issued by the cabinet;

(t) Payment from the fund shall only be made for the costs of corrective action required by the cabinet's administrative regulations or at written direction of the cabinet and shall not be made for costs to upgrade the facility. Payment from the fund shall [will] not be made for any work or portion of [that] work performed at a facility where the results of laboratory analysis do not confirm the need for corrective action;

(u) Cost of any party or parties employed to act as a surrogate or stand-in for the owner or operator of the facility;

(v) Preparation of fund documentation or client invoices that will be submitted to the office for reimbursement;

(w) Except as provided in 415 KAR 1:130, cost related to the removal, or actions incidental to the removal of a tank system. Those cost include, but are not limited to, those cost listed in 415 KAR 1:130(5);

(x) Cost of resampling and laboratory tests performed under Section 11(4)(b) of this administrative regulation or cost of resampling and laboratory tests performed as a result of an operational or methodology mistake by the analytical laboratory, or cost for an analytical laboratory to become certified or accredited under the requirements of KRS 224.60-130(2)(a);

(y) Additional costs relating to compliance with a local program operating under KRS 224.60-105(4), to the extent that those costs

are required to comply with corrective action standards more stringent than required by the cabinet; and

(z) Any other service or cost determined by the office to not be a reasonable and necessary cost of corrective action.

Section 9. Delegation to Executive Director. The secretary may delegate responsibility for the approval of a claim, an Application for Assistance, or the payment of a claim to the executive director.

Section 10. Subrogation. Prior to making payment of a claim, the office [fund] shall acquire by subrogation the rights of the person receiving payment to recover the amounts paid by the office [fund] for the performance of corrective action from the person responsible or liable for the release.

Section 11. Field Audits. (1) The office shall be authorized to enter and inspect a facility seeking or intending to seek reimbursement for the cost of corrective action in order to determine the reasonableness and necessity of the cost of corrective action.

(2) Refusal to allow an office employee entry and inspection of a facility shall make the facility ineligible for fund participation. All monies previously paid to the owner or operator of the facility shall be repaid to, or recovered by, the fund.

(3)(a) After April 1, 1999, office personnel shall be present on site during all tank removal activities, except as provided in paragraphs (d) and (e) of this subsection;

(b) An owner or operator shall contact the office, by certified mail, to schedule a date to have a field auditor on site during tank system removal activities. The certified mail notice shall be received at least fourteen (14) days prior to commencement of the removal;

(c) If the field auditor cannot be present on site on the day scheduled by the notice sent as required in paragraph (b) of this subsection, he may, by written notice, require the owner to reschedule the removal to a proposed date. This notice must be mailed by the office no later than ten (10) days prior to the date scheduled by the owner;

(d) If the field auditor fails to issue notice to reschedule the tank removal, or is not present on the day set by the notice, the removal may proceed without penalty; and

(e) This provision shall not apply to emergency removals ordered by the cabinet.

(4)(a) Office personnel may collect soil or water samples and shall have full access to all areas or wells to collect such samples. Office personnel may require the owner or operator splitting of samples with the office for analytical testing. Failure to allow sample collection, or to split samples, shall make the facility ineligible for fund participation.

(b) If analytical results taken by the office differ significantly from the analytical results submitted by the applicant, the office may require the applicant to resample the area or wells in question. Such resampling will not be reimbursed by the fund. Any remaining discrepancies in analytical results of the resampling will be resolved with the applicant having the burden to prove the validity of their analytical results.

(5) Venue for entry and inspection orders shall be in Franklin Circuit Court.

Section 12. Preapproval for Capital Equipment Rental or Purchase. (1) An owner or operator who has been directed by the cabinet to initiate remedial action that will require the purchase of equipment costing in excess of \$1,000, shall obtain prior approval of the purchase from the fund to be eligible for reimbursement. The request is to be submitted on the Capital Equipment Preapproval Purchase or Rental Request form;

(2) The office may approve the purchase or rental of remediation equipment and establish the amount to be reimbursed. The owner or operator may use the approved request as a guarantee of payment to a contractor performing corrective action to the extent of the amount approved by the office;

(3)(a) The request to purchase the equipment shall contain:

1. Three (3) bids obtained from a supplier or manufacturer of remedial equipment. If the certified contractor or certified company is included in the bid process, four (4) bids are required. Each bid shall

contain a description of the equipment to be purchased and an anticipated salvage value provided by the supplier or manufacturer;

2. If three (3) bids cannot be obtained, the owner shall provide written documentation of the manufacturers or suppliers decline to bid. A minimum of two (2) letters of declination shall be provided for each bid not submitted;

3. A cost benefit analysis substantiating purchase vs. rental of the equipment;

4. A copy of the warranty supplied by the equipment supplier or manufacturer;

5. Shipping, installation, training and start up costs. These costs shall be separated from the actual equipment costs;

(b)1. The purchase of new equipment shall be considered by the fund at 100 percent of the invoice price for the most economical (least expensive life cycle cost) system bid received by the owner or operator;

2. Reimbursement shall be limited to the original purchase price less the anticipated salvage value, including applicable sales tax. The office will not reimburse for markup;

3. If the owner or operator elects to purchase the equipment with a greater life cycle cost, he shall be responsible for the amount above the most economical bid price will be the responsibility of the owner or operator;

4. All unscheduled maintenance costs covered by the new equipment warranty supplied by the equipment supplier or manufacturer are the responsibility of the owner or operator.

(c) If the owner or operator chooses to begin remediation prior to acceptance of the Corrective Action Plan, three (3) bids must be submitted to the office prior to the purchase of the equipment, however, the cost of the equipment will not be reimbursable until such time as the cabinet accepts the Corrective Action Plan. The bids will remain on file at the office until the Corrective Action Plan is accepted. At that time, the owner or operator may request reimbursement for the purchase by submittal of a completed Capital Equipment Purchase or Rental form;

(4)(a) The request to purchase used or reconditioned equipment shall contain:

1. Three (3) bids for new equipment obtained from a supplier or manufacturer of remedial equipment. If the certified contractor or certified company wishes to be included in the bid process, four (4) bids are required. Each bid shall contain a description of the equipment and a salvage value provided by the supplier or manufacturer;

2. If the bids required by subsection (1) of this paragraph cannot be obtained, the owner shall provide written documentation of the manufacturer or suppliers decline to bid. A minimum of two (2) letters of declination must be provided for each bid not submitted;

3. The name, address and telephone number of the previous owner of the equipment proposed for installation;

4. A description of the equipment including pertinent specifications necessary to compare the proposed equipment with the bids for the new equipment;

5. The remaining economic life of the used equipment;

6. A projected salvage value for the used or reconditioned equipment after the proposed usage;

7. Shipping, installation, training and start-up costs. These costs shall be separated from the actual equipment costs;

(b) The purchase of used or reconditioned equipment will be reimbursed at a lump sum rate of the sum of the purchase plus a maximum of fifteen (15) percent markup less the anticipated salvage value, not to exceed the reimbursement ceilings that follow. Reimbursement for the purchase, including markup, of used equipment shall not exceed sixty-five (65) percent of the most economical new system bid received by the owner or operator and submitted to the office for consideration. The economic life of reconditioned equipment shall be considered to be the same as new equipment. Reimbursement for the purchase of reconditioned equipment, including markup, shall not exceed eighty (80) percent of the most economical new system bid received by the owner or operator and submitted to the office for consideration. Reimbursement will not be considered for parts and labor associated with unscheduled maintenance or equipment component replacement for the duration of the expressed limited warranty period specified by the supplier and or manufacturer or for 180 days whichever is greater;

(5) Rental of remediation equipment may be approved by the office. This option may be suitable in circumstances where a lengthy remediation is not anticipated. The fund will only reimburse for the actual usage of the equipment. At no time will the rental rate exceed the purchase price. Usage is considered to be the actual active utilization of the remediation equipment and does not include idle equipment maintained at a fund covered facility for the convenience of the contractual parties. The request to rent the equipment shall contain:

(a) Three (3) bids for new equipment obtained from a supplier or manufacturer of remedial equipment. If the certified contractor or certified company wishes to be included in the bid process, four (4) bids shall be submitted. Each bid shall contain a description of the equipment and a salvage value provided by the supplier or manufacturer;

(b) If three (3) bids cannot be obtained, the owner must provide written documentation of the manufacturer or suppliers decline to bid. A minimum of two (2) letters of declination must be provided for each bid not submitted;

(c) Shipping installation, training and start-up costs. These costs shall be separated from the actual equipment.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Application for Assistance (October, 1998), PSTeAF #2;

(b) Claim Request (October, 1998), PSTeAF #3;

(c) Invoice Listing (July 1996), PSTeAF #4;

(d) Soil Disposal/Treatment Claim Request, (October 1998), PSTeAF #9;

(e) Capital Equipment Purchase and Rental Request, (October 1998), PSTeAF #10; and

(f) Vendor or Subcontractor Payment Request, PSTeAF #11.

(2) This material may be inspected and obtained at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RONALD B. MCCLOUD, Secretary

ROBERT E. NICKEL, Executive Director

DAVID B. WICKER, ESQ., Staff Counsel

APPROVED BY AGENCY: April 7, 1999

FILED WITH LRC: April 12, 1999 at noon

REGULATORY IMPACT ANALYSIS

Agency Contact: David B. Wicker

(1) Type and number of entities affected: The amended regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

(a) Direct and indirect costs or savings to those affected:

1. First year: The tank owners or operators are financially responsible for \$500, \$2,500 or \$12,500 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for remediation of releases from underground petroleum storage tanks. The amended regulation will no longer reimburse for the cost of tank system removals. That cost will be borne by the applicant. Vendors and subcontractors that are owed money by a owner, operator or third-party designee that is in bankruptcy will be able to make direct claims, thus increasing the amount of money available to those people.

2. Continuing costs or savings: Tank owners or operators will continue to experience the cost and savings outlined above savings include the cost of remediation and third-party liability expenses.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process claim forms. Vendors and subcontractors will also be required to file payment claims if the there is a bankruptcy petition filed by an owner, operator or third-party designee.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Office of the Petroleum Storage Tank Environmental Assurance Fund receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 97 administrative budget was \$1.45 million. The fund expects cost to increase as a result of the need to hire new field auditors and contracting to perform financial audits.

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that approximately 22 new staff members will be added.

(b) Reporting and paperwork requirements: The fund will be required to collect, review, maintain, and process claim forms. The fund will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected: House Bill 282 required these amendments. Additional changes were made to improve the efficiency of claims processing, and to allow those effected by a bankruptcy to receive the money for work they have performed.

ALTERNATIVE:

1. Less stringent: The fund cannot be less stringent than the statute allows. Being less stringent would cause undue delays in the processing and payment of claims, and place a financial strain on vendors and subcontractors unable to receive money due to a bankruptcy. This also protects property owners from liens filed on their property due to money being diverted.

2. More stringent: The fund cannot be more stringent than the statute allows. More stringent standards would cause fewer reimbursements and defeat the statutory goal of assisting the owners and operators of petroleum storage tanks.

3. Present proposal: The amended regulation contains the claims procedures to be followed by owners or operators eligible to participate in the fund. These procedures outline what cost are eligible and provide the proper balance of oversight and usability.

(5) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal through all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will likely contain more tanks.

(b) Environmental: The effect of this regulation is to provide reimbursement mechanisms for payments up to \$1,000,000 for corrective action and \$1,000,000 for third-party liability for releases from petroleum storage tanks. A positive effect on the environment is expected as tank owners who were not financially able to remediate their sites will have assistance.

(6) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There is no statute, administrative regulations, or government policy in conflict with the amended regulation

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(7) Source of revenue: The monies expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: The amended regulation conforms to the statute and increases the fund's ability to protect its resources and provide more money to the regulated community. This administrative regulation will also allow vendors and subcontractors to receive direct payments in the case of a bankruptcy of the owner, operator, or their third-party designee. This also protects property owners from liens filed on their property due to money being diverted.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied: No, the regulation applies the same procedures to all applicants. This is seen as fair and results in the same cost being eligible or noneligible for all parties.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum storage tanks to demonstrate financial ability to caused by a petroleum release to the environment.

2. State compliance standards. There are no standards in addition to the federal standards.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 280 subpart details the standards and compliance dates.

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

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

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any service provided by the local government which involves the storage of motor fuel in underground storage tanks.

4. How does this administrative regulation affect the local government or any service it provides? This regulation will imposes no different claim procedure from that imposed on a non-governmental entity.

STATEMENT OF EMERGENCY 500 KAR 13:020E

This administrative regulation establishes new procedures for investigations by the Justice Cabinet's Internal Investigations Unit, Office of the Secretary. In order to protect the health and safety of juveniles residing in facilities operated by the Department of Juvenile Justice and in order to comply with the terms of a federal consent decree, complaints of alleged misconduct by staff must be promptly investigated. This administrative regulation is necessary to reflect the procedure for the investigation of complaints by the Internal Investigation Unit in the Office of the Secretary of the Justice Cabinet. The Internal Investigations Unit shall conduct investigations of all special incidents at all residential treatment and youth development centers, group homes, and detention centers operated by or contracted with the Department for Juvenile Justice and any other investigations within the cabinet as authorized by the Secretary of the Justice Cabinet. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent of 500 KAR 13.020 will be filed with the Regulations Compiler on April 5, 1999.

PAUL E. PATTON, Governor
PAMELA J. MURPHY, Acting Secretary

JUSTICE CABINET

500 KAR 13:020E. Internal Investigations Unit.

RELATES TO: KRS Chapter 15A
STATUTORY AUTHORITY: KRS 15A.160, *U.S. vs Commonwealth*, Civil Action No. 3:95 CV-7575.

EFFECTIVE: April 5, 1999

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes the procedures for investigations by the "Internal Investigations Unit" (hereinafter "IU") Office of the Sec-

retary. The "IIU" shall conduct investigations of all special incidents at all residential treatment and youth development centers, group homes, and detention centers operated by or contracted with the Department for Juvenile Justice and any other investigations within the cabinet as authorized by the Secretary of the Justice Cabinet.

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

(2) "Founded" means that a special incident occurred:

- (a) By an admission of the person responsible; or
- (b) By a preponderance of the evidence.

(3) "Initiation" means any action by the Internal Investigations Unit intended to ensure the immediate safety of the alleged victim or to obtain evidence or information relevant to the investigation.

(4) "Perpetrator" means an individual employed at a facility against whom an allegation of a special incident has been founded by the Internal Investigations Unit.

(5) "Special incident" means an act in which the health or welfare of a resident is harmed or threatened with harm by a facility staff person. It includes but is not limited to incidents when a facility staff person:

(a) Uses inappropriate or excessive force that results in an injury.

(b) Uses inappropriate or excessive force that could result in an injury.

(c) Engages in any sexual activity to include any contact or interaction, which uses or allows, permits or encourages the use of a resident for the sexual gratification of the perpetrator or another person.

(d) Uses inappropriate consequences as punishment such as excessive exercise, harsh physical labor or other physical consequences outside accepted practices of the Department for Juvenile Justice.

(e) Uses or attempts to use a resident in the pursuit of the staff's own personal gain.

(f) Enters into a business relationship with a resident.

(g) Extends unearned special privileges to a resident in return for something done for staff.

(h) Accepts a bribe from a resident or indicate a bribe would be accepted.

(i) Enters any unlawful transaction with a youth as set forth in KRS 530.064, 530.065 and 530.070.

(j) Uses humiliating, demeaning, profane or racially charged language directed at a resident.

(k) Uses verbal threats of harm directed at a resident.

(l) Exhibits a pattern of harassing conduct directed at a resident.

(m) Does not provide appropriate supervision, medical care, food, clothing, shelter or education.

(n) Allows or encourages a resident to engage in an illegal activity such as use of drugs or alcohol or gambling.

(6) "Unfounded" means insufficient evidence was found to indicate that a special incident occurred.

Section 2. Receiving a Report. The Internal Investigations Unit (IIU) shall accept reports of special incidents involving residents in juvenile residential treatment and youth development centers, group homes and detention centers operated by the Department of Juvenile Justice (DJJ).

(1) An 800 number shall be made available to all staff and residents in juvenile residential treatment and youth development centers, group homes, and detention centers to report special incidents. A voice mailbox system shall be available for reporting special incidents after normal work hours.

(2) The investigator shall attempt to elicit from the person reporting the special incident as much information about the incident as possible, including:

- (a) The nature and extent of the special incident;
- (b) The causes of the special incident;
- (c) The location of the alleged victim;
- (d) Any witnesses to the alleged special incident;
- (e) The present danger to the alleged victim;
- (f) The person responsible for the alleged special incident;

- (g) The reporting person's identity and relationship to the victim;
- (3) Anonymous reports which give sufficient information and allege a special incident shall be investigated.

Section 3. The IIU shall not investigate reports that do not meet the definition of a special incident. Such reports may be referred to other appropriate resources.

Section 4. Reports of Suspected Special Incident. Following the receipt of the report, the IIU-2, Special Incident Reporting Form, herein incorporated by reference shall be completed and the report investigated. Investigations shall be conducted according to the following time frames:

(1) If the report indicates the resident is in imminent danger, the investigation shall be initiated within one (1) hour and personal contact made with the alleged victim within twenty-four (24) hours.

(2) If the report alleges physical or sexual harm, but does not indicate imminent danger, the investigation shall be initiated within twenty-four (24) hours and personal contact made with the victim within forty-eight (48) hours.

(3) If the report does not allege physical or sexual harm, the investigation shall be initiated within twenty-four (24) hours and personal contact made with the victim within seventy-two (72) hours.

(4) If the report indicates that the victim is no longer in a residential treatment or youth development center, group home or detention center, the investigation shall be initiated within forty-eight (48) hours and personal contact made with the victim within three (3) workdays.

(5) The time frames begin at the time the report is received by the IIU staff.

Section 5. Initial Investigation. After receiving a report of an alleged special incident the IIU investigator shall:

(1) Complete the IIU-2.

(2) Forward all alleged special incidents to local law enforcement or the Kentucky State Police; the local county attorney and the Cabinet for Families and Children.

(3) Notify the Commissioner of the Department of Juvenile Justice or designee of the report.

(4) Interview the victim privately.

(5) Interview the alleged perpetrator.

(6) Interview appropriate witnesses.

(7) Review documentation relevant to the incident.

(8) Preserve appropriate evidence.

Section 6. Determining the Validity of the Report. After the interviews and all the necessary information is gathered the investigator shall:

(1) Complete a written report within thirty (30) days of receipt of the allegation unless there are extenuating circumstances which are documented. The report shall contain:

(a) The information gathered during the investigation;

(b) A recommendation regarding the validity of the allegation as founded or unfounded.

(2) Submit the report through supervisory channels for review and approval.

(3) Forward all completed investigations to:

(a) The Commissioner of the Department of Juvenile Justice.

(b) The Cabinet for Families and Children.

(4) Forward all completed investigations that are founded to the local county attorney.

PAMELA J. MURPHY, Acting Secretary

BARBARA W. JONES, General Counsel

APPROVED BY AGENCY: March 22, 1999

FILED WITH LRC: April 5, 1999 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Barbara W. Jones

(1) Type and number of entities affected: All juvenile residential treatment and youth development centers, group homes and juvenile detention centers operated by the Department of Juvenile Jus-

tice, approximately 31 facilities.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

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

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

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

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

(b) Kentucky: All juvenile residential treatment and youth development centers, group homes and juvenile detention centers operated by the Department of Juvenile Justice.

(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: Regulation ensures prompt and thorough investigation of all alleged Special Incidents in juvenile residential treatment and youth development centers, group homes, and juvenile detention centers operated by the Department of Juvenile Justice.

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

(c) If detrimental effect would result, explain detrimental effect: Failure to implement the regulation could result in residents not being adequately protected in relation to special incidents.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 620.020, 620.030 and 620.040.

(a) Necessity of proposed regulation if in conflict: The regulation is not in conflict with the cited statutes, but there could be some overlap. The regulation is needed because the cited statutes do not adequately govern the special incidents that residents in residential treatment and youth development centers, group homes or juvenile detention centers may be subjected to.

(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: Yes

STATEMENT OF EMERGENCY

900 KAR 6:050E

This emergency administrative regulation amends the existing certificate of need administrative regulation to require that applications for certificates of need to establish new free-standing ambulatory surgery centers be reviewed under formal review rather than expedited review. The cabinet has been asked by some members of the Legislative Health and Welfare Committee to promulgate this administrative regulation on an emergency basis in order to protect the health care delivery system from the proliferation of free-standing ambulatory surgery centers. It is the view of some mem-

bers of the Legislative Health and Welfare Committee that the proliferation of free-standing ambulatory surgery centers would have an adverse affect on the viability of existing rural hospitals. In that event, failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health of the residents of the Commonwealth of Kentucky. This administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler on April 15, 1999.

PAUL E. PATTON, Governor

JOHN H. MORSE, Secretary

CABINET FOR HEALTH SERVICES

Office of Certificate of Need

900 KAR 6:050E. Certificate of need administrative regulation.

RELATES TO: KRS 216B.010 to 216B.130, 216B.455, 216B.990

STATUTORY AUTHORITY: KRS [43A.350,] 194A.030, 194A.060, 216B.040

EFFECTIVE: March 26, 1999

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 a [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 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 an 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 an applicant [all applicants] for a certificate of need. This shall:

(a) Include an applicant [~~those applicants~~] requesting nonsubstantive review under the provisions of Section 8 of this administrative regulation.

(b) Not include an applicant [~~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 at least thirty (30) days.

Section 3. Certificate of Need Application. (1) An applicant [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 cabi-

net'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 shall be given on the third Thursday of the following months:

1. April; and

2. October.

(d) Public notice for ground 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) A proposal [~~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 shall [~~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 a 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 a 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) Fifteen (15) days prior to 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 for completeness 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 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) shall [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) 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 shall [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) 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) 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 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) shall [will] be mailed to affected persons.

(10) If 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 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) 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.

(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 relocate [transfer] surgical services from one (1) licensed health facility to a newly established or other health facility and either facility is owned by the existing facility with surgical services shall be considered consistent with the state health plan if the existing facility has not added to its complement of operating rooms within twelve (12) months prior to filing the application for relocation and the following conditions are met:

1. The newly established surgical services are located:

a. On the existing facility's licensed premises; or

b. In the same county as the existing health facility and where there are no other licensed providers of surgical services in the county; and

2. The existing facility with surgical services which relocated the rooms and the newly established surgical service shall not add operating rooms for one (1) year following the date that the newly established surgical services commence operations. [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; or

(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.]~~

(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 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.

(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. If a hearing has been scheduled, the applicant shall also notify all parties to the proceedings in writing of the applicant's intent 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 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.

(3) 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 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 of Certificates 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.

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.

(3) 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.

(4) In computing any period of time prescribed by these administrative regulations, the date of notice, decision or order shall not be included.

(5) 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 shall [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 who requested the hearing withdraw [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.

(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 com-

pare 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) 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) 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) 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) Within thirty (30) days of the conclusion of the hearing, the hearing officer shall issue a final decision on the matter.

(8) 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.

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 shall [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 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 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.

(21) [(22)] If the project involves a capital expenditure, a final cost breakdown shall be included in the final progress report.

(22) [(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 shall [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.

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) days 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) (7/16/97);
- (c) Certificate of Need Application for Ground Ambulance [and Air Ambulance] Service Providers (Form #2B) (2/15/97);
- (d) Certificate of Need Application for Change of Location, Replacement, or Cost Escalation (Form #2C) (12/15/97);
- (e) Witness List (Form #3) (9/10/97);
- (f) Exhibit List (Form #4) (9/10/97);
- (g) Notice of Appearance (Form #5) (9/10/97);
- (h) Administrative Escalation (Form #6) (7/16/96);
- (i) Six (6) Month Progress Report (Form #7);
- (j) Advisory Opinion Request (Form #8) (7/16/96);
- (k) Acquisition of a Health Facility, Notice of Intent (Form #9) (3/24/79);
- (l) Notification of the Addition of a Health Service or Equipment (Form #10) (10/15/97).

(2) This material [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 H. MORSE, Secretary

JOHN H. WALKER, Office of Counsel

APPROVED BY AGENCY: March 24, 1999

FILED WITH LRC: March 26, 1999 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Gray, Executive Director (564-9589)

(1) Type and number of entities affected: All applicants for and holders of certificates of need.

(2) Direct and indirect cost or savings to those affected:

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

(b) Cost of doing business in the geographical areas in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments were received on this issue.

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

1. First year following implementation: There are no additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Person applying for certificates of need must complete and file letters of intent and applications. Persons receiving certificates of need must complete and file progress reports.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds have already been budgeted for the operation of the certificate of need process. The agency also collects fees for the filing of applications.

(6) To the extent available from the public comments received,

the economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: No public comments were received on this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives are available because the certificate of need process is mandated by statute (KRS Chapter 216B).

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will enable the Cabinet for Health Services to check the proliferation of surgical services in the state, which members of the Legislative Health & Welfare Committee have identified as an issue needing emergency attention.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on public health will result if this administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Members of the Legislative Health & Welfare Committee have determined that the unchecked proliferation of surgical services will have a detrimental effect on public health by threatening the viability of rural hospitals.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied as the certificate of need process is applied uniformly for all persons subject to the requirements of certificate of need.

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, the Certificate of Need administrative regulation relates to licensed health services provided by local government, including but not limited to home health and ambulance services.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. If local government provides licensed health care services, this administrative regulation will affect that part of local government that provides such services.

3. State the aspect or service of local government to which this administrative regulation relates. That part of local government that provides licensed health care services, if any.

4. How does this administrative regulation affect the local government or any service it provides? By setting forth the requirements for obtaining a certificate of need to establish a health facility or health care service.

ADMINISTRATIVE REGULATION AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

DEPARTMENT FOR LOCAL GOVERNMENT
Division of Financial Services
(As Amended At ARRS, April 13, 1999)

109 KAR 13:010. Uniform financial information report.

RELATES TO: KRS 65.900 to 65.925

STATUTORY AUTHORITY: KRS 65.905(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.905(4) requires ~~[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 or [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 taxing 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, or [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, and special taxing 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.~~

~~(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 districts [district].~~

~~(3)(a) Each county, city or [and] special taxing 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 or [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 material is [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) This material [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, Monday through Friday, [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.

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(As Amended at ARRS, April 13, 1999)

201 KAR 2:165. Transfer of prescription information.

RELATES TO: KRS 217.215(2), 315.191(1)(f) [Chapter 315]

STATUTORY AUTHORITY: KRS 217.215(2), 315.191(1)(a), (f) [; (5)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(5) provides for the board to adopt administrative regulations necessary to control the transfer of prescriptions. This administrative regulation will set out the requirements for the transfer of information.

Section 1. (1) The transfer of [original] prescription information for any noncontrolled substance prescription [except Schedule II Controlled Substances] for the purpose of refill dispensing shall be [is] permissible if:

~~(a) Communicated directly between two (2) pharmacists; or~~

~~(b) It is made through [use of] an on-line real-time computer system that provides documentation of the presence of a pharmacist when the information is transferred [on a one (1) time basis] subject to the following requirements:~~

~~(2) [(+)] The transferring pharmacist shall record the following information:~~

~~(a) That the prescription is void;~~

~~(b) The name and address of the pharmacy to which it was transferred and the name of the pharmacist receiving the prescription information; and~~

~~(c) [The DEA registration number of the pharmacy to which it was transferred [if it is a controlled substance]; and~~

~~(d)] The date of the transfer and the name of the pharmacist transferring the information.~~

~~(3) [(2)] The pharmacist receiving the transferred prescription shall record the following information:~~

~~(a) That the prescription is a transfer;~~

~~(b) The date of issuance of the original prescription;~~

~~(c) The refill authorization on the original prescription;~~

~~(d) The date of original dispensing;~~

~~(e) The refill authorization remaining and the date of the last refill;~~

~~(f) The pharmacy's name and address and the original prescription number from which the prescription was transferred;~~

~~(g) The name of the transferor pharmacist;~~

~~(h) All additional information required by law.~~

~~(4) [(3)] Both the original prescription and the transferred prescription must be maintained for a period of five (5) years from the date of the last refill.~~

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(5) [(4)] Pharmacies electronically accessing the same prescription record must satisfy all information of a manual mode for a prescription transfer.

Section 2. The transfer of prescription information for a [any] controlled substance prescription, except a Schedule II controlled substance [substances], for the purpose of refill dispensing shall be [is] permissible if the transfer complies with the requirements of 21 CFR Section 1306.25 [KRS Chapter 218A, the administrative regulations promulgated pursuant thereto or the requirements of the United States Drug Enforcement Administration, whichever is more stringent].

Section 3. Violation of a [any] provision of this administrative regulation shall constitute [constitutes] unethical or unprofessional conduct in accordance with KRS 315.121(2)(d), (f), (g).

RODNEY C. STACEY, President
CHERYL LALONDE-MOONEY, J.D., Assistant Attorney General
APPROVED BY AGENCY: January 4, 1999
FILED WITH LRC: January 12, 1999 at noon

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(As Amended at ARRS, April 13, 1999)

201 KAR 2:185. Noncontrolled substance prescription drug refills.

RELATES TO: KRS 215.191(f), (g), 315.191(1)(f) [Chapters 217, 315]

STATUTORY AUTHORITY: KRS 217.215, [315.010(4), (5), (7), 315.191(1)(f) [(5)]]

NECESSITY, FUNCTION, AND CONFORMITY: [The Board of Pharmacy is authorized by] KRS 315.010, 315.191 and 217.215(2) require the Board of Pharmacy [(1)] to promulgate [adopt rules and] administrative regulations necessary to regulate the practice of pharmacists and the recordkeeping systems associated with prescriptions. This administrative regulation establishes [defines] the responsibilities of pharmacists and practitioners relating [as] to prescription drug refills.

Section 1. (1) A [No] pharmacist shall not refill a prescription for a noncontrolled substance prescription drug [bearing a "Federal Caution Legend"] unless authorized by the prescribing practitioner.

(2) A [The] pharmacist shall record all [such] refills by writing the date of the refill together with his name or initials on the original prescription.

(3) If [When] an alternate approved automated data processing system is used, refills and records shall be maintained in compliance with 201 KAR 2:170.

Section 2. (1) The use of the terms "prn" and "ad lib" in relation to authorization for refilling prescriptions shall mean the prescription may be refilled for a maximum period of one (1) year from the date prescribed [six (6) months].

(2) After one (1) year from the date prescribed, [To continue the medication] the prescribing practitioner shall [must] issue a new prescription.

Section 3. [Unless specific time limitations are set by the prescribing practitioner, no prescriptions may be refilled beyond six (6) months from the date of issuance.] If [When] the authorized refills are expressed solely as a number, the prescription shall [may] be refilled for the authorized limit of refills within one (1) year of the date prescribed [six (6) months unless the pharmacist determines that the prescribed dosage regimen indicates a term of continued therapy beyond six (6) months].

Section 4. [This administrative regulation does not govern prescription drugs that are classified as controlled substances. The refill of controlled substances is governed by KRS 218A.180.]

Section 5. Violation of a [any] provision of this administrative regulation shall constitute [constitutes] unethical or unprofessional conduct in accordance with KRS 315.121(2)(d), (f), (g).

RODNEY C. STACEY, President
CHERYL LALONDE-MOONEY, J.D., Assistant Attorney General
APPROVED BY AGENCY: January 4, 1999
FILED WITH LRC: January 12, 1999 at noon

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(As Amended at ARRS, April 13, 1999)

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: KRS 314.131(1) authorizes the board to promulgate administrative regulations necessary to implement KRS Chapter 314. KRS 314.091(1)(d) prohibits a person from negligently or willfully acting in a manner inconsistent with the practice of nursing. This administrative regulation establishes requirements that govern [To establish standards governing] the delegation of a nursing task to an unlicensed person [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" is defined in KRS 314.011(1). [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 a task is [tasks are] delegated.

(5) "Delegator" means the nurse delegating a task to another person [tasks to others].

(6) "Nurse" is defined in KRS 314.011(3). [means a registered nurse or a licensed practical nurse.]

(7) "Nursing task" means an act included in the definition of registered nursing practice, advanced registered nursing practice, or licensed practical nursing practice pursuant to KRS 314.011(6), (8), or (10).

(8) "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.

(9) [(8)] "Unlicensed person" means an individual, other than a nurse, the client, or the client's family, legal guardian, or delegatee, 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 a task [tasks] to an unlicensed person [persons] in accordance with this section and 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 task [tasks] or determined that [verified] the unlicensed person is competent [person's competency] to perform the nursing task [tasks].

(4) A nursing task shall be delegated directly or indirectly. An indirect delegation shall not alter the responsibility of the nurse for appropriately assigning and supervising an unlicensed person. [Delegation of nursing tasks may be direct or indirect via estab-

lished 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 **shall be considered [is] acting in a manner inconsistent with the practice of nursing.**

Section 3. Criteria for Delegation. The delegation of **a nursing task [tasks]** to an unlicensed person shall meet the following criteria:

(1) The delegated nursing task **shall be a 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 **shall be a 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 **shall [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 **a delegated nursing task [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 PROTECTION AND REGULATION CABINET
Office of the Petroleum Storage Tank
Environmental Assurance Fund
(As Amended at ARRS, April 13, 1999)

415 KAR 1:050. Definitions for 415 KAR Chapter 1.

RELATES TO: KRS 224.60-115, 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280
STATUTORY AUTHORITY: KRS 224.60-120(6), 224.60-130(2)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-120 and 224.60-130 require the Office of the Petroleum Storage Tank Environmental Assurance Fund to **promulgate [adopt]** administrative regulations to establish the policy guidelines and procedures to administer the Petroleum Storage Tank Environmental Assurance Fund. This administrative regulation defines essential terms used in **[connection with]** the administrative regulations in this chapter.

Section 1. Definitions. (1) "Abandoned" means a prior owner, of the tank, has relinquished all connections with or concern in ownership with no intention to return or **reclaim [claim again]** and that the current owner seeking assistance from the fund acquired the property where the tank is located without knowledge of the tank's existence. **[Physical acts by the owner or operator, such as applying for assistance, will be considered in determining the applicants knowledge of the tank's existence.]**

(2) **"Actual cost" means the cost charged by the person performing the activity or service, and not the cost charged by an additional subcontractor.**

(3) "Assets" shall have the meaning in KRS 224.60-120(3);

(4) "Bodily injury and property damage" shall have the meaning in KRS 224.60-115;

(5) "Cabinet" shall have the **[same]** meaning **[as]** in KRS 224.60-

115(2);

(6) **"Certified company" means a person or partnership involved in the business of performing corrective action services for a release from a petroleum storage tank and employs or contracts with one (1) or more individuals certified pursuant to 415 KAR 1:114.**

[(5) "Cathodic protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrical chemical cell.]

(7) "Claim" shall have the meaning in KRS 224.60-115(4);

(8) "Closed" means a tank which ceased to operate prior to December 22, 1988;

(9) "Contract" means the legally binding, written agreement for performance of corrective action entered into by an owner or operator and a **contracting company [contractor]** certified pursuant to 415 KAR 1:116 **[1:114]**;

(10) "Corrective action" shall have the meaning in KRS 224.60-115(4) **[(5)]**;

(11) "Corrective action plan" means a remediation proposal, **approved by the cabinet**, employing corrective action technologies to obtain site closure, as required, in writing, by the cabinet;

[(11) "Corrosion protection" means a method of corrosion protection that complies with the requirements of 401 KAR 42:030.]

(12) "Currently exist" means an existing petroleum storage tank that **contains [has or does contain]** petroleum, and includes a petroleum storage tank that has been permanently closed by filling with an inert solid material;

(13) "Currently in use" means a petroleum storage tank which contains petroleum or petroleum products and is in use for commercial purposes, storage of petroleum, or is in compliance when temporarily closed **pursuant to 401 KAR 42:070, Section 3 [under the requirements of cabinet administrative regulations]**;

(14) "Drinking water supply" means a groundwater source or a surface water source of a private water supply, a public water system, or a semipublic water system as defined in 401 KAR 8:010;

(15) **["Eligibility" means compliance with the criteria for eligibility established in this chapter;**

[(16)] "Entry level" means the amount of financial responsibility determined by the Office of the Petroleum Storage Tank Environmental Assurance Fund to be paid by the owner or operator of a petroleum storage tank prior to being eligible for participation in the fund;

(16) "Extent of environmental harm" means the extent of horizontal and vertical contamination due to a release from a petroleum storage tank, including contamination of a surface or underground drinking water supply, the potential for exposure posing a threat to human health or the environment, and the amount of contamination released;

(17) "Facility" shall have the meaning in KRS 224.60-115(6) **[(7)]**;

(18) "Federal regulation" shall have the meaning in KRS 224.60-115(7) **[(8)]**;

(19) "Financial ability" means the ability of a petroleum storage tank owner or operator to pay the entry level to the fund based upon a consideration of the assets and income of the owner or operator;

[(21) "Fund" means the [Office of the] Petroleum Storage Tank Environmental Assurance Fund.]

(20) "Guarantor" shall have the meaning in KRS 224.60-120(4) **[224.120(4)]**;

(21) "Maintenance" means the normal operational upkeep to prevent a petroleum storage tank system from releasing petroleum or petroleum products;

(22) "Maximum contaminant level" means the maximum permissible level of a contaminant in water, **as established in 401 KAR 42:070 [pursuant to the regulations of the cabinet]** or applicable federal regulations;

(23) "Motor fuel" shall have the meaning in KRS 224.60-115(11) **[(12)]**;

(24) "Net worth" shall have the meaning in KRS 224.60-120(3);

(25) "Newly discovered tank" **means a [tanks" mean]** petroleum storage tank **[tanks]** at a facility that would not have been discovered by the owner or operator by the exercise of ordinary diligence;

(26) "Occurrence" shall have the meaning in KRS 224.60-115(12) **[(13)]**;

(27) "Office" shall have the meaning in KRS 224.60-115(13);

(28) "Operation" with respect to a UST or UST system means a

UST or UST system currently being used for the storage and dispensing of petroleum or petroleum products;

(29) "Original invoice" means the original or a duplicate original of an invoice;

(30) "Permanently closed" means a UST or UST system that was closed after December 22, 1988, pursuant to 401 KAR 42:070 [the requirements of cabinet administrative regulations];

(31) "Petroleum storage tank" shall have the meaning in KRS 224.60-115(16);

(32) "Petroleum storage tank operator" or "operator" shall have the meaning in KRS 224.60-115(17);

(33) "Petroleum storage tank owner" or "owner" shall have the meaning in KRS 224.60-115(18);

(34) "Ranking system" means the system for determining financial ability and extent of environmental harm, as established by 415 KAR 1:090 [these administrative regulations];

(35) "Release" shall have the meaning in KRS 224.60-115(20);

(36) "Release detection" means a method of determining whether a release of petroleum has occurred from a petroleum storage tank system into the environment or into the interstitial space between the petroleum storage tank system and a secondary barrier or secondary containment around it, that complies with the requirements of 401 KAR 42:040;

(37) "Retail facility" means a facility that sells petroleum products to the general public from petroleum storage tanks;

(38) "Repair" means to restore a petroleum storage tank or system component that has caused a release of petroleum, so as to comply with 401 KAR Chapter 42 [the administrative regulations of the cabinet];

(39) "Secretary" means the Secretary of the Public Protection and Regulation Cabinet.

(40) "Statistically significant increase" means that use of a statistical procedure approved by the cabinet demonstrates that a level of a petroleum constituent in a drinking water supply significantly exceeds background;

(41) "Temporary closure" means taking a UST or UST system out of operation pursuant to the requirements of 401 KAR 42:070;

(42) "Third party" shall have the meaning in KRS 224.60-115(22);

(43) "Upgrade" means the replacement of a tank with a new tank, or the addition or retrofit of a [some] system [such as cathodic protection], lining, or spill and overflow controls to improve the ability of a petroleum storage tank system to prevent the release of product; or the replacement of tanks with new tanks.

LAURA M. DOUGLAS, Secretary
ROBERT E. NICKEL, Executive Director
DAVID B. WICKER, ESQ., Staff Counsel

APPROVED BY AGENCY: October 14, 1998

FILED WITH LRC: October 15, 1998 at 8 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Office of the Petroleum Storage Tank
Environmental Assurance Fund
(As Amended at ARRS, April 13, 1999)

415 KAR 1:060. Financial responsibility account.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280, 101

STATUTORY AUTHORITY: KRS 224.60-120(6), 224.60-130(2)(a) to (c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(2)(c) requires [The 1992 Kentucky General Assembly amended KRS 224.60-130 to direct] the Office of the Petroleum Storage Tank Environmental Assurance Fund to establish a financial responsibility account [within the fund] which may be used by petroleum storage tank owners and operators to demonstrate financial responsibility [as required by state and federal administrative regulations] for the payment of the cost [costs] of corrective action and third-party liability, and to establish eligibility requirements for account participation. KRS 224.60-120(6) requires the office to promulgate administrative regulations implementing procedures to establish the finan-

cial responsibility of petroleum storage tank owners or operators. This administrative regulation establishes the eligibility requirements for the financial responsibility account, and [establishes] the procedure for [eligible storage tank owners and operators to receive a] certification of eligibility for the [this] account.

Section 1. Applicability. An owner or operator of a facility with a petroleum storage tank [tanks] containing motor fuels in operation meeting the following requirements shall be eligible to participate in the financial responsibility account.

(1) The owner or operator of a facility for which a certification of eligibility was issued by the office [fund], pursuant to 415 KAR 1:020 [(1994)] or 415 KAR 1:060 [(1993)], prior to the effective date of this administrative regulation shall [may] be eligible to participate in the financial responsibility account for costs of corrective action or third-party liability incurred at that facility if the requirements of subsection (2)(a) through (g) of this section and Section 5 of this administrative regulation are met.

(2) The owner or operator of a facility that was not issued a certificate of eligibility prior to the effective date of this administrative regulation shall:

(a) Register the tanks with the cabinet as required by KRS 224.60-105;

(b) Have release detection as required by 401 KAR 42:040. A facility [Facilities that are] permanently or temporarily closed in compliance with 401 KAR 42:070 shall [must] have maintained compliance with release detection requirements prior to the permanent or temporary closure of the system; [or be permanently closed in compliance with 401 KAR 42:070 or temporarily closed in compliance with 401 KAR 42:070;]

(c) Not have a release for which corrective action is required at the time of certification;

(d) Have corrosion protection as required by 401 KAR 42:030;

(e) Have paid [all] annual fees required by [to be paid pursuant to] KRS 224.60-150;

(f) Have tanks "in operation" on or after the compliance dates set forth in 401 KAR 42:090 and be mandated by 401 KAR 42:090 to demonstrate financial responsibility as specified under 401 KAR 42:090; and

(g) Have demonstrated to the office financial responsibility [as required;] in the amount of the entry level [to the fund] established in Section 6 of this administrative regulation.

Section 2. Eligibility for Payment. (1) An owner or operator shall [may] be eligible for payment from the financial responsibility account if:

(a) A certificate of eligibility for the facility is issued to the owner or operator pursuant to Section 3(2) of this administrative regulation; [and]

(b) The owner or operator has maintained compliance with the provisions of 401 KAR 42:030 and 42:040; [and]

(c) The owner or operator has a release into the environment from a petroleum storage tank that requires corrective action. The necessity for corrective action shall be established by analytical sample results. If closure can be issued by the cabinet without the performance of corrective action, the facility shall not be [is not] eligible for reimbursement of corrective action cost; and [fund participation]

(d) The owner or operator performs corrective action consistent with the requirements of 401 KAR 42:050, 42:060 and 42:070, or as directed by the cabinet, pursuant to 401 KAR Chapter 42.

(2) An owner or operator issued a certificate of eligibility pursuant to 415 KAR 1:020 [(1994)] or 415 KAR 1:060 shall [(1993) may] be eligible for payment of costs of corrective action and third-party liability incurred on or after April 9, 1990 upon reissuance of a certificate of eligibility pursuant to this administrative regulation. An owner or operator performing ongoing corrective action and participating in the financial responsibility account under a previously issued certificate of eligibility shall not be denied a certificate of eligibility, pursuant to this administrative regulation, if the requirements of Sections 1(2)(a), (b), (d), (e), (f), (g) and 5 of this administrative regulation are met;

(3) An owner or operator issued a certificate of eligibility pursuant to Section 3(2) of this administrative regulation shall [may] be eligible for payment of costs of corrective action and third-party liability in-

curred after the date of issuance of the certificate.

Section 3. Certificate of Eligibility. (1) Compliance with the requirements of Section 1(2) of this administrative regulation shall be demonstrated by an owner or operator by filing with the Office of the Petroleum Storage Tank Environmental Assurance Fund a completed Eligibility and State Financial Responsibility Affidavit form [dated October 1998] [July 1998] [June 1996 hereby incorporated by reference. Copies of this form may be obtained and inspected at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leewood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the fund are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday]. The owner or operator shall certify under oath that all of the requirements of Section 1(2) of this administrative regulation have been met.

(2) If an owner or operator demonstrates compliance with Section 1(2) of this administrative regulation, a certificate of eligibility for participation in the financial responsibility account shall be issued by the office [fund].

(3) A certificate of eligibility shall be [is] valid after the transfer of the covered facility, if [provided] the new owner of the facility submits to the office [fund] a completed Eligibility and State Financial Responsibility Affidavit form for that facility within sixty (60) days of the transfer of the facility. The current certificate of eligibility shall be valid until a final decision is issued by the office [fund] on the new certificate of eligibility, unless the new owner fails to submit a complete Eligibility and State Financial Responsibility Affidavit in accordance with this section.

Section 4. Maintenance of Eligibility. To maintain eligibility for participation in and reimbursement from the financial responsibility account, the owner or operator shall maintain compliance with the eligibility requirements established in Sections 2 and 5 of this administrative regulation.

Section 5. Degree of Compliance After a Release is Detected. If a release is detected at a facility determined to be eligible for participation in the financial responsibility account, the owner or operator shall:

(1) Report the release to the cabinet immediately after the discovery of the release as required by KRS 224.01-400; [~~For the purpose of potential eligibility for participation in the financial responsibility account, in no event shall the report of the release be made to the cabinet more than seven (7) days after discovery; and~~]

(2) Implement initial abatement procedures required by 401 KAR 42:060 within twenty (20) days after detection of the release, or as directed in writing by the cabinet; and

(3) Comply with the requirements of 401 KAR 42:060 as directed in writing by the cabinet.

Section 6. Entry Level to the Financial Responsibility Account. (1) An applicant who applies for fund assistance shall meet an entry level for participation in the financial responsibility account, as follows:

(a) For an applicant who submits an application on or after July 16, 1998, the level shall be as established in KRS 114.60-120(1); and

(b) For an applicant who submitted an application prior to July 16, 1998, the level shall be as prescribed by the statute in effect at the time of the discovery of a release requiring corrective action.

(2) The office shall reimburse, upon final payment, twenty-five (25) percent of the entry level specified in this section, if the owner or operator has:

(a) Completed corrective action at the facility within:

1. 180 days from the discovery of the release, for soil remediation alone; or

2. Twenty-four (24) months from the discovery of the release, for groundwater alone or for both soil and groundwater remediation;

(b) Requested closure from the cabinet; and

(c) Received approval for closure without additional measures being required. [The entry level for participation in the financial responsibility account for an owner or operator of five (5) or less tanks shall be established and maintained at ~~\$500~~ [\$1,000] per occurrence

for taking corrective action and ~~\$500~~ for compensating third parties for bodily injury and property damage.

(2) ~~The entry level for participation in the financial responsibility account for an owner or operator of six (6) to ten (10) tanks shall be established and maintained at \$2,500 [\$5,000] per occurrence for taking corrective action and \$2,500 [\$5,000] per occurrence for compensating third parties for bodily injury and property damage.~~

(3) ~~The entry level for participation in the financial responsibility account for an owner or operator of eleven (11) or more tanks shall be established and maintained at \$12,500 [\$25,000] per occurrence for taking corrective action and \$12,500 [\$25,000] per occurrence for compensating third parties for bodily injury and property damage.~~

(4) ~~These entry levels shall apply to all applicants who apply for fund assistance on or after July 16, 1998. For all other applicants, the entry level will be set in an amount prescribed by the administrative regulation in effect at the time of the discovery of a release requiring corrective action.~~

(5) ~~If the corrective action at a facility is completed in a timely manner, as described in this paragraph, the office shall reimburse, upon final payment, twenty-five (25) percent of the entry level specified in this section. "Completed in a timely manner" as used in this paragraph shall mean:~~

(a) ~~For corrective actions involving only soil remediation—180 days from the discovery of the release. Completion is achieved when the owner or operator has requested closure from the cabinet that is approved without additional measures being required;~~

(b) ~~For corrective actions involving remediation of both soil and groundwater, or only groundwater—twenty-four (24) months from the discovery of the release. Completion is achieved when the owner or operator has requested closure from the cabinet that is approved without additional measures being required.]~~

Section 7. Financial Responsibility for the Entry Level Amount. (1) The owner or operator shall certify financial responsibility in an amount equal to the required entry level amount by using one (1) or a [any] combination of the options listed in subsection (2) of this section. This certification shall be provided to the office [fund] on the Eligibility and State Financial Responsibility Affidavit form.

(2) Financial responsibility for the amount of the entry level shall [may] be demonstrated by:

(a) Commercial or private insurance from a carrier within A.M. Best's rating of B+, or better, authorized to contract business in the Commonwealth of Kentucky;

(b) Participation in a risk retention group qualified to do business in the Commonwealth, [and] who shall furnish relevant financial records [any financial reports as may be required by the office] [fund];

(c) A guarantor with a controlling interest in the owner or operator. The guarantor shall furnish proof of net worth exceeding the entry level for the facility, [as may be required by the office] [fund] in order to demonstrate state financial responsibility;

(d) A surety bond from a surety company that is listed with the U.S. Treasury Department or the Kentucky Department of Insurance. Under the terms of the bond, the surety shall become liable under the bond if [when] the owner or operator fails to perform;

(e) An irrevocable standby letter of credit by an entity that has authority to issue letters of credit in Kentucky, and whose letter of credit operation is regularly examined by a federal or Kentucky agency. The letter of credit shall be drawn to cover "taking corrective action" and indemnification of third parties for liability arising from owning or operating petroleum storage tanks; or [and]

(f) Qualification as a self-insurer with prior approval of the office [fund] if the owner or operator has certified to the office [fund] the following:

1. The owner or operators' annual year-end financial statements; and

2. Compliance with KRS 224.60-120(3). [The owner or operators' net worth is in excess of the entry level amount required for participation in the financial responsibility account.]

Section 8. Change of Eligibility. An owner or operator shall report a [any] change in the eligibility requirements contained in this administrative regulation to the office [fund] within ten (10) days of the change.

Section 9. Newly Discovered Tanks. (1) The discovery of an unregistered tank [tanks] at a facility during the performance of corrective action due to a release from a registered tank shall not affect eligibility to participate in the financial responsibility account.

(2) The costs of corrective action for a release from a [releases from] newly discovered tank [tanks] found during the performance of corrective action for a registered tank [tanks] shall be paid from the financial responsibility account if the other eligibility requirements of this administrative regulation are met.

(3) The number of newly discovered tanks shall not increase the entry level to the financial responsibility account.

Section 10. Loss of Eligibility. (1) If [at any time], prior to a release, the office [fund] determines that an owner or operator has not maintained compliance with the eligibility requirements of this administrative regulation, the office [fund] shall notify the owner or operator of the noncompliance.

(2)(a) A facility shall be [deemed] ineligible to receive payment from the financial responsibility account under a certificate of eligibility issued pursuant to this administrative regulation, if:

1. The owner or operator failed to maintain compliance with the eligibility requirements of this administrative regulation; and

2. A release occurs during the period of noncompliance.

(b) An owner or operator shall [may] be [determined] eligible for payment of the costs of corrective action, from the petroleum storage tank account, 415 KAR 1:070, if the facility is brought into compliance with 401 KAR Chapter 42 [cabinet administrative regulations]. The owner or operator shall not be eligible for payment of the costs of third-party liability. The owner or operator shall [will] be responsible for the payment of the entry level, notwithstanding 415 KAR 1:070, Section 5(4).

(3)(a) A facility shall be [deemed] ineligible to receive payment from the financial responsibility account, pursuant to a previously approved Application for Assistance or a certificate of eligibility issued pursuant to this administrative regulation, if:

1. The owner or operator failed to maintain compliance with the eligibility requirements of this administrative regulation during the ongoing corrective action; and

2. A release occurs during the period of noncompliance.

(b) An owner or operator shall [may] be [determined] eligible for payment of the costs of corrective action, from the petroleum storage tank account, 415 KAR 1:070, if the facility is brought into compliance with the requirements of 401 KAR Chapter 42 [cabinet administrative regulations]. The owner or operator shall not be eligible for payment of the costs of third-party liability.

(4)(a) An owner or operator shall be [may be determined] ineligible to receive payment from the financial responsibility account if the owner or operator:

1. Has knowingly or intentionally submitted false or inaccurate information to the office; or

2. Knowingly made a false statement, representation, or certification in an application, payment request, or [any] other document [documentation] submitted to the office.

(b) A [Any] cost incurred by, or paid from, the fund which is based on false or inaccurate information, a false statement, representation, or certification [statements, representations or certifications] shall be recovered by the office from the person who asserted the false or inaccurate information, false statement, representation, or certification [statements, representations or certifications].

(5) A [Any] person certified pursuant to 415 KAR 1:114 or 415 KAR 1:116 knowingly providing false or inaccurate information or making a false statement, representation, or certification on an [statements, representations or certifications on any] application, payment request or other document [documentation] submitted to the owner, operator or the office shall be subject to the revocation of that certification in accordance with 415 KAR 1:114 and 415 KAR 1:116, in addition to the recovery of payment [by the office] as provided for in subsection (4) of this section.

(6) [fund, and shall be required to repay any monies falsely received.

(5) The office [fund] shall have the right to recover the money paid to an owner or operator, or a contractor if [when]:

(a) The amount was paid due to an error of the office [fund]; [or]

(b) The amount was paid due to a mistake, error, or inaccurate information in the claim submitted by the owner or operator or in an invoice submitted by a contractor; or

(c) A person has obtained payment from the office [fund] by fraud or intentional misrepresentation.

(7) [(6)] An owner or operator issued or reissued a certificate of eligibility for the financial responsibility account pursuant to this administrative regulation may also be eligible to participate in the petroleum storage tank account.

(8) [(7)] Costs of corrective action incurred prior to April 9, 1990 shall not be paid from the financial responsibility account.

Section 11. Account Balance. (1) The unobligated balance of the financial responsibility account shall not be less than \$1,500,000, so as to ensure a \$1,000,000 reserve balance adequate to meet federal financial responsibility requirements for participants in the account and a \$500,000 reserve balance for emergency abatement action by the cabinet pursuant to KRS 224.60-135. The \$500,000 reserved for the cabinet's emergency abatement actions shall be renewed in that amount annually. [When funds are withdrawn for emergency abatement actions by the cabinet, the fund shall replace the amount immediately.]

(2) If the unobligated balance of the financial responsibility account is \$1,500,000, or less, or the approval of an application for assistance [obligation of] a claim causes [shall cause] the unobligated balance of the fund to be less than \$1,500,000, the office [fund] shall immediately suspend the approval of applications [obligation of claims] until the unobligated balance is greater than \$1,500,000. When the suspension is lifted, an application for assistance [Obligations] submitted for approval during the [by the office [fund] at the time of] suspension shall be obligated as of [in accordance with] the date of initial submission [of the obligation when the suspension is lifted].

Section 12. Incorporation by Reference. (1) [The] "Eligibility and State Financial Responsibility Affidavit", (October, 1998), PSTeAF #1, [Public Protection and Regulation Cabinet] is incorporated by reference.

(2) This form may be inspected, copied, or [and] obtained at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, [(502) 564-5981. The business hours of the office are] 8 a.m. to 4:30 p.m.

LAURA M. DOUGLAS, Secretary
ROBERT E. NICKEL, Executive Director
DAVID B. WICKER, ESQ., Staff Counsel

APPROVED BY AGENCY: January 7, 1999

FILED WITH LRC: January 8, 1998 at noon

PUBLIC PROTECTION AND REGULATION CABINET
Office of the Petroleum Storage Tank
Environmental Assurance Fund
(As Amended at ARRS, April 13, 1999)

415 KAR 1:070. Petroleum storage tank account.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(2)(e) directs [The 1992 Kentucky General Assembly amended KRS 224.60-130 to direct] the Office of the Petroleum Storage Tank Environmental Assurance Fund to establish a petroleum storage tank account [within the fund which may be used] to pay the costs of corrective action due to a release of contamination from a petroleum storage tank. This administrative regulation establishes the eligibility requirements for the petroleum storage tank account.

Section 1. Applicability. (1)(a) This administrative regulation shall [does] not apply to a release from a [releases from] petroleum stor-

age tank [tanks] removed from the ground before January 1, 1974;

(b) The cost [Costs] of corrective action for a release [releases] of motor fuel from a petroleum storage tank [tanks] removed from the ground after January 1, 1974 or a tank [tanks] closed in place after January 1, 1974 shall [may] be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 2 of this administrative regulation are met;

(c) The cost [Costs] of corrective action for a release [releases] of motor fuel from a petroleum storage tank [tanks] currently existing and closed after December 22, 1988 shall [may] be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 3 of this administrative regulation are met; and

(d) The cost [Costs] of corrective action for a release [releases] of motor fuel from a petroleum storage tank [tanks] currently in use which is [are] not eligible for participation in the financial responsibility account shall [may] be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 4 of this administrative regulation are met.

(2) Prior to applying for payment from the petroleum storage tank account for corrective action costs incurred at a facility, the owner or operator shall have:

(a) Registered the tanks at the facility with the cabinet as required by KRS 224.60-105;

(b) Paid [all] annual fees as required by KRS 224.60-150;

(c) Submitted a completed Eligibility and State Financial Responsibility Affidavit form to the office [fund] to certify eligibility for the petroleum storage tank account;

(d) Filed a notice of intent with the cabinet to permanently close the petroleum storage tanks at the facility or to make a change-in-service to comply with the requirement of 401 KAR 42:020; and

(e) Confirmed by analytical sample results the need for corrective action at the facility. If closure can be issued by the cabinet without the performance of corrective action, the facility shall not be [is not] eligible for reimbursement of corrective action cost [fund participation].

(3) Payment from the petroleum storage tank account shall:

(a) Be [only be made] for the cost [costs] of corrective action required by law; and

(b) [shall] Not be for a cost [made for costs] to upgrade the facility.

Section 2. Eligibility Requirements for the Class [Classes] of Tanks Described in Section 1(1)(b) of this Administrative Regulation. An owner or operator of a facility of the class described in Section 1(1)(b) of this administrative regulation shall [may] be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

(1)(a) A release of motor fuel is detected at the facility after April 9, 1990; or

(b) Corrective action costs associated with a release are incurred after April 9, 1990;

(2) The release has been reported to the cabinet; and

(3) The owner or operator takes corrective action consistent with the requirements of 401 KAR 42:050, 42:060 and 42:070[or as directed by the cabinet].

Section 3. Eligibility Requirements for the Class of Tanks Described in Section 1(1)(c) of this Administrative Regulation. (1) An owner or operator of a facility of the class described in Section 1(1)(c) of this administrative regulation shall [may] be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

(a) 1. A release of motor fuel is detected at the facility after April 9, 1990; or

2. Corrective action costs associated with a release are incurred after April 9, 1990;

(b) The release has been reported to the cabinet;

(c) The owner or operator takes corrective action consistent with the requirements of 401 KAR 42:050, 42:060 and 42:070, or as directed in writing by the cabinet, pursuant to 401 KAR Chapter 42; and

(d) The owner or operator has filed a notice of intent with the cabinet to permanently close a [the] petroleum storage tank [tanks] at the facility or to make a change in service to comply with the requirements

of 401 KAR 42:020.

(2) If the owner or operator elects to upgrade the facility, a [the] petroleum storage tank [tanks] at the facility shall not be used to store a regulated substance until the upgrade is completed.

Section 4. Eligibility Requirements For the Class of Tanks Described in Section 1(1)(d) of this Administrative Regulation. An owner or operator of a facility currently in use which is not in compliance with the requirements of 401 KAR 42:011 through 401 KAR 42:070, and 401 KAR 42:090 shall [may] be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

(1)(a) A release of motor fuel is detected at the facility after April 9, 1990; or

(b) Corrective action costs associated with a release are incurred after April 9, 1990;

(2) The release has been reported to the cabinet; and

(3) The owner or operator is taking the action [actions] necessary to bring the facility into compliance with 401 KAR Chapter 42 [applicable administrative regulations of the cabinet]; and

(4) The owner or operator takes action necessary to bring the facility into compliance, including corrective action consistent with the requirements of 401 KAR 42:060 and 42:070[or as directed in writing by the cabinet].

Section 5. Entry Level For Participation in the Petroleum Storage Tank Account. (1) The entry level for participation in the petroleum storage tank account for an owner or operator of five (5) or less tanks shall be established and maintained at \$500 [\$1,000] per occurrence for taking corrective action.

(2) The entry level for participation in the petroleum storage tank account for an owner or operator of six (6) to ten (10) tanks shall be established and maintained at \$2,500 [\$5,000] per occurrence for taking corrective action.

(3) The entry level for participation in the petroleum storage tank account for an owner or operator of eleven (11) or more tanks shall be established and maintained at \$12,500 [\$25,000] per occurrence for taking corrective action.

(4) An owner or operator of a facility of the class described in Section 1(1)(b) or (c) of this administrative regulation shall not be [is not] required to pay an entry level for participation in the petroleum storage tank account if the facility is taken permanently out of service.

(5) An [The] entry level payment specified in subsection [payments contained in subsections] (1), (2) or [and] (3) of this section shall apply to an application filed [all applicants who apply for fund assistance] on or after July 16, 1998. For [all] other applications [applicants], the entry level shall [will] be set in an amount prescribed by the administrative regulation in effect at the time of the discovery of a release requiring corrective action. [shall apply retroactively to any facility involved in corrective action that had not been issued a closure letter by the cabinet prior to July 14, 1994.]

[6] If the corrective action at a facility is completed in a timely manner, as described in this subsection, the office shall reimburse, upon final payment, twenty-five (25) percent of the entry level specified in this section. "Completed in a timely manner" as used in this subsection shall mean:

(a) For corrective actions involving only soil remediation: 180 days from the discovery of the release. Completion is achieved when the owner or operator has requested closure from the cabinet which is approved without additional measures being required.

(b) For corrective actions involving remediation of both soil and groundwater, or only groundwater: twenty-four (24) months from the time of the discovery of the release. Completion is achieved when the owner or operator has requested closure from the cabinet which is approved without additional measures being required.]

(6) The office shall reimburse, upon final payment, twenty-five (25) percent of the entry level specified in this section if the owner or operator has:

(a) Completed corrective action at the facility within:

1. 180 days from the discovery of the release, for soil remediation alone; or

2. Twenty-four (24) months from the discovery of the release, for groundwater alone or for both soil and groundwater

remediation:

(b) Requested closure from the cabinet; and

(c) Received approval for closure without additional measures being required.

Section 6. Ineligibility. (1)(a) The office [fund] ~~shall~~ [may] determine that an owner or operator is not eligible for participation in the petroleum storage tank account if the owner or operator, ~~his agent, employee, or contractor~~ [agents, employees, or contractors] willfully or recklessly violated the requirements of 401 KAR Chapter 42 at the facility for which a claim is made.

(b) ~~An~~ [The] owner or operator of a facility placed in the petroleum storage tank account pursuant to 415 KAR 1:060, Section 10(2) shall be denied eligibility for reimbursement as delineated in 415 KAR 1:060, Section 10(2)(a) and (b).

(2) An owner, operator with an approved Application for Assistance ~~shall be~~ [may be determined] ineligible to receive payment from the petroleum storage tank account if the owner or operator has ~~knowingly submitted false or inaccurate information to the office, or knowingly made a false statement, representation, or certification in an application, payment request, or other document~~ [any other documentation] submitted to the office. ~~A~~ [Any] cost incurred by, or paid from, the fund which is based on false or inaccurate information, ~~a false statement, representation, or certification~~ [statements, representations or certifications] shall be recovered by the office from the person who asserted the false or inaccurate information, ~~false statement, representation, or certification~~ [statements, representations or certifications].

(3) ~~A~~ [Any] person certified pursuant to 415 KAR 1:114 or 415 KAR 1:116 ~~who knowingly provides~~ [providing] false or inaccurate information or ~~makes a false statement, representation, or certification on an~~ [making false statements, representations or certifications on any] application, payment request or other document [documentation] submitted to the owner, operator or the office shall be subject to the revocation of that certification in accordance with 415 KAR 1:114 and 415 KAR 1:116, in addition to the recovery of payment by the office as provided for in subsection (2) of this section.

(4) ~~[fund, and shall be required to repay any monies falsely received:~~

(3) The office [fund] shall have the right to recover the money paid to an owner or operator, or a contractor ~~if the amount was paid due to~~ [when]:

(a) ~~[The amount was paid due to]~~ An error of the office [fund]; [or]

(b) ~~[The amount was paid due to]~~ A mistake or inaccurate information in the claim submitted by the owner or operator or in an invoice submitted by a contractor; or

(c) ~~Fraudulent~~ [A person has obtained payment by fraud] or intentional misrepresentation.

Section 7. Permanent Closure of Tanks. Prior to receiving final payment from the petroleum storage tank account, an owner or operator of tanks being permanently closed shall demonstrate that:

(1) Each tank has been removed from the ground or filled with an inert solid material in conformance with **401 KAR 42:070, Section 4(2); and**

(2) ~~[the applicable administrative regulations of the cabinet, and that]~~ Closure of the facility has been approved by the cabinet.

Section 8. Newly Discovered Tanks. (1) The discovery of ~~an~~ unregistered ~~tank~~ [tanks] at a facility during the performance of corrective action due to a release from a registered tank shall not affect eligibility to participate in the petroleum storage tank account.

(2) The ~~cost~~ [costs] of corrective action for ~~a release~~ [releases] from ~~a~~ newly discovered ~~tank~~, [tanks] found during the performance of corrective action for ~~a~~ registered ~~tank~~, [tanks] shall be paid from the petroleum storage tank account if the other eligibility requirements of this administrative regulation are met.

(3) The number of newly discovered tanks shall not increase the entry level to the fund.

Section 9. Applicable Costs. (1) ~~The cost~~ [Costs] of corrective action incurred prior to April 9, 1990 shall not be payable from the

petroleum storage tank account.

(2) ~~The cost~~ [Costs] of corrective action incurred at a facility on or after April 9, 1990 ~~shall be paid~~ [may be payable] from the petroleum storage tank account if the eligibility requirements of this administrative regulation are met.

(3) ~~The cost~~ [Costs] incurred at a facility for site investigation or corrective action at the written direction of the cabinet ~~shall be paid~~ [may be payable] from the petroleum storage tank account if:

(a) Contamination requiring corrective action is substantiated by analytical sample results; and

(b) The eligibility requirements of this administrative regulation are met.

LAURA M. DOUGLAS, Secretary

ROBERT E. NICKEL, Executive Director

DAVID B. WICKER, ESQ., Staff Counsel

APPROVED BY AGENCY: January 7, 1999

FILED WITH LRC: January 8, 1999 at noon

**PUBLIC PROTECTION AND REGULATION CABINET
Office of the Petroleum Storage Tank
Environmental Assurance Fund
(As Amended at ARRS, April 13, 1999)**

415 KAR 1:110. Contractor costs.

RELATES TO: KRS [224.60-120,] 224.60-130(2), 224.60-140(5) through (15), (18), 40 CFR Part 280

STATUTORY AUTHORITY: KRS [224.60-120,] 224.60-130(2)(a), (b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(2)(a) ~~authorizes~~ [requires] the fund to establish a range of amounts to be paid from the fund for the cost of corrective action, and to establish ~~reimbursement eligibility~~ criteria ~~for contractors~~ [to be met by persons who contract to perform corrective action to be eligible for reimbursement from the fund]. This administrative regulation establishes the range of amounts ~~to~~ [that will] be paid for ~~specific~~ [the performance of particular] aspects of corrective action, and the ~~procedure for submission of bids from contractors~~. [manner of providing bids by contractors to determine eligibility for reimbursement from the fund.]

Section 1. ~~Reimbursement and Payment~~ [Reimbursements and Payments] by the Fund. (1) The fund shall not ~~reimburse an owner or operator~~ [owners and operators] more than the ~~amount~~ [amounts] specified in this administrative regulation for corrective action services performed by ~~a certified contractor or company~~ [contractors and companies], except as provided in subsections (7) and (9) of this section. ~~A cost item in this section is~~ [All cost items in this section are] restricted to a maximum fifteen (15) percent markup above actual cost, unless the ~~markup for that item is~~ [specifically] excluded in subsection (6) of this section. The markup is allowed ~~[only]~~ on the ~~cost~~ [costs] of corrective action services performed by ~~a subcontractor or~~ [subcontractors and] other vendor, ~~[vendors but only]~~ to the extent the actual cost ~~charged by the person performing the service, plus the markup, does~~ [do] not exceed the maximum allowable ~~cost~~ [cost] for that ~~cost~~ [cost] item. ~~A cost charged by an individual subcontractor shall not be included.~~ [For the purpose of this administrative regulation, actual cost shall mean the cost charged by the person performing the activity or service, and not the cost charged by additional subcontractors.] [Range of Amounts to be Paid by the Fund for the Cost of Performing Corrective Action. (1) The fund shall not pay more than the following amounts for the performance of corrective action by certified contractors, except as provided in subsections (2) and (4) of this section. All items in this section are subject to a maximum fifteen (15) percent contractor markup above actual cost, unless specifically excluded. The contractor markup is allowed only for subcontractor or vendor services. The markup is allowed only to the extent that the cost plus the markup do not exceed the maximum cost for that item.]

(2) The office ~~shall, if necessary to determine if the claim is reasonable and necessary, [is authorized to]~~ request additional

information and documentation related to actual ~~cost~~ [costs] incurred by a certified contractor, certified company, subcontractor or other vendor providing corrective action services and related materials, instruments and equipment. Failure to provide the requested [additional] information or [and] documentation shall result in the denial of the payment claim, as provided for in 415 KAR 1:080, Section 2(5)(b) and (c). A [(4) and (5)-All] payment claim [claims] submitted to the office after the effective date of this administrative regulation shall be subject to the requirements of this subsection.

(3) A certified contractor or certified company shall not employ [The use or employment of] a subcontractor, [including] a subsidiary company, or other vendor, in order [by a certified contractor or certified company] to increase profitability on the cost of corrective action. A claim [is prohibited. Payment claims] denied by the office under this subsection may be appealed pursuant to 415 KAR 1:120. [with] The owner, operator, certified contractor, or certified company shall have [having] the burden to prove the validity of the payment claim.

(4)(a) An owner or operator seeking reimbursement in excess of \$15,000 for the combined cost of preresidential corrective actions shall obtain office preapproval before incurring costs beyond the \$15,000 level.

(b) Preresidential corrective action shall include:

1. Initial response pursuant to KRS 224.60-135;
2. Action necessary to monitor, assess, or evaluate a release;

3. Site investigations; and

4. Preparation of a corrective action plan, if required by the cabinet.

(c) The following procedures shall apply: [If the combined cost of preresidential corrective actions will exceed \$15,000, all expenses beyond the \$15,000 level, for which the owner or operator will seek reimbursement from the fund, shall be preapproved by the office prior to the owner or operator incurring costs beyond the \$15,000 level. For the purpose of this subsection, preresidential corrective actions shall include initial responses pursuant to KRS 224.60-135, actions necessary to monitor, assess and evaluate a release, including site investigations, and the preparation of a corrective action plan if required by the cabinet. The following procedures shall apply to this requirement:]

1. [(a)] The owner or operator shall submit to the office a written request and supporting documentation explaining [to the office which explains] the need for continuing preresidential action and setting [actions and sets] forth the unit costs, in compliance with [the requirements of] subsection (6) of this section, for continuing preresidential action, including the cost [actions, including, but not limited to, the costs] of personnel, initial response, sampling and laboratory testing, and other expenses necessary to complete [the] preresidential action [actions]. The supporting documentation shall [must also] include evidence that the cabinet has determined that the preresidential action is [actions are] necessary to protect human health and the environment, and that [the] continuation of [the] preresidential action [actions] is necessary to comply with [the requirements of] 401 KAR Chapter 42.

2. [(b)] The office shall [may] request, by certified mail or electronic mail, additional information and documentation necessary [if needed] to determine if the cost [costs] of continuing preresidential corrective action is [actions are] eligible, necessary and reasonable. [A request for Additional information and documentation shall be made by certified mail or electronic mail, if available.]

3. [(c)] The owner or operator shall provide the additional information and documentation within thirty (30) days of receipt of the request, unless otherwise agreed to in writing by both parties within the thirty (30) day period. If the owner or operator fails to provide the additional information and documentation, his [the] request for additional funds [to continue the preresidential actions] shall be denied. [by the office.]

4. [(d)] If the owner or operator complies with the requirements of this subsection and the proposed cost is [are] preapproved, the office shall obligate the additional funds to continue the preresidential action [actions], and shall notify the owner or operator of the obligation in writing.

(d) [(e)] A denial by the office under the provisions of this sub-

section may be appealed by the owner or operator pursuant to 415 KAR 1:120. [-and]

(e) [(f)] Except for an application [applications] filed pursuant to 415 KAR 1:130, [the requirements of] this subsection shall apply to an application [all Applications] for assistance filed with the office on or after the effective date of this administrative regulation.

(f) [(g)] This subsection shall not apply to cost incurred as a result of initial abatement, free product recovery, or other emergency action ordered by the cabinet pursuant to 401 KAR 42:060.

(5) An owner or operator seeking reimbursement in excess of \$35,000 for the combined cost of remedial corrective actions shall obtain office preapproval before incurring costs beyond the \$35,000 level.

(b) Remedial corrective action shall include:

1. Clean up of contaminated groundwater;
2. Clean up of contaminated surface water;
3. Clean up of contaminated soil;
4. Correction of a residual effect of preresidential action;
5. Restoration or replacement of potable water supplies;

and

6. Monitoring, assessment and evaluation of the effectiveness of remedial action after a release has occurred.

(c) The following procedures shall apply: [If the combined costs of remedial corrective actions will exceed \$35,000, all expenses beyond the \$35,000 level, for which the owner or operator will seek reimbursement from the fund, shall be preapproved by the office prior to the owner or operator incurring additional costs beyond the \$35,000 level. For the purpose of this subsection, remedial corrective actions include actions to clean up contaminated groundwater, surface waters, or soil, actions to address residual effects after initial preresidential corrective action is taken, actions taken to restore or replace potable water supplies, as well as actions necessary to monitor, assess, and evaluate the effectiveness of remedial action after a release has occurred. The following procedures shall apply to this requirement:]

1. [(a)] The owner or operator shall submit to the office a written request and supporting documentation explaining [to the office which explains] the remedial action [actions] to be performed and the need for the additional cost [costs] beyond the \$35,000 level. This request may be incorporated into, or submitted as, part of the request for additional preresidential funds under subsection (4) of this section. Supporting documentation shall state [also set forth] the unit costs, in compliance with subsection (6) of this section, for continuing remedial action or for [actions or] increasing the obligation for remedial action [actions], including [but not limited to] the cost [costs] of personnel, sampling and laboratory testing, excavation, haulage, treatment or disposal of contaminated soil or water, and other expense [expenses] necessary to comply with the requirements of 401 KAR Chapter 42. Evidence shall [must also] be provided that the cabinet has determined that the remedial action is [actions are] necessary to protect human health and the environment, and is [are] necessary to comply with the requirements of 401 KAR Chapter 42.

2. [(b)] The office shall [may] request, by certified mail or electronic mail, additional information and documentation necessary [if needed] to determine if the cost [costs] of continuing remedial corrective action is [actions are] eligible, necessary and reasonable. [A request for additional information and documentation shall be made by certified mail or electronic mail, if available.]

3. [(c)] The owner or operator shall provide the additional information and documentation within thirty (30) days of receipt of the request, unless otherwise agreed to in writing by both parties within the thirty (30) day period. If the owner or operator fails to provide the additional information and documentation, his [the] request for additional funds [to continue the remedial actions] shall be denied. [by the office.]

4. [(d)] If the owner or operator complies with the requirements of this subsection, and the proposed cost is [are] preapproved, the office shall obligate the additional funds to continue the remedial action [actions], and shall notify the owner or operator of the obligation in writing.

(d) [(e)] A denial by the office under the provisions of this subsection may be appealed by the owner or operator pursuant to 415

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KAR 1:120. [~~and~~]

(e) [~~(f)~~] Except for an application [applications] filed pursuant to 415 KAR 1:130, [~~the requirements of~~] this subsection shall apply to an application [~~all Applications~~] for assistance filed with the office on or after the effective date of this administrative regulation.

(f) [~~(g)~~] This subsection shall not apply to cost incurred as a result of initial abatement, free product recovery, or other emergency action ordered by the cabinet pursuant to 401 KAR 42:060.

(6) The range of amounts to be paid by the fund for the cost of corrective action **shall be [are]** as follows:

(a) Pavement removal and replacement, including labor equipment and material costs:

Asphalt		
Removal		
Includes the cost of loading:		
Asphalt pad, for each 3 inches of thickness, per square yard	\$2.75 to \$3.25	
Asphalt curbing, per linear foot	\$2.40 to \$2.90	
Replacement		
Asphalt pad, for each 4 inches of thickness, per square foot	\$3.50 to \$4.25	
Cost of additional thickness to be provided.		
Asphalt curb and gutter, per linear foot	\$5.10 to \$6	
Concrete		
Removal		
Includes the cost of loading:		
Concrete pad, per square yard		
4 inches thick	\$2 to \$3	
6 inches thick	\$4 to \$5	
9 inches thick	\$8.20 to \$10	
10 inches or more thick	\$26 to \$31	
With rebar	add 15%	
Concrete curbing, per linear foot	\$4.50 to \$5.50	
Replacement		
Concrete, 4 inches thick, per square foot	\$2 to \$2.80	
With rebar	add 15%	
For each additional inch, per square foot	\$0.20 to \$0.30	
[Transportation of the first 100 total tons of per one (1) way mile, per ton. Mileage must be documented. If nearest disposal facility not used, reasonableness must be documented.]	\$0.20 to \$0.30	
Transportation [after the first 100 total tons] of asphalt or concrete[;] to disposal facility[; per one (1) way mile, per ton]. Mileage shall [must] be documented. If the nearest disposal facility is not used, reasonableness shall [must] be documented.	\$0.15 to \$0.20	
Disposal fee, per ton	Actual cost at point of disposal plus maximum 8% markup, not to exceed \$32.50	
If a disposal fee is [disposal fees are] submitted for reimbursement using the Soil Disposal/Treatment Claim form, [no] markup shall not be allowed		

(b) Disposal and replacement of contaminated soil, including labor and equipment costs:

Excavation and stockpiling or loading directly into trucks, per ton. Necessity of stockpiling shall [must] be demonstrated [to justify reimbursement].	\$3.50 to \$4
For less than 100 total tons, add fifty (50) percent.	

Stone backfill material, per ton	Actual cost from quarry plus maximum 8% markup, total not to exceed \$10 per ton
Soil backfill material, per ton, includes excavation, loading, weighing, permitting and restoration of borrow site	Actual cost plus 8% markup not to exceed \$4
Install, [and] compact, and grade backfill, per ton [includes purchase of materials, equipment and labor]	\$1.50 to 2.50 [\$11 to \$17]
Transportation of backfill, per ton, per one (1) way mile.	Minimum \$3 per ton or \$0.15 to \$0.20
Transportation of [the first 100 total tons of] contaminated soil to disposal facility[; per ton, per one (1) way mile]. Mileage shall [must] be documented. If closest disposal facility is not used, reasonableness of cost shall [must] be justified.	Minimum \$3 per ton or \$0.15 to \$0.20 per ton, per one (1) way mile [\$0.20 to \$0.30]
[Transportation after the first 100 total tons of contaminated soil to disposal facility; per ton, per one (1) way mile. Mileage must be documented. If closest disposal facility is not used, reasonableness of cost must be justified.]	\$0.15 to \$0.20
Disposal fee per ton	Actual cost at point of disposal plus maximum 8% markup, not to exceed \$32.50
If a disposal fee is [disposal fees are] submitted for reimbursement using the Soil Disposal/Treatment Claim form, [no] markup shall not be allowed	
(c) Treatment of soil [soils] and disposal of drummed waste including labor cost [costs] :	
Treatment of contaminated soil by thermal desorber, landfarming, or other method [methods] , per ton. Cost includes design, permitting, monitoring, construction, transportation, environmental compliance, reporting, closure of facility, labor, equipment, markup, and [all] other cost [costs] necessary for treatment of the material. Quantity of material treated shall [to] be determined by survey, accurately measured dimensions, weight tickets or other method approved by the fund. Reimbursement for treatment shall not exceed that required for transportation and landfill disposal	Actual cost at point of treatment with a maximum 8% markup, not to exceed \$40 per ton [39]
If a disposal fee is [disposal fees are] submitted for reimbursement using the Soil Disposal/Treatment Claim form, [no] markup shall not be allowed	
Transportation and disposal of drummed tank waste, per drum	Disposal cost shall be actual cost at point of disposal plus a maximum 8% markup. Total transportation and disposal cost not to exceed \$575

(d) One (1) of the following methods shall be used to determine the total reimbursable cost for disposal of contaminated water removed prior to the implementation of an approved **corrective action plan [CAP]**:

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Pumping, [and] treatment of contaminated water in a mobile facility, and discharge, including [all] equipment, labor, mobilization, transportation, permitting, and [other] associated charges, per gallon	\$0.55
Disposal of contaminated water or tank content [contents] in wastewater treatment plant or a recycling facility, per gallon	Actual cost at point of disposal plus maximum 8% markup
Pumping and transportation of contaminated water or tank content to approved facility, including truck, driver and travel time, per gallon, minimum \$250 [200]	\$0.15 [0.07]

(e) Labor rates, per hour: Labor rates **shall** include [all] fringes, [and] benefits, and contractor's overhead and **profit** [profits]. [All] Labor rates **shall** include cost of standard office equipment and standard tools of the profession.

Carpenter	\$25 to \$35
Cement finisher	\$25 to \$35
Electrician	\$25 to \$30
Electrical contractor	\$30 to \$40
Equipment operator	\$20 to \$35
Laborer	\$15 to \$22
Master plumber	\$30 to \$40
Journeyman plumber	\$20 to \$35
Apprentice plumber	\$20 to \$30

(f) Professional and technical labor rates, per hour: Labor rates **shall** include [all] fringes, [and] benefits, and contractor's overhead and **profit** [profits]. Reimbursement of labor rates shall be based upon the task performed by an employee rather than the qualifications of the employee.

Certified contractor	\$75 to \$90
Professional engineer	\$70 to \$80
Engineer-in-training	\$45 to \$55
Geologist	\$45 to \$55
Registered geologist	\$70 to \$80
Drafting/CAD person including computer time	\$25 to \$35
Senior environmental technician, requires an associate degree in an environmental related field or a minimum of five (5) years of environmental experience	\$35 to \$45
Environmental technician, trained in sample collection	\$25 to \$30
Environmental specialist, shall [must] have a college degree in chemistry, biochemistry, biology, soil science, agronomy, or other appropriate college degree or experience [as may be] approved by the executive director	\$45 to \$55
Secretarial or clerical	\$15 to \$20
Mileage, per mile for automobile or pickup truck	\$0.27 [0.25]
Mileage, per mile for utility truck	\$0.30
Overnight lodging - shall [must] be demonstrated to be necessary	Actual cost at lodging facility, not to exceed \$60 [55] per night
Meals - when overnight stay is necessary	
Breakfast	\$6 [4]
Lunch	\$7 [5]
Supper	\$14 [11]
Soil gas analysis for VOC (equipment charge), per day	\$150

(g) Environmental exploration - includes equipment, material and labor costs unless otherwise stated. [All] Drilling charges shall be based upon unit prices outlined in this section. Other charges for the drill rig or rig time **shall not be** [are not] reimbursable:

1. Mobilization and demobilization of drilling equipment (includes

rig, two (2) man crew, labor for gathering of equipment, tools, travel time and initial off-site steam cleaning):

Auger rig, core rig, or wash rotary rig, per mile, minimum of \$200	\$2 to \$3
Air rotary rig, per mile, minimum of \$350	\$3.50 to \$4

2. Installation of PVC monitoring well, including decontamination of down hole **material** [materials] and grout or backfill **material** [materials], and development of well. Construction using other **material** [materials], such as stainless steel **screen**, **shall** [screens may] be reimbursed if the alternative construction was ordered by the cabinet.

Two (2) inch diameter well per linear foot	\$14 to \$16.
Four (4) inch diameter well per linear foot	\$15 to \$20.

Necessity for construction of a four (4) inch diameter well **shall** [must] be established.

3. Construction of monitoring well surface completion (includes concrete pad, protective casing or manhole, locking cap, lock, etc.) including **cost of** [any] labor, equipment, and material [costs]. If a **listed component** [any component listed] is not installed, surface completion cost **shall not be** [is not] allowed: \$250 each.

4. [a:] Drilling in unconsolidated material per linear foot including decontamination[;] and labor for water supply, as necessary[; and backfill of the void with bentonite or bentonitic slurry. Backfill by other methods are not reimbursable unless determined to be in accordance with cabinet administrative regulations].

Hollow stem auger less than five (5) inch inside diameter (use of an auger more than five (5) inches inside diameter shall be justified)	\$11 to \$15 [12 to \$16] [5 to \$9]
Greater than five (5) inch inside diameter	\$14 to \$17 [18 to \$21] [8 to \$11]

Continuous flight augers:	
Four (4) inch nominal outside diameter	\$12 to \$14 [9 to \$11] [5 to \$7]
Six (6) inch nominal outside diameter	\$13 to \$15 [12 to \$14] [6 to \$8]

[b:] Backfill of the soil boring void with bentonite or bentonitic slurry, per linear foot. Backfill by **another method shall not be** [other methods are not] reimbursable unless [determined to be] in accordance with 401 KAR 42:060 and 401 KAR 42:070 [cabinet administrative regulations].

Less than seven (7) inch outside diameter	\$3 to \$4
Greater than seven (7) inch outside diameter	\$4 to \$6

[c:] For continuous split spoon sample collection, add five (5) dollars per linear foot.

[d:] [c:] For split spoon sample collection at five (5) foot intervals, add three (3) dollars and fifty (50) cents per linear foot.

[e:] [d:] Random split spoon sampling, per sample: \$13 to \$20.

5. [Standby time: maximum \$150 per day:

6:] Drilling in rock (per linear foot): \$18 to \$25.

6. [7:] For [all] drilling costs[;] for depths greater than sixty (60) feet, add two (2) dollars and forty (40) cents per linear foot.

7. [8:] Well abandonment including **cost of** [all] material, equipment and labor [costs], per linear foot.

Overdrilling to depth of well and backfilling with concrete grout, per linear foot	\$17 to \$22
Removal of casing to below ground surface and backfilling of casing in place with cement grout, per linear foot	\$5 to \$7.50

8. [9:] Preparation and **submission** [submittal] of well records, per well - \$30 to \$40.

9. [10:] [a:] Direct push sampling including personnel, decontamination, **material** [materials], supplies, and backfilling of void: [; per day: \$900 to \$1100:]

Probing of less than 50 linear feet per day	\$700
Probing of 51-100 linear feet per day	\$1200
Probing of greater than 100 linear feet per day, add \$4 per linear foot for each foot over 100 feet	

[b:] Mobilization and demobilization of direct push sampler, including equipment, labor and supplies, per mile: \$0.27 [0.30 to \$0.40].

[c:] Installation and construction of a direct push **piezometer**

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[piezometers] or monitoring well [wells] including labor, decontamination, [all] down hole material [materials] and development. Charge shall be [Charges are] in addition to allowable daily charge [charges]:

Well with constructed filterpack, per linear foot	\$ 6 to \$ 8
Well packed with prepacked screen, per linear foot	\$11 to \$ 13

[d.] Construction of surface completion for direct push well or piezometer. Surface completion shall consist of concrete pad, protective casing or manhole, locking cap, locks, including [any] labor, equipment and material cost. If a listed component [any component listed] is not installed, surface completion cost shall not be [is not] allowed: \$200 each.

10. [11.] Equipment, materials and supplies. Equipment charges [are not reimbursable] for the time before travel to the site begins or after return from the site shall not be reimbursable:

Air compressor, less than 190 CFM, per day	\$65 to \$75
Air compressor, 190 CFM or greater, per day	\$140 to \$165
Backhoe, trailer and accessories, per hour	\$50 to \$55
Concrete saw, per day	\$25 to \$35
Concrete saw (push type), per day	\$70 to \$80
Conductivity meter, per day	\$15 to \$20
Disposal drum, each	\$30 to \$35
Explosimeter, per day	\$30 to \$35
FID, OVA, per day	\$80 to \$95
Generator, per day	\$50 to \$55
Grout unit, per day	\$45 to \$75
Jackhammer, per day	\$50 to \$75
PID/HNu, per day	\$60 to \$75
Power auger, per day	\$40 to \$50
Sampling supplies including gloves, spoons, tools, bailers, ropes, chain of custody, sample preservatives, decontamination and other materials or supplies incidental to the collection of samples	\$12 per well, \$2 per soil sample
Self-contained steam cleaning unit, per day	\$100 to \$125
Steam cleaner, per day	\$50 to \$75
Survey equipment, per day	\$30 to \$35
Trackhoe, trailer and accessories per day [hour]	\$80 to \$100
Water level indicator, per day	\$10 to \$12
Water trailer (500 gal.), per day	\$50 to \$75
Water truck (800 gallon capacity or greater), per day	\$125 to \$175
Copies, per page	\$0.05
Faxes, per page	\$1.25

11. [12.] The fund shall [will only] reimburse for only one (1) environmental professional to assist during drilling activities in the collection [of] in visual inspection of samples, logging of boreholes or monitoring wells or other task.

[13. Mobilization and demobilization of heavy equipment including backhoe, trackhoe and dump trucks, including labor, per event – \$200.]

(h) Sampling analysis, not including labor to take sample; including sampling containers [materials, transportation of sample, and chain of custody]:

Soil Sample	
BTEX (benzene, toluene, ethylbenzene, xylene)	
Method 5030 in conjunction with SW 846 8240, 8260, 8020 or 8021	\$45 to \$60 [75 to \$88]
Polynuclear Aromatic Hydrocarbons	
Method 3540 or 3550 in conjunction with SW 846 8100, 8270 or 8310	\$155 to \$190 [215]
Total recoverable oil and grease	
Method SW 3540 or 3550 in conjunction with 846 9071	\$37 to \$46
Total lead	
Method SW 846 7421 or 6010	\$23 to \$30
Water Samples	
BTEX (benzene, toluene, ethylbenzene, xylene)	
Method 5030 in conjunction with SW 846 8240, 8260, 8020 or 8021	\$45 to \$60 [72 to \$84]

Polynuclear Aromatic Hydrocarbons	
Method 3510 or 3520 in conjunction with SW 846, 8100, 8270 or 8310	\$161 to \$190
Total recoverable oil and grease	
Method 3510 or 3520 in conjunction with SW 846 1664 or 9070	\$35 to \$46 [48]
Total Lead	
Method SW 846 7420 7421 or 6010	\$23 to \$30 [29]

Sludge and Cleaning Liquid Samples

Toxicity Characteristic Leading Procedure	
Metals	\$230 to \$265
Volatiles	\$290 to \$320
Acid/base/neutrals	\$375 to \$415
Pesticides and herbicides	\$290 to \$315
Ignitability	
SW846 Method 1010	\$25 to \$35
Paint Filter Test	
SW846 Method 9095	\$15 to \$28
PH	\$12 to \$20

(i) Mobile laboratory fees at unit cost exceeding those found in paragraph (g) of this subsection shall [may] be eligible for reimbursement if approved under [in-conformance-with] the criteria established in Section 4 of this administrative regulation.

(j) Legal services.

Attorney:	
Sole practitioner, per hour	\$40
Partner or principal [principle] in firm, per hour	\$75
Associate in firm, per hour	\$60
Paralegal, per hour	\$30

(7) [(2)] An amount in excess of the maximum amount set forth in subsection (6) [(1)] of this section shall [may] be approved by the fund, if the contractor demonstrates that the additional cost is necessary to the performance of corrective action and the services or materials are not available at a lower cost.

(8) [(3)] Original invoices and supporting documentation shall be submitted to the fund along with a [any] payment request under this section to verify that the cost incurred is necessary and reasonable. The fund shall [may] require additional documentation, including an invoice from a [invoices from any] vendor providing service [services], equipment or material [materials] as part of corrective action, if [when] required to determine the reasonableness or necessity of a payment request.

(9)(a) [(4)] Upon agreement of the owner or [f] operator and the office [fund], the office [fund] shall [may] reimburse for work, testing, [and] equipment and material [materials] in a manner other than that prescribed in Section 1 of this administrative regulation.

(b) Approved methods shall be:

1. Task orders;

2. Firm fixed price; or

3. Pay-for-performance as provided in "Pay for Performance Cleanups".

(c) The [United States Environmental Protection Agency, EPA 510-B-96-002, June, 1996. [This document is hereby incorporated by reference. This document may be inspected and obtained at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the Fund are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday.] Any such] agreement shall be reflected in a memorandum of agreement, setting [and set] forth the:

1. Method of reimbursement;

2. [The] Amount to be reimbursed; and

3. [The] Rate or schedule of payment.

(10) Beginning on January 2, 2000, and every two (2) years thereafter, [(5) At the beginning of each calendar year] the secretary shall direct the staff to review the appropriateness of the range of

amounts established by this administrative regulation. The staff shall:

- (a) Establish a mailing list of persons who want to comment on this issue;
- (b) Solicit comments and information from interested persons and persons who contract to perform corrective action;
- (c) Conduct a public hearing to receive comment on the cost of corrective action; and
- (d) Submit a report to the secretary by July 1 of the [each] calendar year recommending changes or revisions to the range [ranges] of amounts established by this administrative regulation.

Section 2. Range of Amounts to be Paid for Items Not Listed in Section 1 of this Administrative Regulation. (1) An item [items] not listed in Section 1 of this administrative regulation shall be [are] subject to the following qualifications:

- (a) An original invoice from the manufacturer or retailer [Original invoices from manufacturers or retailers] shall be supplied to the fund, with supporting documentation, if required;
- (b) An unlisted item [Unlisted items] shall be subject to a maximum reimbursable amount of fifteen (15) percent above actual cost, including a rental or purchase [which includes rentals or purchases];
- (c) A markup [No markups] shall not be allowed on a [any] pass through cost, [costs] such as a utility [utilities] or employee expense account; [accounts; and]
- (d) Out-of-state travel expense [expenses], including [but not limited to] air fare, shall not be reimbursed unless demonstrated to be necessary for the performance of corrective action (example: expertise not available within state); and
- (e) The cost shall be [is] eligible, reasonable and necessary to the performance of corrective action.
- (2) The cost for an [Costs for] alternative corrective action technology [technologies], such as soil venting, bioremediation, or a [and] groundwater treatment system [systems], shall be subject to the range of costs set forth in Section 1 of this administrative regulation [where appropriate]. Additional cost [costs] associated with the technology shall be justified as to reasonableness and necessity.
- (3) The cost [Costs] of corrective action performed by an owner or operator as an initial response or an action to prevent or remedy an emergency situation, or as directed by the cabinet, shall be subject to the range of costs set forth in Section 1 of this administrative regulation [where appropriate]. This cost [These costs] shall be justified as to reasonableness and necessity.

Section 3. Eligibility Criteria for a Person who Contracts [Persons who Contract] to Perform Corrective Action. To be eligible for payment from the fund, a person who contracts [persons who contract] to perform corrective action shall be certified according to 415 KAR 1:114 and shall be employed or contracted by a company [companies] certified according to 415 KAR 1:116.

- (1) Personnel shall be categorized according to [the applicable type of personnel described in] Section 1 of this administrative regulation, and the appropriate rate applied;
- (2) Costs shall be itemized to comply with the cost items listed in Section 1 of this administrative regulation;
- (3) Original invoices shall be submitted with a request for payment or reimbursement from the fund;
- (4) Documentation and additional information to support the request for payment or reimbursement shall be supplied as requested by the office staff.

Section 4. [Certification of Contractor Costs. (1)(a) The fund may issue a request for proposals from individuals or companies engaged in the performance of corrective action for releases from petroleum storage tanks:

- (b) The fund shall establish the date by which the proposals are to be submitted;
- (2) The fund shall specify in the notice of the request for proposals the information to be submitted by the individual or company. At a minimum, the information to be supplied shall include:
 - (a) Verification that the submitter is a certified contractor, or a company employing certified contractors. A company shall include the name and position of its certified contractors;

(b) A statement of qualification of the individual or company, including a statement of relevant experience in the performance of corrective action for releases from petroleum storage tanks;

(c) A list of references, including the name, business address, and telephone number of at least three (3) persons for whom the individual or company has performed corrective action for a release from a petroleum storage tank. If the company has not performed corrective action for at least three (3) persons, a list of persons for whom the certified contractors employed by the company have performed corrective action may be submitted;

(d) A schedule of fees that the individual or company proposes to charge an owner or operator for the performances of corrective action for a release from a petroleum storage tank. The schedule of fees shall set forth a cost for each of the items listed in Section 1 of this administrative regulation. The schedule shall note any differences or variations in listed costs attributable to length of necessary transportation, or other factors. If subcontractors are to be used, the schedule shall specify the maximum cost to be charged by the individual or company for the corrective action activities to be performed by a subcontractor;

(e) A verification by the individual, or an authorized agent of the company, that the proposal is true and accurate, and that the schedule of fees shall be applicable for a period of one (1) year from the date by which proposals shall be submitted to the fund;

(3) The fund shall review all proposals received after the date established for submittal of proposals. Proposals are to be submitted for the purpose of assisting the fund in the regulation of persons who contract to perform corrective action. These proposals shall not be made available for public inspection until after the date for submittal established by the fund, since to do so would create an unfair advantage for competitors of the individual or company. Proposals may not be amended after the date for submittal, except as provided in subsection (6) of this section.

(4) The staff shall review each proposal to verify that the individual or company complies with the requirements for contractor certification; is qualified to perform corrective action for releases from petroleum storage tanks, and the proposed costs comply with the requirements of Section 1 of this administrative regulation.

(5) If the fund verifies that the individual or company complies with the requirements of subsection (4) of this section, the individual or company shall be placed upon a list of approved contractors that shall be made available to owners or operators of petroleum storage tanks upon request. The list of approved contractors shall be sent to all fund applicants and owners or operators participating in the fund.

(6) If the fund verifies a proposal, the individual or company shall not charge the owner or operator more than the listed costs on the schedule of fees unless the individual or company demonstrates to the satisfaction of the fund that:

- (a) The increase in costs was beyond the reasonable control of the contractor;
 - (b) The increase is due to an increase in costs to the contractor, such as an increase in disposal fees or equipment costs, and is supported by adequate documentation; and
 - (c) The increase is reasonable and necessary to cover the actual costs of performing corrective action.
- (7) Claims submitted to the fund by an owner or operator for the costs of corrective action performed by an approved certified contractor or certified company shall be reviewed by the office staff to determine that the costs were necessary.

Section 5. [The provisions of] This administrative regulation shall apply to all cost incurred [at facilities where the tank system is removed or closed in place] on or after the effective date of this administrative regulation.

Section 5. [6.] Incorporation by Reference. (1) [The following document is incorporated by reference:] "Pay for Performance Cleanups", United States Environmental Protection Agency, EPA 510-B-96-002, June, 1996, is incorporated by reference.

(2) This material may be inspected, copied or [This form may be] obtained [inspected and copied] at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601. [(502) 564-5981, 8 a.m. to 4:30 p.m.]

eastern time,] Monday through Friday, 8 a.m. to 4:30 p.m.

LAURA M. DOUGLAS, Secretary
ROBERT E. NICKEL, Executive Director
DAVID B. WICKER, ESQ., Staff Counsel
APPROVED BY AGENCY: January 7, 1999
FILED WITH LRC: January 8, 1999 at noon

PUBLIC PROTECTION AND REGULATION CABINET
Office of the Petroleum Storage Tank
Environmental Assurance Fund
(As Amended at ARRS, April 13, 1999)

415 KAR 1:116. Certification of contracting companies.

RELATES TO: KRS 224.60-130(3), (4), 224.60-140
STATUTORY AUTHORITY: KRS 224.60-130(2)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(2)(a) requires the office [fund] to establish fund reimbursement eligibility criteria [to be met by persons who contract to perform corrective action to be eligible for reimbursement by the fund: In 1998, the General Assembly amended this provision to specifically allow the office to set criteria] for the certification of partnerships and companies that engage in corrective action. This administrative regulation establishes [sets the] criteria for [the] certification of companies that contract with eligible owners and operators to perform corrective action at petroleum storage tank facilities.

Section 1. [Definitions. (1) "Certified company" means a person or partnership involved in the business of performing corrective action services for a release from a petroleum storage tank and employs or contracts with one or more individuals certified pursuant to 415 KAR 1:114.

(2) "Person" is defined by KRS 224.60-115(14).

Section 2. [Applicability. (1) A [Any] person who contracts with an eligible owner or operator [owners or operators] to perform corrective action shall be certified by the office. The cost of corrective action performed by a person not certified shall not be reimbursable. [Failure of the owner or operator to contract with a certified person shall render cost for any corrective action performed by that person unreimbursable.]

(2) To be eligible to contract with a petroleum storage tank owner or operator [owners and operators] seeking reimbursement from the fund, the person shall:

(a) Employ or contract with one (1) or more individuals certified by the office pursuant to 415 KAR 1:114;

(b) Hold, in good standing, all licenses, permits and training certifications required to perform corrective action services in Kentucky;

(c) Demonstrate to the office the technical, administrative and financial capability [capabilities] to perform and manage corrective action at an underground storage tank facility [facilities]; and

(d) Be approved in writing by the office as certified to perform corrective action services in Kentucky.

(3) This requirement shall apply [only] to applications for assistance submitted to the office on or after July [March] 1, 1999.

(4) An officer or principal of a [the] certified company shall sign an application [all applications] or claim payment request [requests] submitted to the fund by, or on behalf of, the eligible owner or operator. The certified company shall certify that:

(a) The [all] information or payment request has [requests have] been reviewed and is [are] true and correct; and

(b) Each claim payment cost is [-For claim payments, the certified company shall certify that all costs are] reasonable, necessary, and was [were] performed in compliance with 401 KAR Chapter 42 and 415 KAR Chapter 1.

Section 2. [3.] Application Requirements. (1) An applicant for company certification shall submit:

(a) [Submit] A completed Certified Company and Partnership Application Form;

(b) [Submit] Verification of the employment or contracting of one (1) or more individuals certified pursuant to 415 KAR 1:114;

(c) [Submit.] As references, the names and addresses of three (3) previous clients for whom environmental remediation has been performed by the company. If none, the applicant shall provide the names and addresses of three (3) previous or current clients of the individual certified pursuant to 415 KAR 1:114; and

(d) [Submit] A list of the names and address of officers and principals of the applicant, [and addresses,] and if applicable, a list of all stockholders.

(2) Office staff may inspect facilities of the applicant if necessary to verify information in the application or to assist in the evaluation of the applicant's capabilities.

(3)(a) The office may require additional information and documentation if necessary to determine the applicant's capabilities.

(b) The request for additional information and documentation shall be made by certified mail.

(c) The applicant shall submit the additional information within thirty (30) days of receipt of the request.

(4) An application for certified company status shall be denied if the applicant:

(a) [The applicant] Fails to provide the information required in the application or in this administrative regulation;

(b) [The applicant] Does not meet the requirements of subsection (1) of this section;

(c) [The applicant] Does not hold, in good standing, all licenses, permits and training certifications required to perform corrective action services in Kentucky;

(d) [The applicant] Fails to allow the office staff to inspect its facilities;

(e) [The applicant] Fails to provide additional information and documentation requested by the office;

(f) [The applicant] Fails to demonstrate [to the office that it possesses] the technical, administrative and financial capability [capabilities] to perform and manage corrective action at underground storage tank facilities;

(g) [The applicant] Provides false or misleading information in the application;

(h) Has an officer, director, principal, or stockholder who [Any of the applicant's officers, directors, principals, or stockholders] has [ever] had a certification, granted pursuant to 415 KAR 1:114, revoked or suspended; or

(i) Has an officer, director, principal, or stockholder [The applicant has, as any of its officers, directors, principals, or stockholders, an individual] who was an officer, director, principal, or stockholder in a certified company, previously having had its certification revoked or suspended.

(5) An applicant whose application for company certification is denied may appeal the determination by requesting a reconsideration or hearing pursuant to 415 KAR 1:120.

(6) The office shall issue a certificate to a qualifying applicant, indicating certification pursuant to this administrative regulation. [An applicant that meets the requirements of this administrative regulation shall be issued a certificate by the office indicating certification under this regulation.] A certification [Certifications] shall be renewed biannually.

Section 3. [4.] Revocation or Suspension of Certification. (1) A certification issued pursuant to this administrative regulation shall [may] be revoked or suspended if the certified company:

(a) Or its employee or agent [The certified company, its employees, or agents] knowingly submits [submit] false information, documentation, or a false payment request to an owner, operator [payment requests to owners, operators], or the fund;

(b) [The certified company] Has permitted an employee, agent or subcontractor to violate a [any] provision of 415 KAR Chapter 1, or to perform corrective action in violation of the standards of the State Fire Marshal or the cabinet;

(c) [The certified company] Has failed to comply with the terms set forth in 415 KAR 1:135;

(d) [The certified company] Has negligently, incompetently, recklessly or intentionally violated a [any] provision of this chapter or a [any] required federal, state or local regulation, code or standard

relating to corrective action;

(e) ~~[The certified company]~~ Has obtained the certification through fraud or misrepresentation; or

(f) ~~[The certified company]~~ Fails to perform a corrective action in a manner consistent with state or federal laws and regulations for safety or corrective actions, or fails to perform a corrective action consistent with generally acceptable professional standards.

(2) The secretary shall issue a letter notifying a noncompliant certified company that its certification has been revoked or suspended by action of the fund. ~~[have authority to revoke or suspend a certification. The secretary shall then cause a letter to be issued notifying the certified company of the fund's action.]~~

(3) A person whose certificate is suspended or revoked may appeal the determination by requesting a hearing pursuant to 415 KAR 1:120.

Section 4. [5-] Incorporation by Reference. (1) [The] "Certified Company and Partnership Application Form (October 1998)" is incorporated by reference.

(2) This material [form] may be inspected, copied, or obtained~~[, inspected and copied]~~ at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday, [(502) 564-5981,] 8 a.m. to 4:30 p.m. [eastern time, Monday through Friday]

LAURA M. DOUGLAS, Secretary

ROBERT E. NICKEL, Executive Director

DAVID B. WICKER, ESQ., Staff Counsel

APPROVED BY AGENCY: January 7, 1999

FILED WITH LRC: January 8, 1999 at noon

TRANSPORTATION CABINET
Department of Highways
Division of Professional Services
(As Amended at ARRS, April 13, 1999)

600 KAR 6:010. Definitions of terms used in 600 KAR Chapter

6.

RELATES TO: KRS 45A.800 through 45A.835, 45A.838, 23 CFR 172, 23 USC 112, 121 [48 CFR, 49 CFR 18, 23 USC]

STATUTORY AUTHORITY: KRS 45A.838 [13A-100(1), 45A-800 through 45A.835, 45A.838, 23 CFR 172, 48 CFR, 49 CFR 18, 23 USC]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.838(1), (2), and (5) require the Transportation Cabinet to promulgate administrative regulations relating to the establishment and operation of professional service firm pools. This administrative regulation establishes the definitions for terms used in 600 KAR Chapter 6. ~~[This administrative regulation adopts the definitions to be used in all of the administrative regulations set forth in 600 KAR Chapter 6.]~~

Section 1. Definitions. (1) "Award" means the presentation of an agreement or contract to a professional.

(2) "Cabinet" means the Kentucky Transportation Cabinet.

(3) "Change order" means as defined in KRS 45A.030(2).

(4) "Competitive negotiation" means as described in KRS 45A.085.

(5) "Consultant" means a firm which has been selected to perform engineering or related services for the cabinet as the prime firm in accordance with 600 KAR 6:060.

(6) "Continuous professional liability policy" means professional liability insurance coverage which is maintained without a gap in coverage in order to become and to remain prequalified with the Transportation Cabinet.

(7) "Contract" means as defined in KRS 45A.030(5).

(8) "Contract modification" means as defined in KRS 45A.030(6).

(9) "Cost per unit of work" means a price based on a unit if [units when] the extent of work cannot be defined but a cost of the work per unit can be determined in advance with reasonable accuracy.

(10) "Cost plus a fixed fee" means a price based on the actual

allowable cost of the work plus any preestablished fixed amount for operating margin.

(11) "DBE" means a disadvantaged business enterprise as defined and certified in accordance with the provisions of 600 KAR 4:010.

(12) "Direct salary" means the salary of a person ~~[persons]~~ directly involved with and chargeable to a specific project, e.g., engineering or draftsman time spent on a project.

(13) "Firm" means an individual or other entity which offers professional engineering or related services.

(14) "FHWA" means the Federal Highway Administration.

(15) "Lump sum" means a fixed price, including cost and operating margin, agreed upon between a consultant and cabinet for a group of tasks without a breakdown of individual values, i.e., a lot price.

(16) "Modification" means a formal revision to the terms of a contract.

(17) "Noncompetitive negotiation" means as described in KRS 45A.095.

(18) "Overhead costs" means an indirect cost that:

(a) Is not chargeable to a specific project; and

(b) Supports:

1. Personnel salaries;

2. Accounting;

3. General maintenance and repair;

4. Building rent;

5. Utilities;

6. Furniture; and

7. A similar cost related to conducting business. ~~[the indirect costs, including salaries and other costs, not chargeable to any specific project. These costs normally support the different projects in which a firm is involved, e.g., accounting, general maintenance and repair, building rent, utilities, furniture, etc.]~~

(19) "Overhead submission packet" means a package of information containing a summary of the:

(a) Firm's overhead expense accounts;

(b) [the] Direct and indirect labor; and

(c) [and indirect labor rates, and] Direct costs of [the] items outlined in 600 KAR 6:080, Section 1(13) [(3)].

(20) "Pool" means a group of firms selected to provide engineering or related services.

(21) "Prequalification" means the evaluation of a professional:

(a) To determine if he is qualified to contract with the cabinet for professional engineering or related services; and

(b) By consideration of:

1. Financial capability;

2. Technical expertise;

3. Experience;

4. Past performance;

5. Management; and

6. Similar business factors. ~~[professionals in which the cabinet considers such factors as financial capability, technical expertise, experience, past performance, and management, in order to develop a list of professionals qualified to contract with the cabinet for professional engineering or related services.]~~

(22) "Prequalification category" means a type of project for which professional engineering or related services are contracted.

(23) "Prime" means a consultant;

(a) Awarded a contract under 600 KAR 6:070; and

(b) Performing [who performs] at least fifty (50) percent of the dollar value of the work for a project.

(24) "Principal" means an [any] individual who;

(a) Owns directly or indirectly more than ten (10) percent of the voting interest in a consulting firm; or

(b) Serves as:

1. President;

2. Vice president;

3. Secretary;

4. Director; or

5. Another firm officer. ~~[who is an officer of the firm (i.e., president, treasurer, vice president, secretary, or director).]~~

(25) "Project-specific professional liability insurance" means separate professional liability coverage which provides noncancelable coverage for the duration of a specific project and continuing through a

discovery period after construction is complete.

(26) "Professional engineer" means an individual or firm licensed to practice engineering in the Commonwealth of Kentucky under KRS Chapter 322.

(27) "Professional engineering or related services" means specialized engineering or related professional services performed by an individual, consultant, or other organization [individuals, consultants, or other organizations] of recognized technical competence, education or experience that is [are] involved in the planning, design, construction, maintenance or operation of Kentucky's transportation systems.

(28) "Professional liability policy" means claims-made insurance coverage for professional engineering or related services which indemnifies a firm, a past or present partner, an officer, a director, a stockholder, or an employee [and past or present partners, officers, directors, stockholders or employees] while acting within the scope of firm [their] duties, [for the firm] against the following:

- (a) A negligent act;
- (b) An error or omission in performing a professional service; or
- (c) Failure to provide a service in accordance with standard of care.

(29) "Professional services" means specialized services performed by an individual or consultant [individuals or consultants] of recognized technical competence.

(30) "Project" means an undertaking by the Transportation Cabinet as defined in KRS 45A.800(4).

(31) "Project manager" means the director of the user division or person designated by the user division director to oversee the performance of a consultant to perform contracted services on a project.

(32) "Proof of necessity" means the justification to employ a:

- (a) Engineer;
- (b) Architect;
- (c) Appraiser;
- (d) Attorney; or
- (e) Other professional. [consulting engineers, architects, appraisers, attorneys, consultants and others.]

(33) "Proposal" means an offer made by a firm to the cabinet as a basis for negotiations for entering into a contract.

(34) "Salary additives" means an employer-paid fringe benefit, including:

- (a) The employer portion of FICA;
- (b) Health insurance;
- (c) Group life insurance;
- (d) A state unemployment contribution; or
- (e) A similar employee benefit. [benefits including an employer portion of FICA, hospitalization, group life insurance, unemployment contributions to the state and other similar benefits.]

(35) "Scope of work" means all services and actions required of the consultant by the contract.

(36) "Services" means as defined in KRS 45A.030(19).

(37) "Six (6) year plan" means the document prepared by the Transportation Cabinet in accordance with the provisions of KRS 176.419 through 176.470.

(38) "Standard of care" means the ordinary and reasonable care required and established by expert testimony of what a reasonable and prudent professional would have done under the same or similar circumstances.

(39) "Subconsultant" means a second consultant contracted to a prime consultant for the performance of work contracted by the cabinet to the prime consultant.

(40) "Termination clause" means a contract clause which allows the cabinet to terminate, at its own discretion, the performance of work and to make settlement of the consultant's claims.

(41) "User division" means as defined in KRS 45A.800(6).

(42) "Work unit" means an item on a list of tasks which are required to be accomplished by the consultant in order to satisfactorily complete the scope of work.

JAMES C. CODELL, III, Secretary
J.M. YOWELL, State Highway Engineer
GERI GRIGSBY, General Counsel

APPROVED BY AGENCY: December 21, 1998

FILED WITH LRC: December 23, 1998 at 11 a.m.

TRANSPORTATION CABINET
Department of Highways
Division of Professional Services
(As Amended at ARRS, April 13, 1999)

600 KAR 6:065. Pooling of professional engineering or related services.

RELATES TO: KRS 45A.800 through 45A.835, 45A.838, 23 CFR 172, 23 USC 112, 121, 304, 315 [48-CFR, 49-CFR 18, 23 USC]

STATUTORY AUTHORITY: KRS 45A.838 [13A-100(1); 45A.800 through 45A.835, 45A.838, 23-CFR 172, 48-CFR, 49-CFR 18, 23-USC]

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation sets forth the procedure to be used by the Transportation Cabinet when pooling firms as it relates to professional engineering or related services.

Section 1. Project Types Utilizing Pooling of Engineering or Related Services. (1) [Roadway design;

- (2)] Transportation planning;
- (2) [(3)] Structure design;
- (3) [(4)] Aeronautics;
- (4) [(5)] Traffic engineering;
- (5) [(6)] Environmental services;
- (6) [(7)] Geotechnical services;
- (7) [(8)] Bridge maintenance services;
- (8) [(9)] Construction engineering services;
- (9) [(10)] Multimodal;
- (10) Road design;

(a) The use of a consultant pool for a road design project shall be limited to ten (10) percent of the total number of road design projects advertised for engineering services in the prior fiscal year.

(b) The total design fees for road design projects shall not exceed \$2,000,000 in a fiscal year; and

(11) Similar [Other] highway related services [as determined by the Transportation Cabinet].

Section 2. Procedures and Criteria for Qualifying and Selecting Pooled Firms. (1) The cabinet shall notify a prequalified firm [the prequalified firms] of the establishment of an individual pool [pools] by posting a procurement bulletin on the cabinet's web page.

(2) To be considered for selection in a pool:

(a) A firm shall submit a completed TC Form 40-15 "Response to Announcement for Engineering and Related Services as Prime Consultant"; and

(b) The completed TC Form 40-15 shall be received by the date listed on the advertised procurement bulletin. [Firms shall submit a completed TC Form 40-15 "Response to Announcement for Engineering and Related Services" to be considered for selection in the pool. This form must be received by the date listed on the advertised procurement bulletin.]

(3) The remainder of the selection process shall proceed according to KRS 45A.800 through 45A.835.

Section 3. Project Assignment for Pool Firms [Engineering and Related Services Selection Process:] (1)(a) A selected firm [All selected firms] shall be placed in the pool.

(b) A firm name shall be:

- 1. Randomly drawn from the pool; and
- 2. Listed in consecutive order.

(c) A project shall be offered to the firm on a rotating basis.

(d) A firm shall not be offered an additional project until the remaining firms on the list have been offered a project. [Firm names shall be randomly drawn and listed in consecutive order. This order shall determine the order in which projects shall be offered to firms on a rotating basis. No firm shall be offered an additional project until the remaining firms on the list have been offered a project.]

(2) If a firm declines to accept a project, that firm shall not be eligible to accept another project until the remaining firms on the list have been offered a project.

(3) If a firm declines a project or does not respond to an invitation to perform services for a project within seven (7) working days of the dated notification letter, documentation shall be placed in the project files and the next firm on the list shall be offered the project.

Section 4. Projects Grouped by Geographic Area. (1) The selection committee shall assign projects which are grouped based on geographical areas. [Pooled Project Assignment. (1) Firms shall be assigned projects based on geographical areas listed below:

- (a) Highway district(s);
- (b) County(ies); or
- (c) State region(s);

(2) The geographical **area of the project shall be:**

(a) Included in the advertisement for services; and

(b) Defined by the cabinet. [areas shall be defined by the cabinet [user division] and included in the advertisement for services.]

(3) The selection committee shall assign **a selected firm to a geographical area.** [the selected firm(s) to the geographical area(s).]

Section 5. Incorporation by Reference. (1) [Material incorporated by Reference. The following material is incorporated by reference:] "Response to Announcement for Engineering and Related Services as Prime Consultant", (June, 1993 Edition), **Transportation Cabinet.**

(2) **It may be inspected, copied, or obtained at the Transportation Cabinet, State Office Building, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.** [Form TC-40-15, June 1993.]

J.M. YOWELL, P.E., State Highway Engineer

JAMES C. CODELL, III, Secretary

GERI GRIGSBY, General Counsel

APPROVED BY AGENCY: March 12, 1999

FILED WITH LRC: March 12, 1999 at noon

**TRANSPORTATION CABINET
Department of Highways
Division of Professional Services
(As Amended at ARRS, April 13, 1999)**

600 KAR 6:070. Contracting for professional engineering or related services.

RELATES TO: KRS 45A.800 through 45A.835, 45A.838, 23 CFR 172, **23 USC 112, 121, 304, 315** [48 CFR, 49 CFR 18, 23 USC]

STATUTORY AUTHORITY: KRS **45A.838** [13A.100(1), 45A.800 through 45A.835, **45A.838**, 23 CFR 172, 48 CFR, 49 CFR 18, 23 USC]

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation sets forth the procedure to be used by the Transportation Cabinet when selecting professional engineering or related services while implementing the provisions of KRS 45A.800 to 45A.835.

Section 1. Methods of Contracting with Consultants. (1) The following methods of contracting with **a consultant may be used** [consultants shall be acceptable]:

- (a) Lump sum;
- (b) Cost plus a fixed fee;
- (c) Specific **rate [rates]** of compensation; or
- (d) Cost per unit of work.

(2)(a) **If [When]** the cabinet chooses the lump sum method of contracting, the consultant shall present a statement to the Division of Professional Services showing the probable cost for the elements of work and the expected operating margin.

(b) This statement shall include a supported breakdown of the direct and indirect costs and subconsultant costs which the consultant expects to incur.

(c) The method of dividing the project into work units and the calculation of related time units shall be devised so that the estimate can be easily reviewed.

(d) The Division of Professional Services and the user division

shall verify the following supporting documentation before recommending the contract for approval:

1. Reasonableness of the amount proposed and consideration of the degrees of risk and responsibility to be assumed by the consultant;
2. The extent, scope, complexity, character and duration of the required services;
3. Professional and financial investments to be required of the consultant;
4. The consultant's normally-expected return for ~~such~~ services;
5. Conditions under which the consultant is expected to perform;
6. The cabinet's estimate of the appropriate amount for the services required; and
7. The cabinet's findings on the basis of experience and knowledge.

(3)(a) **If [When]** the cabinet chooses the cost plus a fixed fee method of contracting, an upper limit of payment of actual cost shall be established which **shall not** [cannot] be exceeded without obtaining cabinet approval.

(b) During negotiations, the Division of Professional Services or other negotiation unit shall be responsible for establishing the upper limit along with the fixed fee to be paid to the consultant for the services required.

(c) The Division of Professional Services or other negotiation unit shall establish the fixed fee and an upper limit based on:

1. Past experience gained from negotiations of similar projects;
2. Judgment regarding scheduling; and
3. Complexity of work; and
4. [the] User division's **estimate [estimates].**

(4)(a) **If [When]** the cabinet chooses the specific rate of compensation method of contracting, the Division of Professional Services or other negotiation unit shall document the basis on which the amount specified as the upper limit or upset limit was established.

(b) The agreement shall contain provisions which permit adjustment to this upper limit **if [when]** the consultant establishes, and the user division agrees, that there has been or is to be a significant change in the:

1. Scope, complexity or character of the services to be performed;
2. Conditions under which the work is required to be performed; or
3. Duration of the work if the change from the time period specified in the agreement for completion of the work warrants such adjustment.

(c) In the case of statewide agreements under which there is to be subsequent individual authorizations, the establishment of a maximum amount for the overall contract shall be submitted to the LRC's Government [Personal Service] Contract Review Committee [Subcommittee]. A maximum amount shall be established for each of the individual authorizations which shall not exceed the maximum amount for the overall contract.

(5)(a) **If [When]** the cabinet is using the cost per unit of work method of compensation, the consultant shall be paid on the basis of units completed.

(b) **Cost per unit contracting shall be appropriate for use if:**

1. **The extent of the work cannot be accurately figured; and**
2. **The cost of the work per unit can be determined with reasonable accuracy in advance.** [This method of contracting is appropriate when the extent of the work cannot be definitely defined but when cost of the work per unit may be determined in advance with reasonable accuracy.]

(c) A proposal using this method of contracting shall be supported in the same manner as that indicated for the lump sum method used for consultants.

(6)(a) For an individual acting as a consultant, the specific rates of compensation shall include the direct salary costs, salary additives, indirect costs and the net fee. The agreement of supporting data shall specifically identify these costs.

(b) Other direct costs may be included as an element of a specific rate or as independent cost items.

Section 2. Prenegotiation Procedures. (1)(a) A consultant selected pursuant to 600 KAR 6:060 shall meet with cabinet representatives in accordance with the schedule identified in the procurement bulletin issued pursuant to 600 KAR 6:050 to discuss in detail the scope of services to be provided by the consultant for the project.

(b) The Transportation Cabinet may require a consultant to obtain project-specific professional liability insurance for an unusual project.

(c) If project-specific professional liability insurance is required:

1. A firm's audit may be reexamined to determine if a change in the overhead rate is needed; or

2. And there is more than one (1) consultant involved in the project, the consultants may jointly purchase the insurance.

(2) After this prerenegotiation meeting, the consultant shall submit the following to the cabinet:

(a) Official minutes of the prerenegotiation meeting; and

(b) All required tasks and work units. [For roadway design, work units which quantify the tasks to be performed to achieve the roadway design services that appeared in the advertisement or procurement bulletin and an identification of the assignment of the work units to the prime consultant or a subconsultant.]

1. The cabinet shall have [has] the following options regarding the submittal:

a. Concur;

b. Modify and return the modification to the consultant; or

c. Reject and ask the consultant to evaluate and resubmit the work units.

2. After an agreement on the work units between the cabinet and the consultant, each shall independently develop production rates to be applied to the work units to determine person-hours for each task.

~~[(b) For structure work, work units include a description of the structure to be designed including but not limited to type, length, span arrangement, curves, skew, pilings based on preliminary geotechnical information, an identification of the assignment of the work units to the prime consultant or a subconsultant, and any other pertinent considerations:~~

~~1. The cabinet has the following options regarding the submittal:~~

~~a. Concur;~~

~~b. Modify and return the modification to the consultant; or~~

~~c. Reject and ask the consultant to evaluate and resubmit the work units;~~

~~2. After an agreement on the work units between the cabinet and the consultant, each shall independently develop production rates to be applied to the work units to determine person-hours for each task.~~

~~(c) For environmental services, a scope of work for each task and corresponding person-hours to achieve each task and an identification of the assignment of the work units to the prime consultant or a subconsultant.~~

~~(d) For geotechnical assessments, a copy of the work units and corresponding cost derivatives to achieve each task which qualifies and quantifies the tasks to be performed to achieve the geotechnical services that appear in the announcement and an identification of the assignment of the work units to the prime consultant or a subconsultant.~~

~~1. The cabinet has the following options regarding the submittal:~~

~~a. Concur;~~

~~b. Modify and return the modification to the consultant; or~~

~~c. Reject and ask the consultant to evaluate and resubmit the work units;~~

~~2. After an agreement on the work units between the cabinet and the consultant, each shall independently develop production rates to be applied to the work units to determine person-hours for each task.~~

~~(e) For bridge maintenance inspection, a copy of work units and proposed equipment usage to achieve the inspection services that appeared in the announcement and an identification of the assignment of the work units to the prime consultant or a subconsultant.~~

~~1. The cabinet has the following options regarding the submittal:~~

~~a. Concur;~~

~~b. Modify and return the modification to the consultant; or~~

~~c. Reject and ask the consultant to evaluate and resubmit the work units;~~

~~2. After an agreement on the work units between the cabinet and the consultant, each shall independently develop production rates to be applied to the work units to determine person-hours for each task.~~

~~(f) For planning studies, work units which qualify the tasks to be performed to achieve the planning study services that appeared in the announcement and an identification of the assignment of the work units to the prime consultant or a subconsultant.~~

~~1. The cabinet has the following options regarding the submittal:~~

~~a. Concur;~~

~~b. Modify and return the modification to the consultant; or~~

~~c. Reject and ask the consultant to evaluate and resubmit the work units;~~

~~2. After an agreement on the work units between the cabinet and the consultant, each shall independently develop production rates to be applied to the work units to determine person-hours for each task.]~~

(3) The consultant shall submit to the Division of Professional Services a fair and reasonable fee proposal which shall be prepared using the following:

(a) Personnel classifications and average wage rates for each classification as they appear in the audit and adjusted for work in the future years;

(b) Distribution of work by the personnel classifications;

(c) Overhead rates as determined by an audit;

(d) Subconsultants and fee proposals for each;

(e) Direct expenses not included in the overhead and subject to the limitations of subsections (5), (6), (7), and (8) of this section; and

(f) Person-hours to achieve the agreed upon task to achieve the scope of services that appear in the advertisement or procurement bulletin.

(4) After the Division of Professional Services requests a proposal and fee estimate from the consultant, the user division shall:

(a) Prepare an estimate of resources required to complete the project;

(b) Discuss the project with other divisions and request resource estimates from them as necessary; and

(c) Coordinate all of the resource estimates from other divisions to be used by the Division of Professional Services in negotiation of the contract.

(5)(a) Except as set forth in subparagraph (b) of this subsection, for contract negotiation purposes, the maximum allowable overhead rate shall be 150 percent;

(b) For contract negotiation purposes, if a consultant or subconsultant offers special expertise in engineering or related services which is outside normal project development activities, the limitations in 600 KAR 6:080, Section 2, shall [may] be suspended and the allowable overhead rate may exceed 150 percent if:

1. The director of the Division of Professional Services recommends approval;

2. The State Highway Engineer recommends approval;

3. The Secretary of the Transportation Cabinet approves; and

4. The approved overhead rate does not exceed the actual overhead rate established pursuant to 48 CFR Part 31.

(6) For contract negotiation purposes, travel expenses for a consultant employee or survey crew [employees or survey crews] shall be limited to those incurred from an office in Kentucky or the border of Kentucky nearest the consultant's office;

(7) For contract negotiation purposes, direct expenses shall be limited to the following items and limits:

(a) Passenger car - twenty-seven (27) cents per mile;

(b) Truck or four (4) - wheel drive vehicle - thirty-five (35) cents per mile;

(c) Lodging:

1. Professional staff - fifty-five (55) dollars per night per person; and

2. Survey field personnel - seventy (70) dollars per night for two

(2) persons in one (1) room;

(d) Meals:

1. Breakfast - six (6) dollars per day per person;

2. Lunch - seven (7) dollars per day per person; or

3. Dinner - fourteen (14) dollars per day per person;

(e) Printing of reports for distribution external to the Transportation Cabinet - estimated cost from the printer per document;

(f) Travel time for a survey crew - travel time to and from a job site in hours multiplied by the survey crew wage rate multiplied by one and three-tenths (1.3) for salary additives;

(g) Special equipment which is project-specific;

(h) Capital cost of money; and

(i) Computer time, if accounted for as a direct charge, shall not exceed fifteen (15) dollars per hour.

(8) For contract negotiation purposes, the maximum direct salary per year shall be:

- (a) \$90,000 for a nonprincipal or nonpartner of a firm; and
- (b) \$100,000 for a principal or partner of a firm.

Section 3. Contract Negotiations. (1)(a) The Division of Professional Services shall be the designated negotiating agent for the Department of Highways in the Cabinet.

(b) If professional engineering or related services are requested by user divisions within the cabinet but not in the Department of Highways, that user division shall be responsible for negotiating the fee.

(2)(a) The Division of Professional Services or other designated negotiation unit shall receive the proposal and fee estimate from the consultant. The proposal submitted by the consultant shall include either a statement that the payment shall be based on the percentage of work completed or the proposed project milestones and corresponding maximum percentage payments and a breakdown of the estimated fee for performing the work including the following:

1. Direct salaries;
2. Overhead;
3. Other direct costs including cost of materials which are not included in the overhead;
4. Subconsultant costs;
5. Operating margin; and
6. Use of DBE firms.

(b) The Division of Professional Services or other designated negotiation unit shall analyze the proposal and may confer with others regarding the proposal as necessary. The proposal shall be used as a basis for further negotiation of the professional services agreement.

(c) Unreasonable or deliberately inflated proposals shall be rejected and may be cause for terminating negotiations in accordance with KRS 45A.825(9).

(3) If the contract which is being negotiated uses a method of compensation other than lump sum, the consultant shall use an accounting system which segregates and accumulates reasonable, allocable and allowable costs to be charged to a contract for an audit by the External Audit Branch.

(4)(a) If a consultant intends to utilize the services of a subconsultant to perform any part of the work, at the time of negotiations the consultant shall submit a fee proposal for the amount of work to be subcontracted.

(b) The fee proposal shall be based on the audited overhead and wage rates for the subconsultant.

(c) A subconsultant shall be prequalified with the cabinet to perform the services to be subcontracted to it if the services are required to be prequalified.

(d) Prior approval from the Division of Professional Services or other negotiation unit shall be necessary.

(e) If a consultant desires to utilize a subconsultant to perform part of the work after a contract has been approved and notice has been given to begin work, the procedures set forth in Section 6 of this administrative regulation shall be followed.

(5) A consultant which is awarded a contract for professional engineering or related services with the cabinet shall perform at least fifty (50) percent of the dollar value of the work for the project unless otherwise approved by the Director of the Division of Professional Services.

(6)(a) The operating margin allowed a professional engineering or related services consultant shall be allowed only on the negotiated direct labor and overhead costs regardless of the type of contract and shall not exceed the following:

1. Lump sum contract - up to [a:] fifteen (15) percent of the total direct labor cost plus overhead costs for a contract, including all contract modifications up to and including [-less than] \$2,000,000 and ten (10) percent of the total direct labor cost plus overhead costs for a contract, including all contract modifications, for the amount in excess of \$2,000,000. [-or

b. Ten (10) percent of the total direct labor cost plus overhead costs for a contract, including all contract modifications, equal to or in excess of \$3,000,000; or

c. For a contract with the total direct labor cost, plus overhead cost of \$2,000,000 to \$3,000,000, the operating margin shall be fourteen (14) percent to ten (10) percent with a one (1) percent reduction for each \$200,000 increase in fee.]

2. Unit price contract - up to fifteen (15) percent of the estimated

unit cost at the time of execution of the contract.

(b) A cost plus fixed fee contract shall have a lump sum fee equal to ten (10) percent of the estimated cost at the time of the execution of the agreement.

(7) The Division of Professional Services or other negotiation unit shall compare the consultant's established fee with the cabinet's estimate to determine both the reasonableness of the fee and areas of substantial differences which may require further negotiation.

(8) The Division of Professional Services or other negotiation unit shall negotiate with the consultant to establish a reasonable fee and basis of payment, including incremental payments for completed work where appropriate, for the services to be performed under the contract.

(9)(a) The consultant shall keep written documentation of each negotiation meeting and shall submit to the Division of Professional Services or other negotiation unit the following:

1. Minutes of negotiations;
2. As-negotiated fee;
3. As-negotiated person-hours;
4. Classification percentage distribution; and
5. Direct cost breakdowns.

(b) The public shall not be denied access to the items set forth in paragraph (a) of this subsection.

(10) After the Division of Professional Services or other negotiation unit has negotiated a contract, the head of the unit shall comply with the provisions of KRS 45A.825(10).

Section 4. Contract Preparation and Execution. (1) The Division of Professional Services or other negotiation unit shall prepare an agreement or contract to cover [over] the services to be provided, method and amount of payment, the time of completion and necessary special provisions.

(a) The agreement shall also include by reference the General Provisions Attachment as revised July 1994 unless the project is for a consultant structure inspection. ~~[The General Provisions Attachment is incorporated by reference as a part of this administrative regulation.]~~

(b) If the project is for a consultant structure inspection, the agreement shall also include by reference the Division of Operations, Consultant Structure Inspection Provisions as revised in May 1993. ~~[The Division of Operations, Consultant Structure Inspection Provisions Form is incorporated by reference as a part of this administrative regulation.]~~

(2) The contract and negotiation minutes shall be sent to the consultant for the signature of an authorized representative. All original documents shall be returned to the Division of Professional Services or other negotiation unit.

(3) The contract shall be reviewed and approved by the secretary of the cabinet.

(4) ~~If~~ [When] the project is subject to approval from the FHWA and after the contract has received final approval from the cabinet, the Division of Professional Services shall send to the FHWA the following requesting their approval:

- (a) A copy of the contract;
- (b) The negotiated fee and person-hours;
- (c) The consultant's fee and person-hour proposal;
- (d) The cabinet's person-hour estimate;
- (e) The minutes of the negotiation;
- (f) The minutes of the predesign conference;
- (g) A copy of the advertisement and announcement;
- (h) The list of firms that responded to the announcement in a timely manner;

(i) The written approval from the secretary of the cabinet to engage a professional firm;

(j) The minutes of the Professional Engineering Services Selection Committee;

(k) The memorandum from the Chairman of the Selection Committee stating the ranking of the three best-qualified firms by the Professional Engineering Services Selection Committee; and

(l) The audit report of overhead and wage rates which was used to establish the fee.

(5) [(6)] If FHWA does not approve the contract, the secretary of the cabinet, after discussion with the State Highway Engineer and staff, may decide to modify the contract, redefine the project, terminate

the project or ask for reconsideration by the FHWA.

Section 5. Notice to Proceed and Payments. (1)(a) Before a notice of approval for payment can be issued, funds shall be encumbered by the cabinet.

(b) The funds for statewide contracts shall be encumbered on a project by project basis.

(2) After the Division of Professional Services or other negotiation unit receives notification indicating that the LRC Government [Personal Service] Contract Review Committee [Subcommittee] has received the contract and project information for review, a notice to proceed shall be transmitted to the consultant indicating that it may commence work but it shall not bill for services until specifically authorized to do so. For projects requiring approval of a unit of the federal government, notice to proceed shall not be issued until the federal approval is obtained.

(3) If [When] the LRC Government [Personal Service] Contract Review Committee [Subcommittee] issues a notification of acceptance on a contract, the Division of Professional Services or other negotiation unit shall issue a letter to the consultant informing it that it may bill the cabinet for charges incurred while working on the project.

(4)(a) If the LRC Government [Personal Service] Contract Review Committee [Subcommittee] objects to the contract and the cabinet determines that the contract is to be canceled, the Division of Professional Services or other negotiation unit shall notify the consultant of the cancellation and shall take necessary steps to close the contract.

(b) If the cabinet determines that the contract is to be modified to comply with the concerns of the LRC Government [Personal Service] Contract Review Committee [Subcommittee], the Division of Professional Services or other negotiation unit shall notify the consultant of the necessary modifications and shall follow the contract modification [and change order] procedures specified in Section 7 of this administrative regulation.

(c) If the cabinet determines that the contract is to be executed as submitted to the LRC Government [Personal Service] Contract Review Committee [Subcommittee], the Division of Professional Services or other negotiation unit shall issue a letter to the consultant informing it that it may bill the cabinet for charges incurred while working on the project.

Section 6. Contract Administration. All work performed under a professional services contract shall be subject to general supervision, direction, review and approval by the cabinet.

(1)(a) A project manager shall be assigned to the project by the director or office head of the user division.

(b) The division director or office head may serve as the project manager.

(c) The project manager shall be responsible for coordinating all cabinet activities with the consultant and for providing necessary supervision through the duration of the contract. This coordination shall include the following:

1. Scheduling, monitoring and controlling the consultant's activities;
2. Reporting the status of these activities to the appropriate authority;
3. Periodically reviewing the work to determine if the work:
 - a. Is acceptable;
 - b. Is in accordance with the agreement for the particular project; and

c. Scope has changed to the point that it may require a supplemental agreement and increased or decreased compensation; and

4. Completing and processing the Consultant Monthly Report Form incorporated by reference in Section 9 of this administrative regulation.

(2)(a) During the project, the consultant may subcontract with other firms to perform specialized services in a manner similar to Section 1(4) of this administrative regulation. The subconsultant shall be prequalified by the cabinet in accordance with the provisions of 600 KAR 6:040 if the services that are subcontracted are required to be prequalified.

(b) If the services to be performed by the subconsultant are subject to prequalification by the cabinet and were not previously identified in the original negotiation or subsequent contract modifications

[change orders], the consultant shall submit a request for a fee adjustment for the person-hours to be performed by the subconsultant.

(c) If the subconsultant services are not subject to prequalification procedures and exceed \$25,000, they shall be reviewed by the External Audit Branch for reasonableness of cost. For subcontracts equal to or less than \$25,000, the Director of the Division of Professional Services or other negotiation unit, upon recommendation of the negotiator, may accept the rates and costs if they are reasonable and in line with past costs incurred for similar work.

Section 7. Contract Modifications. (1) If [When] it is determined by either the consultant or the cabinet that one (1) or more of the following conditions are acceptable and necessary, a contract modification for a fee or schedule adjustment may be requested:

(a) Change in termini or section;

(b) Addition of major phases of work to the negotiated scope of work;

(c) Modification of previously approved work resulting from factors beyond the control of the consultant;

(d) Modification of a major item, if in the original contract, the item is designated as a basis of the original negotiations and the conditions for a contract modification [change order] consideration are identified in the original contract;

(e) Delay by the cabinet as outlined in each contract;

(f) Use of a subconsultant for services previously identified to be done by the consultant or other subconsultant; or

(g) Availability of current audit established in accordance with 600 KAR 6:080.

(2) The request for a contract modification may be originated by the Division of Professional Services, user division, highway district office or the consultant.

(3)(a) If [When] the director or office head of the user division determines the change is appropriate, the user division shall advise the consultant in writing of the contemplated change in the scope, complexity, extent, character or duration of the original agreement.

(b) If [(a)-When] additional or reduced compensation is justified, the user division shall request a revised proposal from the consultant.

(4) The contract modification shall be negotiated using the procedures set forth in Sections 1, 2, and 3 of this administrative regulation.

(5) The Division of Professional Services or other negotiation unit shall send the Contract Modification [Change Order] form TC 40-17 [as revised December 1998] [June 1992] or the Construction Consultant Change Order form, TC 63-53 [revised June 1992;] to the consultant for its approval. [These forms are incorporated by reference in Section 11 of this administrative regulation.]

(6) After approval by the cabinet, the contract modification [change order], LRC's proof of necessity form and other supporting documentation shall be submitted to the LRC Government [Personal Service] Contract Review Committee [Subcommittee].

(7) For projects requiring FHWA oversight, the approved contract modification [change order] shall be sent to the Federal Highway Administration for approval in accordance with Section 4(4) of this administrative regulation.

(8) Funds shall be encumbered by the cabinet sufficient to pay for the approved contract modification [change order].

(9) If a contract modification [change order] results in a fee negotiated for the contract modification [change order] in other than lump sum as a method of compensation, the consultant shall use an accounting system which segregates and accumulates allocable and allowable costs which are to be charged to the contract modification [change order].

Section 8. Completion of Contract. (1) Upon completion of the contract, the cabinet shall review the work performed to determine that it meets the terms and conditions of the contract and shall evaluate the consultant for future reference.

(2) The project manager or the director of the user division shall review the work performed by the consultant, including any progress and final reports, to determine that all terms and conditions of the contract have been met before processing the final voucher for payment or releasing the consultant.

(3) Before approving the final invoice for payment, the director of the user division or the project supervisor shall evaluate the consultant

and prepare written documentation of the consultant's performance on the project.

(4) The user division shall send the consultant written documentation of the consultant's performance for the project. Copies of the documentation shall be placed in the contract file maintained by the Division of Professional Services and in the consultant's experience record file.

(5)(a) If a consultant receives a below average rating, he may appeal, in writing, to the user division director within thirty (30) days of receiving the rating notification.

(b) The written notice of appeal shall specifically set forth the reasons why the consultant believes the below average rating is erroneous.

(c) The appeal shall be conducted in accordance with KRS Chapter 13B.

(d) At the conclusion of the appeal, if the performance evaluation is revised, the initial documentation of the below average rating shall be:

1. Removed from the file; and

2. Replaced with the revised performance documentation.

[The consultant may appeal in writing a below average rating to the user division director within thirty (30) days of written documentation of the consultant's performance for the project.

(b) The appeal shall specifically set forth the reasons why the consultant believes the below average rating is in error.

(c) The user division director shall notify the consultant within thirty (30) days from the consultant's appeal of the director's decision of whether or not to revise the performance rating.

(d) The consultant may appeal in writing the user division director's decision to the Chairman of the Consultant Prequalification Committee within thirty (30) days.

(e) The Consultant Prequalification Committee shall review all documentation relating to the consultant's performance for the project. The committee may discuss the performance rating with the project supervisor or the consultant.

(f) The committee shall notify the consultant and the user division of its decision within ninety (90) days from the consultant's appeal.

(g) If the consultant's appeal is denied by the Consultant Prequalification Committee, it may appeal the decision to the State Highway Engineer within thirty (30) days of written notice of denial of its appeal by the Consultant Prequalification Committee.

(h) The State Highway Engineer shall notify the consultant of his decision within thirty (30) days.

(i) The decision of the State Highway Engineer shall be final.

(j) If the performance evaluation documentation is revised, the initial documentation shall be removed from all files and replaced with the revised performance document.]

(6) The Director of the Division of Professional Services or head of other negotiation unit shall request the External Audit Branch to perform a final audit if appropriate. The audit shall determine the total allowable contract costs and the total dollars to be paid to the consultant. All contracts utilizing a cost plus fixed rate method of payment shall be audited.

(7) The user division shall forward the Federal Highway Administration a copy of all progress and final reports for federal-aid projects if required or requested by the FHWA.

Section 9. Cancellation of Contract. (1) Each professional service contract shall include a provision for the termination of the agreement and shall allow for the cancellation of the contract by the cabinet with proper notice to the consultant.

(2) **If [When]** the cabinet decides to cancel a professional services contract, the Division of Professional Services or other negotiation unit shall notify the consultant of the cancellation and of the reasons for the cancellation.

(3) The cabinet shall **not be liable for payment of services past [be liable only for payment of services up to]** the effective date of cancellation of the contract as specified by the terms of the contract.

(4) The cabinet shall be liable for a demobilization fee equal to ten (10) percent of the remaining balance of the contract not to exceed \$25,000.

Section 10. Payments to Consultants. Before payment of a partial

or final request for payment, the cabinet shall review the work of the consultant, including any progress or final reports, to ensure that the work for which the payment is to be made has been completed and that the terms and conditions of agreement have been satisfactorily followed.

(1) During the course of the project, progress billings shall be submitted by the consultant as agreed upon in the contract. The consultant shall submit an Engineer's Pay Estimate, TC 61-408 [revised July 1998] [March 1988] and a Consultant Monthly Report, TC 61-2 [revised March 1996] [October 1995] as an invoice to the chief district engineer or director of the user division or to their designees.

(2) The chief district engineer or director of the user division or his designee shall review the Engineer's Pay Estimate and Consultant Monthly Report, verify that the work has been completed as described in the document, and sign both forms.

(3) If an Engineer's Pay Estimate is not needed to be submitted to the chief district engineer or director of the user division within a given month, the Consultant Monthly Report shall still be submitted.

(4) A final invoice and request for payment shall not be authorized until [Final invoices and requests for payment shall be authorized only] after all work has been reviewed and accepted or approved, including any final reports prepared by the consultant. All terms and conditions of the contract shall be satisfactorily met and the final audit shall be performed prior to processing the final payment.

Section 11. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Contract Modification [Change Order]", Form TC 40-17, December 1998 [June 1992] edition;

(b) "Construction Consultant Change Order", Form TC 63-53, June 1992 edition;

(c) "Engineer's Pay Estimate", Form TC 61-408, July 1998 [March 1988] edition;

(d) "Consultant Monthly Report", Form TC 61-2, March 1996 [October 1995] edition;

(e) "General Provisions Attachment (Exhibit 15-07)", July 1994 edition; and

(f) "Consultant Structure Inspection Provisions (Exhibit 15-07A)", May 1993 edition.

(2) All material incorporated by reference as a part of this administrative regulation may be obtained, viewed or copied at the Division of Professional Services, 6th Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622. Its telephone number is (502) 564-4555. Its office hours are 8 a.m. to 4:30 p.m. eastern time on weekdays.

JAMES C. CODELL, III, Secretary
J.M. YOWELL, State Highway Engineer
GERI GRIGSBY, General Counsel

APPROVED BY AGENCY: March 12, 1999
FILED WITH LRC: March 12, 1999 at noon

**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Vehicle Enforcement
(As Amended at ARRS, April 13, 1999)**

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: **KRS 281.600 authorizes the Transportation Cabinet to promulgate administrative regulations relating to safety requirements. This administrative regulation establishes requirements for motor carriers operating in Kentucky. [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. **A commercial motor vehicle and its operator** ~~[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) **A city or suburban bus shall not be** ~~[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 **shall not be** ~~[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 having 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 **shall not be** ~~[is not]~~ required to comply with Title 49, Code of Federal Regulations, Part 393, Subpart B, relative to lighting device requirements.

(b) **A motor vehicle as described in paragraph (a) of this subsection shall** ~~[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 **shall not be** ~~[is not]~~ required to comply with Title 49, Code of Federal Regulations, Part 393, Subpart B relative to lighting devices requirements.

(b) **A motor vehicle as described in paragraph (a) of this subsection shall** ~~[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 **shall not be** ~~[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 shall [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;

(d) 63 Fed. Reg. 1383, January 9, 1998;

(e) 63 Fed. Reg. 8330, February 18, 1998;] and

(e) [(f)] "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

TRANSPORTATION CABINET
Department of Highways
Division of Traffic
(As Amended at ARRS, April 13, 1999)

603 KAR 4:050. Limited supplemental guide signs.

RELATES TO: KRS 177.0734, 177.0736, 177.076, 177.077, 177.078, 177.079, [~~1998 Ky. Acts ch. 526~~]

STATUTORY AUTHORITY: KRS 177.0736, 177.077(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.077 requires the Transportation Cabinet to prescribe by administrative regulations standards and procedures relating to limited supplemental guide signs. This administrative regulation sets forth the standards to be used in the erection and maintenance of limited supplemental guide signs.

Section 1. Definitions. (1) "Activity" means either an historical site or a tourist area or attraction.

(2) "Cabinet" means the Transportation Cabinet.

(3) "Clear zone" means the area between the edge of the driving-lane of a public road and an imaginary line running parallel to the road a certain distance from the edge of the traveled way [as specified by the American Association of State Highway and Transportation Officials (AASHTO) Roadside Design Guide (current edition)].

(4) [~~"Department" means the Kentucky Department of Highways;~~

(5)] "Eligibility distance" means the distance from the at-grade intersection of the state highway at the point where the directional sign is located to the entrance driveway to the activity.

(5) "Interagency Committee" means the Transportation and Tourism Interagency Committee established by KRS 177.107.

(6) "MUTCD" means the Federal Highway Administration's "Manual on Uniform Traffic Control Devices" incorporated by reference in 603 KAR 5:050.

(7) "Ramp" means the on- or off-access road from an interstate highway or parkway to or from the first public road.

(8) "Spacing" means the distance between the limited supplemental sign and all other traffic control devices or signs located within the right of way. This spacing shall [will] be controlled by the MUTCD.

(9) "TODS" means Tourist Oriented Directional Signing as used in the MUTCD.

Section 2. General Provisions. The Transportation Cabinet shall control the erection and maintenance of Limited Supplemental Guide Signs in accordance with the "Manual on Uniform Traffic Control Devices" (MUTCD) as incorporated by reference in 603 KAR 5:050 and with the provisions of this administrative regulation.

Section 3. Application for Limited Supplemental Guide Signs. (1) An application from an historical site or tourist area or attraction for the erection of a limited supplemental guide sign shall be made to the Transportation Cabinet. The cabinet shall process the application through the Division of Traffic and the Interagency Committee. The Division of Traffic shall [will] review proposed signing for compliance and review the proposed location to determine if there is an appropriate location for the erection of the sign. [~~The Interagency Committee shall place the request on the agenda for the next committee meeting, if the application is received at least five (5) working days before the next scheduled meeting.~~]

(2) Upon receipt of an application, the Transportation Cabinet shall, within thirty (30) days, notify the applicant in writing of the date and time for any hearings or discussion of the application by the Interagency Committee. The cabinet shall [will] consider [the] recommendations from [of] the Division of Traffic, [and] the Interagency Committee, local and regional comments, and approve or disapprove the erection of the limited supplemental guide sign within ninety (90) days after the receipt of an application, and shall provide written notification to the applicant of the decision.

(3) Upon approval of the application the applicant shall enter into a contractual agreement with the cabinet.

(4) Any fees shall be paid by check made payable to the Ken-

tucky State Treasurer.

(5) The cabinet shall approve an application for a limited supplemental guide sign in accordance with the criteria set out in KRS 177.077(2). If multiple applications are received for the same location and lack of space prohibits approval of every application, the cabinet shall [may] consider the following criteria [the following priority will be used] to determine the favorable eligibility for the erection of a limited supplemental guide sign:

(a) Activities between one (1) mile and fifteen (15) miles from the interchange with consideration given to number of visitors;

(b) Activities between sixteen (16) miles and fifty (50) miles from the interchange with considerations;

(c) Federal parks and recreation areas;

(d) Historical sites;

(e) Local and regional support; and

(f) State parks and recreation areas. [~~State parks and recreation areas:~~

(b) ~~Federal parks and recreation areas;~~

(c) ~~Historical sites;~~

(d) ~~Activities between one (1) mile and fifteen (15) miles from the interchange with consideration given to number of visitors;~~

(e) ~~Activities between sixteen (16) miles and fifty (50) miles from the interchange with consideration given to number of visitors;~~

(f) ~~Local support.]~~

Section 4. Limited Supplemental Guide Signs. (1) General requirements for limited supplemental guide signs:

(a) The limited supplemental guide signs shall be located to:

1. Take advantage of natural terrain;

2. Have the least impact on the scenic environment; and

3. Avoid visual conflict with the other signs within the highway right of way.

(b) Limited supplemental guide signs shall not be erected where there is insufficient space to locate both traffic control devices and the limited supplemental guide sign.

(c) Unprotected limited supplemental guide sign supports located within the clear zone shall be of a breakaway design.

(d) A limited supplemental guide sign may be located laterally outside the normal longitudinal alignment of other traffic control signs, but shall be erected within the highway right of way as long as the spacing requirements of the MUTCD are met.

(e) The location of any other traffic control device shall at all times take precedence over the location of a limited supplemental guide sign.

(2) Before a limited supplemental guide sign may [can] be erected for an activity that is not visible from the interchange ramp, a legal trailblazing sign shall [signs must] be erected at each location where a turn is required to arrive at the activity site. This may [can] be in the form of TODS, cultural or recreational signing or billboard advertising.

Section 5. Limited Supplemental Guide Signs Eligibility. An historical site or a tourist area or attraction shall meet the following requirements to qualify for limited supplemental signing. A limited supplemental guide sign shall not be erected until the activity or site has been approved in accordance with this administrative regulation.

(1) A tourist area or attraction [~~All tourist areas or attractions~~] shall be of significant interest to the traveling public with at least one-third (1/3) of the income or one-third (1/3) of the visitors at the activity derived during the normal business season from visitors not residing within twenty (20) miles of the activity.

(2) Each activity shall be open to the general public during regular and reasonable hours, and not by appointment or reservation only.

(3) Each activity shall comply with all applicable local, state, and federal statutes and regulations including those prohibiting discrimination based on race, religion, color, sex, age, disability, or national origin.

(4) Each activity identified on a limited supplemental sign shall provide assurance of its conformance with all applicable federal, state or local laws and regulations and have necessary and proper licenses.

(5) If an activity is in noncompliance of any of these laws or

regulations, it shall [may] be considered ineligible for participation in this program and its signs [may be] removed.

(6) The activity shall be conducted in a building or area that complies with state and local building code requirements for safety. [an appropriate building or area.]

(7) The activity shall not be conducted in a building principally used as a residence unless there is a convenient, separate, and well-marked entrance. The building or area shall be maintained in a manner consistent with standards generally accepted for that type of business or activity.

(8) Any activity which operates on a seasonal basis shall make provisions with the cabinet for the removal of the activity's sign during the off season. The activity shall, in writing, notify the cabinet at least thirty (30) days before the opening or closing occurs.

(9) The cabinet shall not be responsible [have no responsibility] for business lost due to signs or limited supplemental panels becoming temporarily out of service.

(10) The display of the activity sign on the limited supplemental structure shall not be considered an endorsement or recommendation by the Commonwealth of Kentucky on behalf of the activity.

Section 6. Review of Eligibility. Subject to KRS 177.077(8), the Transportation Cabinet may review the status of individual sign eligibility for continuance in the program.

Section 7. Measurements. A measurement [Measurements] taken to determine the qualifications of activities shall be from the juncture of the center line of the highway, measured between the center edges of the main traveled way of the route or routes on which travel is necessary to locate the activity.

Section 8. [7.] Incorporation by Reference. (1) [Material incorporated by Reference. The following material is incorporated by reference as part of the administrative regulation: Transportation Cabinet form TC 99-200; "Limited Supplemental Guide Signs Application", TC 99-200, (11/98 Edition), Transportation Cabinet, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Transportation Cabinet, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. [November 1998 edition.]

J.M. YOWELL, P.E., State Highway Engineer
JAMES C. CODELL, III, Secretary
E. JEFFREY MOSLEY, Office of General Counsel
APPROVED BY AGENCY: March 12, 1999
FILED WITH LRC: March 12, 1999 at noon

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board
(As Amended at ARRS, April 13, 1999)

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 certificate 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) A certificate in another area, if the applicant has had one (1) year of teaching children birth through age five (5) years. [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 PROTECTION AND REGULATION CABINET
Department of Insurance
(As Amended at ARRS, April 13, 1999)

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. This administrative regulation establishes requirements for reporting by an association and employer-organized association and authorizes the commissioner to impose an administrative penalty for failure to report required information to the commissioner in a timely manner. [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 ad-

administrative regulations promulgated under that Subtitle.] This administrative regulation requires each association and employer-organized association to provide [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) "Association" is defined by KRS 304.17A-005(1).

(2) "Contract type" means single or family plan.

(3) "Covered lives" means a health plan subscriber and a subscriber's spouse and dependents covered under the health insurance policy.

(4) "Eligible association" means an association:

(a) Qualified as eligible by the commissioner prior to the effective date of 1998 Ky. Acts ch. 496;

(b) That has actively marketed a health insurance program to its members since September 8, 1996; and

(c) Which is not insurer-controlled.

(5) "Employer-organized association" is defined by KRS 304.17A-005(8).

(6) "Health plan subscriber" means:

(a) An employee of an employer group; or

(b) An individual who participates in the health insurance plan.

(7) "Member" means employer group or individual who joins the association. ["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 pursuant 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.

(7) An association or employer-organized association that self-insures shall comply with KRS 304.48-170 and the administrative regulations promulgated thereunder regarding the filing of a statement of financial condition.

Section 3. Penalty. (1) If an association or employer-organized association is subject to this administrative regulation and fails to file a quarterly report, as required by Section 2(2) of this administrative regulation, the commissioner may, after notice to the association and a hearing pursuant to KRS Chapter 13B, impose a civil penalty.

(2) The civil penalty shall not exceed \$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 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", (04/99 [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.

**CABINET FOR HEALTH SERVICES
Office of Inspector General
Division of Licensing and Regulation
(As Amended at ARRS, April 13, 1999)**

902 KAR 20:078. Operations and services; group homes.

RELATES TO: KRS 216B.010, 216B.015, 216B.040, 216B.042, 216B.045 to 216B.055, 216B.075, 216B.105 to 216B.131, 216B.990, 311.560(4), 314.011(8), 320.210(2) [to 216B.130, 216B.990]

STATUTORY AUTHORITY: KRS 216B.010, 216B.040, 216B.042 [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 requires [and 216B.105 require [mandate] that] the Kentucky Cabinet for Health Services to regulate health facilities and health services. This administrative regulation establishes [provides] licensure requirements for [the operation of and services to be provided by] group homes. [Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.]

Section 1. Definitions. (1) "Developmental disability" means a severe chronic disability which is attributable to a mental or physical impairment or combination of mental and physical impairments manifested before the person attains the age of twenty-two (22) and is likely to continue indefinitely. This disability results in substantial limitations in areas of major life activity including self-care, receptive and expressive language, learning, mobility, capacity for independent living and economic sufficiency and requires individually planned and coordinated services of a lifelong or extended duration.

(2) "Mental retardation" means a significantly subaverage general intellectual functioning existing concurrently with deficiencies in adaptive behavior which is first manifested during the developmental period.

(3) "Normalization principle" means [is] the utilization of means which are as culturally normative as possible in order to establish and maintain personal behavior and characteristics which are as culturally normative as possible.

(4) "Qualified mental retardation or developmental disability professional" means:

(a) A physician with specialized training or one (1) year of experience in treating persons with mental retardation or developmental disabilities; [or]

(b) A psychologist with a doctoral or master's degree from an accredited program with specialized training or one (1) year of experience in treating persons with mental retardation or developmental disabilities; [or]

(c) An educator with at least a bachelor's degree in education and with specialized training or one (1) year of experience in working with persons with mental retardation or developmental disabilities; [or]

(d) A social worker with at least a bachelor's degree from an accredited program and with specialized training or one (1) year of experience working with persons having mental retardation or developmental disabilities, or a field other than social work and at least three

(3) years of social work experience under the supervision of a qualified social worker; [or]

(e) A licensed physical therapist or an occupational therapist who is a graduate of a program of physical or occupational therapy approved by the Council on Medical Education of the American Medical Association and who has specialized training or one (1) year of experience in treating persons with mental retardation or developmental disabilities; [or]

(f) A speech pathologist or audiologist who has been granted a certificate of clinical competence by the American Speech and Hearing Association or who has completed the equivalent educational and experimental requirements for such a certificate and has specialized training or one (1) year of experience in training persons with mental retardation or developmental disabilities; [or]

(g) A registered nurse who has specialized training or one (1) year of experience in treating persons with mental retardation or developmental disabilities; [or]

(h) A therapeutic recreation specialist who is a graduate of an accredited program and licensed or registered by the state if required; or

(i) A rehabilitation counselor who is certified by the commission on Rehabilitation Counselor Certification.

Section 2. Scope of Operations. A group home shall provide [is a facility providing] a homelike environment and specialized services in accordance with individualized habilitation plans to not less than four (4) nor more than eight (8) persons with mental retardation or developmental disabilities, at a location not adjacent to or part of a mental health or mental retardation institution.

Section 3. Administration and Operations. (1) Licensee. The licensee shall be legally responsible for the group home and for compliance with federal, state and local laws and regulations pertaining to the operation of the home.

(2) Manager. The group home shall have a manager who is responsible for the full-time operation of the home and for implementing programs as delineated. The manager shall be at least twenty-one (21) years of age and a high school graduate or equivalent.

(3) In the absence of the manager, responsibility shall be delegated to a similarly qualified staff person, to be on site when a resident is [residents are] present [for implementation of the program].

(4) Advisory board. Each group home shall have a specific group of individuals, organized as an advisory board, who shall establish policies concerning the operation of the group home and the welfare of the individuals residing in the home. The [Such group of individuals shall be organized as an] advisory board [and] shall meet at least quarterly. The advisory board shall be composed of at least three (3) members and shall include representatives from each of the following groups:

(a) Mental retardation or developmental disability representative from regional mental health and mental retardation board;

(b) A parent or guardian [Parents or guardians] of an individual with mental retardation or developmental disability or a consumer advocate knowledgeable of the needs of group home residents; and

(c) A qualified mental retardation or developmental disability professional.

(5) Policies. The licensee shall develop, with the input of the advisory board:

(a) A written outline of the objectives and goals it is striving to achieve. The [Such] outline shall be available for public distribution [to staff, consumer groups and the interested public]; and

(b) A written policy to include description of procedures for: [Written policies which include:]

1. Current routine operations [operational procedures];
2. [Procedures for the] Protection of resident [resident's] rights;
3. [Procedures for the] Protection of resident [the resident's] financial interests; and

4. [Procedures for the] Reporting of cases of abuse, neglect or exploitation of an adult or child [adults and children] pursuant to KRS Chapters 209 and 620.

(6) The licensee shall incorporate the normalization principle into its objectives and shall implement programs consistent with this principle.

(7) The licensee shall establish a job description [descriptions and qualifications] for [all] group home personnel and shall delegate necessary authority for the daily management of the group home program.

(8) The licensee shall conduct an annual [a] program evaluation [annually].

(9) The way residents are represented to the public shall be appropriate to the purposes and programs of the group home and [these terms] shall not emphasize mental retardation or deviancy.

(10) The advisory board shall appoint a services committee which shall be responsible for:

(a) [All] Decisions pertaining to resident admissions, transfers and discharges.

(b) Assuring that a comprehensive habilitation plan is established for each resident on an individual basis.

(11) The services committee shall:

(a) Be composed of the manager and two (2) other persons, both of whom shall be qualified mental retardation and developmental disability professionals.

(b) Determine [Utilize appropriate evaluations in determining] eligibility for admission based on areas of comparable need for programming. If [When] [In such instances where] the chronological age span of the program participants exceeds five (5) years for individuals twelve (12) years or younger, ten (10) years for individuals aged thirteen (13) to eighteen (18), and twenty (20) years for individuals eighteen (18) years and older, [adequate] written justification demonstrating the appropriateness of the program shall [must] be a part of the individual habilitation plan.

(12) Upon admission a resident [all residents] shall [must] be free from communicable disease which is reportable to the health department, except a noninfectious tuberculosis patient under continuing medical supervision for [his or her] tuberculosis [disease]. [Within] Thirty (30) days prior to or within fourteen (14) days after admission, a resident [all residents] shall [must] have a physical examination.

(13) [For all individuals who are admitted to the group home,] The services committee shall assure that the following information is a part of each [the] resident's record:

- (a) Persons to contact in case of emergency;
- (b) Next of kin;
- (c) Legal competency status and presence or absence of committee; and
- (d) Financial resources.

Section 4. Personnel. (1) The group home shall employ an adequate number of supervisory and direct care personnel and establish an on-call procedure to assure that the home has staff present when a resident is [residents are] present.

(2) Volunteers may be utilized but not substituted for the employment of full- or part-time staff.

(3) The group home shall provide an employee orientation program [for all employees] to include:

- (a) History of retardation;
- (b) Normalization principle;
- (c) Habilitation planning techniques; and
- (d) Basic first aid.

(4) A regular in-service program for the entire staff shall be conducted at least four (4) times a year. Volunteers may participate in the [such] program.

Section 5. Services. (1) Within thirty (30) days after admission to the facility the services committee shall establish a comprehensive habilitation plan for each resident. The resident's habilitation plan shall be reviewed at least every ninety (90) days. In all cases, whether children or adults, the resident or resident's representatives shall participate in the development of the comprehensive habilitation plan.

(a) The [Such] plan shall address the following:

- 1. Sensorimotor needs;
- 2. Communicative needs;
- 3. Social needs;
- 4. Emotional needs;
- 5. Educational needs; and
- 6. Vocational training needs.

(b) The individual habilitation plan shall outline the responsible

parties for meeting each of the above listed needs.

(c) Each resident's habilitation plan shall be maintained as an integral part of the resident's records.

(2) Availability of services. The licensee shall assure that a comprehensive array of services is available as needed by each resident of the group home. These services shall be obtained from agencies through a written agreement. The following components shall be available:

(a) Medical services, including emergency medical services and an annual physical examination. For women this examination shall include gynecological services.

(b) Dental services to include at least two (2) visits annually.

(c) Psychological and psychiatric services, to be available as needed according to the resident's habilitation plan.

(d) Physical therapy.

(e) Social services, to include individual, group and family counseling as appropriate, according to individual needs.

(f) Occupational rehabilitative services, to include vocational counseling, planning and training as appropriate, according to individual needs.

(g) Speech therapy and audiology services, as needed.

(h) Public education for school age persons in accordance with 20 USC 1400.

(i) Recreational opportunities to provide the resident with adequate physical fitness and constructive leisure time activities.

Section 6. Physical Standards. The ultimate aim of the environment and design for a group home shall be to foster those skills necessary for maximum independence of the resident and enhance the resident's ability to cope with his or her environment. To this end the following shall be required:

(1) Location.

(a) Group homes may [can] be located in urban, suburban or rural settings, but shall not be isolated from the mainstream of their community, and shall [must] be in an area zoned for residential use where applicable. The residence shall have the style and appearance of neighborhood houses.

(b) The group home shall be located within thirty (30) minutes driving time of resident's day program locations, medical and other professional services; and the usual array of essential merchants: groceries, clothing stores, drug stores, etc. The home shall be located within sixty (60) minutes driving time of a hospital.

(c) Group homes shall not be located in house trailers or motor homes.

(2) Resident accommodations.

(a) The residence shall house no less than four (4) nor more than eight (8) residents.

(b) Other than residents, a person [no persons] other than the residence's staff and the staff's immediate family shall not [may] reside in the home.

(c) A bedroom [Bedrooms] shall contain no more than two (2) beds with a minimum of sixty (60) square feet in single rooms and eighty (80) square feet in multiple rooms. A bed [Beds] shall be no less than thirty-three (33) inches wide and six (6) feet long. Bunk beds shall not be used.

(d) A bed [Beds] occupied by a resident [residents] shall be placed so that the [no] resident shall not [may] experience discomfort because of proximity to a radiator, heat outlet, [radiators, heat outlets] or exposure to drafts. Each resident shall have his or her own bed equipped with substantial springs, a clean comfortable mattress, two (2) sheets and a pillow, and [such] bed covering as required for the resident's health and comfort.

(e) Closet space and drawer space shall be provided for personal belongings.

(f) A resident [Residents] shall not be housed in a room, a [rooms,] detached building [buildings] or other enclosure [enclosures] which has [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.

(g) Appropriate sanitary toilet and bathing facilities shall be conveniently available for resident use with one (1) toilet, lavatory and shower or tub for each six (6) persons residing in the home, including

residents and staff.

(h) Adequate ventilation in [all] resident use areas shall be maintained. Each resident bedroom shall have an exterior screened window, which can [may] be opened.

(i) If a private source of water is used, the group home shall annually obtain written certification from an appropriate agency that the supply is safe and sanitary. An ample supply of hot and cold running water shall be available at all times.

(j) The group home shall have adequate lighting by natural or artificial means in each hall, stairway, entryway, vestibule, resident area, kitchen, and bathroom.

(k) A heating system which can maintain an even temperature of [and is capable of maintaining] seventy-two (72) degrees Fahrenheit in resident used areas shall be provided.

(l) Adequate common living areas shall be provided in the group home. This shall include separate living, recreational and eating areas, each large enough to accommodate residents and their visitors.

(m) Adequate laundry facilities shall be available in the home or a conveniently located laundromat may be used.

(n) Telephone service shall be provided to the residents. This service shall be accessible to the residents and shall afford a degree of privacy.

(o) Resident staff living quarters. Resident staff living quarters shall provide privacy. Resident staff includes managers.

(3) General requirements.

(a) The facility shall conform to the National Fire Protection Association 101, Life Safety Code adopted by the Kentucky Department of Housing, Buildings and Construction relative to group homes.

(b) The group home shall conform to requirements for plumbing pursuant to 815 KAR 20:010 to 20:191, as amended.

(c) The group home shall conform to requirements for making buildings and facilities accessible to and usable by persons with disabilities.

(d) The group home shall comply with applicable state and local laws relating to sanitation, including insect and rodent control.

Section 7. Resident Care and Safety. (1) Dietary.

(a) The group home shall provide at least three (3) meals per day with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. One (1) or more of these meals may be provided outside the group home depending upon the resident's habilitation plan, but all meals are the financial responsibility of the group home.

(b) Nutrition needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council and in accordance with resident dietary restrictions.

(c) A written record shall be kept of [all] foods served.

(d) [All] Food shall be stored off the floor in such a manner as to be protected from dust, insects, rodents, birds, or other forms of contamination. [All] Food showing evidence of spoilage or infestation shall be disposed of immediately upon detection.

(e) Each refrigerator [Refrigerators] shall have a complete seal, be clean, free of odor [odors], and kept at a temperature of forty-five (45) degrees Fahrenheit or below. A thermometer that is easily readable shall be placed in each refrigerator and freezer.

(2) Housekeeping and sanitation.

(a) The facility shall be kept in good repair, clean, uncluttered and sanitary at all times. Floors, walls, ceilings, lighting fixtures, storage areas and equipment shall be kept clean and in good repair. Windows and doors shall be screened.

(b) The facility shall collect and dispose of all garbage, refuse, trash, and litter in compliance with applicable state and local laws and administrative regulations. Garbage containers shall be made of metal or other impervious material, approved by the fire marshal, that will not emit harmful vapors upon exposure to extreme heat, and shall be water tight and rodent proof and shall have tight-fitting lids.

(3) Emergency procedures.

(a) Each group home shall have a fire control and evacuation plan to be practiced at least quarterly with all staff and residents participating.

(b) An on-duty staff member shall be designated [at all times] to be in charge of evacuation of residents in the event of a fire or other

natural disaster.

(c) Phone numbers of a hospital, an ambulance service, the fire department, and a physician for emergencies shall be posted by each telephone [all telephones] in large legible print.

(d) A report on an accident [all accidents] requiring medical treatment of a resident shall be written and one (1) copy kept on file and made available to the advisory board within seven (7) days of the incident. The original shall be sent to the Cabinet for Health Services, Division for Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky.

(e) An incident report [Incident reports] for a minor accident [accidents] shall be written, kept on file and made available upon request.

(4) Medications.

(a) A [All] prescription medication [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. A medication [All medications] shall be plainly labeled with the patient's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statement and directions for use.

(b) Medication shall not be administered to a [any] resident except on the written order of a physician or other practitioner [ordering personnel] acting within his [the limits of their] statutory scope of practice [advanced-registered-nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), or therapeutically-certified optometrist as authorized in KRS 320.240(14)]. If [When] medication requires administration by a licensed person, an arrangement [personnel, arrangements] shall be made to procure the services of a person licensed to administer medication [such personnel].

(c) A medication [Medications] in the home shall be kept in a locked cabinet. A controlled substance [Controlled substances] shall be kept under double lock (e.g., in a locked box in a locked cabinet). There shall be a controlled substance [substances] record in which is recorded the name of the patient; the date, time, kind, dosage, balance remaining and method of administration of a [all] controlled substance [substances]; the name of the physician who prescribed the medication [medications]; and the name of the nurse who administered it, or staff who supervised the self-administration.

(d) Self-administration of prescription medication [medications] shall be allowed only upon the written instruction of the attending physician or other practitioner acting within his statutory scope of practice. [instructions of the client's attending physician.]

(e) Each resident [individual] who requires prescription medication shall receive [medical supervision which includes] regular evaluation of his [the individual's] response to the medication, including appropriate monitoring and laboratory assessment.

(f) The group home shall comply with [all] federal and state law and regulation [laws and regulations] relating to the procurement, storage, dispensing, administration and disposal of drugs.

(5) Restraints. Physical or [and] chemical restraint [restraints] shall not be used.

Section 8. Resident Rights. (1) Staff shall recognize a resident's rights for:

(a) Treatment which preserves his feelings of self-worth and dignity;

(b) Visitation;

(c) Privacy; and

(d) Freedom of worship.

(2) Staff shall not open resident correspondence, except as authorized by the resident or his legal guardian or committee.

(3) A resident shall be:

(a) Free from physical punishment;

(b) Appropriately dressed;

(c) Supplied with:

1. Clean washcloth and towel;

2. Toothbrush;

3. Hair brush and comb;

4. Other toilet articles; and

5. Bureau or cupboard for storage of personal belongings.

(d) Allowed rest periods in his own bed;

(e) Allowed free movement within the group home, with

access to all common areas; and

(f) **Allowed access to the community at large.** [(1) The residents shall be treated in a manner which preserves their feelings of self-worth and human dignity, have visitation rights, the right of privacy and freedom of worship.

(2) A resident's correspondence shall not be opened, except as authorized by the resident or resident's legal guardian or committee.

(3) Residents shall not be physically punished in any way.

(4) Residents shall be appropriately dressed at all times.

(5) Each resident shall have their individual:

(a) Clean wash cloth and towel;

(b) Toothbrush;

(c) Brush and comb;

(d) Other appropriate toilet articles; and

(e) Bureau or cupboard for storage of personal belongings.

(6) Residents shall not be denied the privilege of rest periods in their beds.

(7) Residents shall be allowed free movement within the group home and shall have access to all common living areas.

(8) Residents shall have access to the community.]

TIMOTHY L. VENO, Inspector General

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: December 14, 1998

FILED WITH LRC: December 15, 1998 at 11 a.m.

**CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Financial Management and Analysis
(As Amended at ARRS, April 13, 1999)**

907 KAR 3:005. Physicians' services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.030, 194A.050 [194.050], 42 CFR 440.50, 415.152, 415.174, 415.184 [EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services.] KRS 205.520 authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the provisions relating to physicians' services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and the medically needy. [This administrative regulation is not the same as the administrative regulation 907 KAR 1:009 found deficient and is substantially different since it no longer contains the provision(s) found deficient.]

Section 1. Physicians' Services. (1) **Except as provided in subsection (2) of this section, a covered service** [Covered services] shall **be a service** [include those] furnished by **a physician** [physicians] through direct physician-patient **interaction [contact]** in the office, the patient's home, a hospital, nursing facility or elsewhere.

(2) **A covered service shall include a service** [An exception to the physician's physical presence requirement shall be made in an instance in which a service is] furnished by a resident under the medical direction of a teaching physician in accordance with 42 CFR Part 415.152, 415.174 and 415.184.]

(3) **A physician assistant shall be considered the agent of a supervising physician with regard to coverage of a practice-related activity performed within his scope of certification in accordance with 201 KAR 9:175.**

(4) For purposes of the Medicaid Program, **an oral surgeon** [surgeons] shall be:

(a) Treated in the same manner as **a physician** [physicians] with regard to coverage for services within **his** [their] scope of licensed

practice; and

(b) **Included in a reference to a physician**, [the term "physician" shall be construed to include **an oral surgeon**] [surgeons] unless the context in which it is used is to the contrary.

(5) **A service which is** [All services which are] medically necessary, appropriate and related to the diagnosis and treatment of illness or injury shall be covered with the exception of those services established in Section IV, F, of the Physician's Manual incorporated by reference in this administrative regulation. [(3) Covered physicians' services and service limitations are shown in the Physician Manual.]

Section 2. [Physicians Manual. (1) The Physician Manual specifies the conditions for participation, services covered, and limitations for the physicians' services component of the Medicaid Program. "The Physician Manual", revised December 1995, shall be incorporated by reference in this administrative regulation.

(2) The manual shall be on file in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Third Floor East, Frankfort, Kentucky 40621.

(3) The manual shall be available for review during the normal business week, Monday through Friday, 8 a.m. through 4:30 p.m. (eastern time), excluding state holidays.

(4) Copies may be obtained from the Department for Medicaid upon payment of an appropriate fee in accordance with KRS 61.872.

Section 3. Additional Limitations. (1) A patient placed in "lock-in" status due to over-utilization shall receive **a service** [services only] from his lock-in provider except in the case of emergency or **if he receives a referral from his lock-in provider.**

(2) Laboratory procedures.

(a) A laboratory procedure [procedures] performed in a [the] physician's office shall be limited to **a procedure for which the physician has been certified [under the Clinical Laboratory Improvement Amendment (CLIA)]** in accordance with 42 CFR Part 493 and KRS 205.520. [those procedures listed on the Department for Medicaid Services physician laboratory benefit schedule.]

(b) The professional component of a physician laboratory procedure [procedures] performed by a board certified pathologist [pathologists] in a hospital setting or an outpatient surgical clinic shall be covered if the physician has an agreement with the hospital or outpatient surgical clinic for the provision of laboratory procedures.

(3) The cost of **a preparation** [preparations] used in **an injection** [injections] shall not be considered a covered benefit, except as specified in Section IV.13 of the Physician Manual.

(4) **A telephone contact with a patient** [Telephone contacts with patients] shall not be considered a covered benefit.

(5) **A service** [Services] performed or **a recipient contact** [recipient contacts] made exclusively by **a nurse or another physician's employee** [physician assistants, nurses, or other physician's employees] shall not be covered under the physicians' services component.

Section 3. Material Incorporated by Reference. (1) The "Physician Manual", **March, 1999** [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 406021, Monday through Friday, 8 a.m. to 4:30 p.m.

[Section 4. Implementation Date. The provisions of this administrative regulation shall be applicable with regard to services provided on or after April 15, 1996.]

DENNIS BOYD, Commissioner

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: December 14, 1998

FILED WITH LRC: December 15, 1998 at 11 a.m.

**CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Financial Management and Analysis
(As Amended at ARRS, April 13, 1999)**

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

RELATES TO: KRS 205.550

STATUTORY AUTHORITY: KRS 194A.030, 194A.050 [194.050], 42 CFR 440.50, 447 Subpart B, 42 USC 1396a, b, c, d, s [a-d, 1396s, EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services.] KRS 205.520 authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the method of reimbursement [for establishing reimbursements] for physicians' services. [This administrative regulation is not the same as the administrative regulation 907 KAR 1:010 found deficient and is substantially different since it no longer contains the provisions found deficient.]

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services.

(2) "EPSDT" means early and periodic screening, diagnosis, and treatment.

(3) "Resource-based relative value scale (RBRVS) unit" means [is] a value based on [current procedural terminology (CPT) codes established by the American Medical Association assigned to] the service which takes into consideration the physicians' work, practice expenses, liability insurance, and a geographic factor based on the prices of staffing and other resources required to provide the service in an area relative to national average price.

[(3) "Usual and customary charge" is [means as] defined in 907 KAR 1:002.]

(4) ["EPSDT" means early and periodic screening, diagnosis, and treatment.

(5) "Screening" means the review of the health and health-related condition of a recipient by a physician to determine if [any] further diagnosis or treatment is needed.

(5) "Usual and customary charge" means the uniform amount which the medical provider charges in the majority of cases for a specific medical procedure or service.

Section 2. Reimbursement. (1) Except as specified in Section 3 of this administrative regulation, payment for a covered physician's service [covered physicians' services] shall be based on the physician's [physicians'] usual and customary actual billed charges up to the fixed upper limit per procedure established by the department using a Kentucky Medicaid Fee Schedule developed from a resource-based relative value scale (RBRVS). If there is not an [no] RBRVS based fee, the department shall set a reasonable fixed upper limit for the procedure consistent with the general rate setting methodology. [Fixed upper limits not determined in accordance with the principle shown in this subsection of the administrative regulation (if any)] due to consideration of other factors (such as recipient access) shall be specified in the administrative regulation.]

(2) A RBRVS unit [units] shall be multiplied by a dollar conversion factor to arrive at the fixed upper limit. [(a)] The dollar conversion factors [effective for the period ending June 30, 1996 shall be as follows:

Types of Service	Kentucky Conversion Factor
Deliveries	Not Applicable
Anesthesia (except delivery-related)	\$25.15
All Other Services	\$25.80

(b) The dollar conversion factors effective for the period beginning on July 1, 1996] shall be as follows:

Types of Service	Kentucky Conversion Factor
Deliveries	Not Applicable
Anesthesia (except delivery-related)	\$29.02
All Other Services	\$29.67

Section 3. Reimbursement Exceptions. The following [covered services which are] reimbursement exceptions shall apply as [are] established [shown] in the Physicians Manual [which is incorporated by reference in 907 KAR 3:005].

(1)(a) The department shall reimburse a physician a three (3) dollar and thirty (30) cent administration fee for a vaccine administered to a Medicaid recipient under the age of twenty-one (21) up to three (3) administrations per physician, per recipient, per date of service.

(b) The department shall not reimburse a physician for the cost of a vaccine which is available free through the Vaccines for Children Program in accordance with 42 USC 1396s. [Physicians may [shall be allowed to] secure drugs for specified immunizations identified in 907 KAR 3:005 as follows:

(a) Free through the Vaccines for Children Program in accordance with the terms, standards, and criteria described in 42 USC 1396(a) (62) and 1396s; or

(b) In the open market. The Department for Medicaid Services shall reimburse the physician the same amount that the Department for Public Health would pay to obtain that drug.]

(2)(a) A payment [Payments] for the following specified obstetrical services[.] shall be reimbursed the lesser of;

1. The actual billed charge; or
2. [at] The standard fixed fee paid by type of procedure.

(b) The obstetrical services and fixed fees shall be [are] [shall be]:

1. Vaginal delivery only, \$870;
2. Vaginal delivery including postpartum care, \$900;
3. Cesarean delivery only, \$870; and
4. Cesarean delivery including postpartum care, \$900.

(3)(a) For delivery-related anesthesia services, a physician shall be reimbursed the lesser of;

1. The actual billed charge; or
2. A standard fixed fee paid by type of procedure.

(b) Delivery-related anesthesia [These] procedures and standard fixed fees shall be [are] [shall be]:

1. Vaginal delivery, \$200;
2. Epidural single, \$315;
3. Epidural continuous, \$335; and
4. Cesarean section, \$320.

(4) Payment for an individual [individuals] eligible for coverage under Medicare Part B shall be [is] made in accordance with the individual's Medicare deductible and coinsurance liability.

(5) A family practice physician [physicians] practicing in a geographic area [areas] with no more than one (1) primary care physician per 5,000 population, as reported by the United States Department of Health and Human Services, shall be reimbursed at the physician's usual and customary actual billed charge [charges] up to 125 percent of the fixed upper limit per procedure established by the department.

(6) A physician laboratory service [services] shall be reimbursed based on the Medicare allowable payment rate [rates]. For a laboratory service [services] with no established allowable payment rate, the payment shall be sixty-five (65) percent of the usual and customary actual billed charge [charges].

(7) A procedure [Procedures] specified by Medicare and published annually in the Federal Register [and] which is [are] commonly performed in the physician's office shall be;

(a) Subject to outpatient limits if provided at an alternative site; [sites] and

(b) [Shall be] Paid an adjusted rate [rates] to take into account the change in the usual site of service.

(8) A payment [Payments] for the injection procedure for chemo-nucleolysis of intervertebral disk[(s)], lumbar shall be [established by the department as] the lesser of;

- (a) The actual billed charge; or
- (b) [at] A fixed upper limit of \$793.50 [as established by the de-

partment].

(9) Certain injectable antibiotics and antineoplastics, and contraceptives shall be reimbursed at the lesser of:

(a) The actual billed charge; or

(b) ~~[at]~~ The average wholesale price of the medication supply minus ten (10) percent.

(10) Specified family planning procedures performed in the physician office setting shall be reimbursed at the lesser of:

(a) The actual billed charge; or

(b) The established RBRVS fee plus actual cost of the supply minus ten (10) percent.

(11) For a practice-related service provided by a physician assistant, the participating physician shall be reimbursed at the lesser of:

(a) The usual and customary actual billed charge; or

(b) ~~[up to the fixed upper limit per procedure established by the Department for Medicaid Services at]~~ Seventy-five (75) percent of the physician's fixed upper limit per procedure.

(12) Reimbursement rates for a screening service provided to a recipient under the age of twenty-one (21) shall be in accordance with the following:

(a) For a complete screening, which shall include all items or procedures listed in 907 KAR 1:034, Section 3, appropriate to the age and health history of the recipient, except the fifth year (kindergarten examination) and 12th year (sixth grade examination), the fee shall be seventy (70) dollars per recipient screened;

(b) For a complete screening for the fifth and 12th years, the fee shall be ninety (90) dollars per recipient screened;

(c) For a partial screening, which shall include at least a health history and unclothed physical examination, the fee shall be thirty (30) dollars per recipient screened; ~~[and]~~

(d) For completion of a partial screening with some items or procedures appropriate to the age and health history of the recipient provided as a follow-up to a partial screening as established in paragraph (c) of this subsection ~~[(2) of this section]~~, the fee shall be forty (40) dollars per recipient screened; ~~[and]~~

(e) For an interperiodic screen, which shall be medically necessary to determine the existence of a suspected physical or mental illness and in addition to the regular periodicity schedule screenings, the fee shall be thirty (30) dollars per recipient screened; and

(f) The preestablished fees payable shall not exceed the usual and customary charge of the provider for the service.

~~[Section 4. Implementation Date. The provisions of this administrative regulation shall be applicable for services provided on or after April 15, 1996 except as otherwise specified.]~~

DENNIS BOYD, Commissioner

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: December 14, 1998

FILED WITH LRC: December 15, 1998 at 11 a.m.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

COUNCIL ON POSTSECONDARY EDUCATION
(Amended After Hearing)

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 and includes the Kentucky Commonwealth Virtual University.

(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 as determined by this administrative regulation ~~[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 if [by an institution where] one (1) condition of receiving the payment is the enrollment of the [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; [;] the Kentucky Commonwealth Virtual University 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)[(a)] 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 re-~~

ceived 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 inde-

pendent of any ~~[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) Financial assistance ~~[A gift]~~ from or a loan ~~[;]~~ made ~~[or co-~~ signed] 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 alone 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 sec-

tion 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 designation [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 person 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 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 designated 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 determination [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 review committee shall be in writing and published for student use.~~

~~(4) [(5)] A copy of the document authorizing and creating an institution's residency review committee, and a copy of the operating policies and procedures of the residency review committee shall be provided 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, by the date specified by the institution [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 determination 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 information as set forth in subsection (3) of this section. A student may request a review of a determination of residency status in a subsequent academic term.

Section 13. Institutional Responsibilities. Each institution shall:

(1) Provide for an administrative appeals process that includes a residency appeals officer to consider student appeals of an initial residency determination and which shall include a provision of fourteen (14) days for the student to appeal the residency appeals officer's determination.

(2) Establish a residency review committee to consider appeals of residency determinations by the residency appeals officer. The residency review committee shall make a determination of student residency status and notify the student in writing within forty-five (45) days after receipt of the student appeal.

(3) Establish a formal hearing process as describe in Sec-

tion 14 of this administrative regulation.

(4) Establish written policies and procedures for administering the responsibilities in subsections (1), (2), and (3) of this section and that are:

(a) Approved by the institution's governing board;

(b) Made available to all students; and

(c) Filed with the council.

[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 appeals 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 residency 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 [administrative 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 residency 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 operational policy.

Section 16. Procedure for [Appeal to the Council on Postsecondary 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.

(3) [(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 appeals 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 determination of residency status. Notice to the student shall be provided 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 decision including reference to relevant sections of this administrative regulation which were used to support the decision.]

Section 14. [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 recommendation on [final determination of] a residency appeal;

(b) Guarantees of due process to a student that include [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 15. [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: March 31, 1999

FILED WITH LRC: April 5, 1999 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Dennis L. Taulbee

(1) Type and number of entities affected: This administrative regulation affects 10 public entities: the 9 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.

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

401 KAR 57:002. 40 CFR Part 61 national emission standards for hazardous air pollutants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 61.01 to 61.139, 61.160 to 61.358, 42 USC 7401, 7412, 7414, 7416, 7601

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 61.01 to 61.139, 61.160 to 61.358, 42 USC 7401, 7412, 7414, 7416, 7601

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation incorporates by reference the National Emission Standards for Hazardous Air Pollutants (NESHAP) codified in 40 CFR 61.01 to 61.139, 61.160 to 61.358. Delegation of implementation and enforcement authority for the federal NESHAP program from the United States Environmental Protection Agency to the Commonwealth of Kentucky is provided under 42 USC 7412(l).

Section 1. Definitions. Terms used in this administrative regulation shall have the meaning given in this section unless the context clearly indicates otherwise.

(1) "Part 61 NESHAP" means National Emission Standards for Hazardous Air Pollutants codified in 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF).

(2) "Administrator" as used in 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF) means the Secretary of the Natural Resources and Environmental Protection Cabinet unless a specific provision of the Part 61 NESHAP states that the United States Environmental Protection Agency shall retain enforcement authority.

Section 2. Applicability. This administrative regulation shall apply to sources that are subject to 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF). These sources shall comply with the following:

(1) The applicable provisions in 40 CFR 61.01 to 61.19 (Subpart A), General Provisions, which is incorporated by reference in Section 3 of this administrative regulation;

(2) The applicable methods, procedures, and reporting requirements contained in 40 CFR Part 61, Appendices A through E, which are incorporated by reference in Section 3 of this administrative regulation; and

(3) The applicable Part 61 NESHAP incorporated by reference in Section 3 of this administrative regulation.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 40 CFR 61.01 to 61.19 (Subpart A), "General Provisions", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, **1998** [1997];

(b) 40 CFR 61.20 to 61.26 (Subpart B), "National Emission Standards for Radon Emissions from Underground Uranium Mines", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, **1998** [1997];

(c) 40 CFR 61.30 to 61.34 (Subpart C), "National Emission Standard for Beryllium", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, **1998** [1997];

(d) 40 CFR 61.40 to 61.44 (Subpart D), "National Emission Standard for Beryllium Rocket Motor Firing", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, **1998** [1997];

(e) 40 CFR 61.50 to 61.56 (Subpart E), "National Emission Standard for Mercury", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, **1998** [1997];

(f) 40 CFR 61.60 to 61.71 (Subpart F), "National Emission Stan-

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dard for Vinyl Chloride", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, **1998** [1997];

(g) 40 CFR 61.90 to 61.97 (Subpart H), "National Emission Standards for Emissions of Radionuclides Other Than Radon from Department of Energy Facilities", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, **1998** [1997];

(h) 40 CFR 61.100 to 61.108 (Subpart I), "National Emission Standards for Radionuclide Emissions from Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, **1998** [1997];

(i) 40 CFR 61.110 to 61.112 (Subpart J), "National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, **1998** [1997];

(j) 40 CFR 61.120 to 61.127 (Subpart K), "National Emission Standards for Radionuclide Emissions from Elemental Phosphorus Plants", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, **1998** [1997];

(k) 40 CFR 61.130 to 61.139 (Subpart L), "National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, **1998** [1997];

(l) 40 CFR 61.160 to 61.165 (Subpart N), "National Emission Standard for Inorganic Arsenic Emissions from Glass Manufacturing Plants", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, **1999** [1997];

(m) 40 CFR 61.170 to 61.177 (Subpart O), "National Emission Standard for Inorganic Arsenic Emissions from Primary Copper Smelters", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, **1998** [1997];

(n) 40 CFR 61.180 to 61.186 (Subpart P), "National Emission Standard for Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, **1998** [1997];

(o) 40 CFR 61.190 to 61.193 (Subpart Q), "National Emission Standards for Radon Emissions from Department of Energy Facilities", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, **1998** [1997];

(p) 40 CFR 61.200 to 61.210 (Subpart R), "National Emission Standards for Radon Emissions from Phosphogypsum Stacks", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, **1998** [1997];

(q) 40 CFR 61.220 to 61.226 (Subpart T), "National Emission Standards for Radon Emissions from the Disposal of Uranium Mill Tailings", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, **1998** [1997];

(r) 40 CFR 61.240 to 61.247 (Subpart V), "National Emission Standard for Equipment Leaks (Fugitive Emission Sources)", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, **1998** [1997];

(s) 40 CFR 61.250 to 61.256 (Subpart W), "National Emission Standards for Radon Emissions from Operating Mill Tailings", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, **1998** [1997];

(t) 40 CFR 61.270 to 61.277 (Subpart Y), "National Emission Standard for Benzene Emissions from Benzene Storage Vessels", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, **1998** [1997];

(u) 40 CFR 61.300 to 61.306 (Subpart BB), "National Emission Standard for Benzene Emissions from Benzene Transfer Operations", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, **1998** [1997];

(v) 40 CFR 61.340 to 61.358 (Subpart FF), "National Emission Standard for Benzene Waste Operations", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, **1998** [1997];

(w) "Appendix A to Part 61, National Emission Standards for Hazardous Air Pollutants, Compliance Status Information", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, **1998** [1997];

(x) "Appendix B to Part 61, Test Methods", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, **1998** [1997];

(y) "Appendix C to Part 61, Quality Assurance Procedures", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, **1998** [1997];

(z) "Appendix D to Part 61, Methods for Estimating Radionuclide Emissions", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, **1998** [1997]; and

(aa) "Appendix E to Part 61, Compliance Procedures Methods for Determining Compliance with Subpart I", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, **1998** [1997].

(2) This material may be inspected, copied, or obtained at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 746-7475;

(d) Florence Regional Office, **8020 Ewing Boulevard, Suite 110** [7964 Kentucky Drive, Suite 8], Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 85 State Police Road, London, Kentucky 40741, (606) 878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (502) 687-7304; and

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

(3) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: April 6, 1999

FILED WITH LRC: April 7, 1999 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis

(1) Type and number of entities affected: This administrative regulation incorporates by reference the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF), as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1998. The benefits expected from this administrative regulation are twofold. First, sources that are subject to the Part 61 NESHAP program will be able to work with the state rather than the United States Environmental Protection Agency (U.S. EPA) to demonstrate compliance with applicable requirements. Second, the emission standards in 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF) will be incorporated by reference in 1 administrative regulation instead of incorporating each in a separate administrative regulation. This will reduce the number of existing air administrative regulations by 13, and will allow the Division to easily revise and update the Part 61 NESHAP once a year when the Code of Federal Regulations is published.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal rulemakings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in the geographical areas where it will be implemented beyond the costs described in the federal rulemakings.

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

1. First year following implementation: There are no reporting or

paperwork requirements beyond those required in Part 61 NESHAP.

2. Second and subsequent years: There are no requirements beyond those required in Part 61 NESHAP.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: A substantial savings in time and efficiency will be realized by promulgating 1 administrative regulation for Part 61 NESHAP in lieu of 22.

2. Continuing costs or savings: The savings in time and efficiency should continue indefinitely, since there are additions and revisions made to the federal Part 61 NESHAP every year. These can now be handled by amending 1 administrative regulation.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements beyond those in Part 61 NESHAP.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impacts beyond those described in the federal rulemakings.

(b) Kentucky: This administrative regulation will have no economic impacts in any geographical location in Kentucky beyond those described in the federal rulemakings.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal Part 61 NESHAP.

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal Part 61 NESHAP program, which will be implemented by the U.S. EPA if Kentucky fails to do so.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal Part 61 NESHAP program.

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

(a) Necessity of proposed administrative regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF), July 1, 1998, so that Kentucky will continue to have the delegated authority to implement and enforce the federal Part 61 NESHAP program.

(11) TIERING: Is tiering applied? No. The cabinet is incorporating by reference 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF), July 1, 1998, without change. There is no tiering of requirements beyond that contained in the federal Part 61 NESHAP.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found in 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF), July 1, 1998. The United States Environmental Protection Agency (U.S. EPA) may grant states implementation and enforcement authority for the federal Part 61 NESHAP program pursuant to 42 USC 7412(l).

2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF), July 1, 1998, contain National Emission Standards for Hazardous Air Pollutants that the U.S. EPA is required to promulgate pursuant to 42 USC 7412.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation does not affect any known unit, part or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any known aspect or service of local government.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (Amended After Hearing)

401 KAR 57:019. Repeal of 401 KAR 57:005, 401 KAR 57:015, 401 KAR 57:021, 401 KAR 57:025, 401 KAR 57:030, 401 KAR 57:035, 401 KAR 57:040, 401 KAR 57:045, 401 KAR 57:050, 401 KAR 57:055, 401 KAR 57:130, 401 KAR 57:270, 401 KAR 57:300, [401 KAR 59:310,] 401 KAR 59:450, 401 KAR 59:455, 401 KAR 59:460, 401 KAR 59:465, 401 KAR 59:485, 401 KAR 59:490, 401 KAR 59:495, 401 KAR 59:500, 401 KAR 59:505, 401 KAR 59:535, 401 KAR 59:540, 401 KAR 59:545, 401 KAR 59:550, 401 KAR 59:555, 401 KAR 59:570, 401 KAR 59:575, 401 KAR 59:580, 401 KAR 59:585, 401 KAR 59:590, 401 KAR 59:595, 401 KAR 59:635, 401 KAR 59:705, 401 KAR 59:725, 401 KAR 59:740, 401 KAR 59:745, 401 KAR 59:750, 401 KAR 59:755, 401 KAR 60:042, 401 KAR 60:043, 401 KAR 60:100, 401 KAR 60:110, 401 KAR 60:111, 401 KAR 60:150, 401 KAR 60:160, 401 KAR 60:170, 401 KAR 60:180, 401 KAR 60:190, 401 KAR 60:250, 401 KAR 60:260, 401 KAR 60:330, 401 KAR 60:340, 401 KAR 60:370, 401 KAR 60:380, 401 KAR 60:390, 401 KAR 60:400, 401 KAR 60:420, 401 KAR 60:440, 401 KAR 60:450, 401 KAR 60:460, 401 KAR 60:470, 401 KAR 60:480, 401 KAR 60:490, 401 KAR 60:500, 401 KAR

60:540, 401 KAR 60:560, 401 KAR 60:580, 401 KAR 60:590, 401 KAR 60:600, 401 KAR 60:620, 401 KAR 60:630, 401 KAR 60:640, 401 KAR 60:680, 401 KAR 60:700, 401 KAR 60:730, 401 KAR 60:750, 401 KAR 63:070, 401 KAR 63:100, 401 KAR 63:101, 401 KAR 63:104, 401 KAR 63:110, 401 KAR 63:160, 401 KAR 63:190, 401 KAR 63:300, 401 KAR 63:320, 401 KAR 63:340, 401 KAR 63:360, 401 KAR 63:400, 401 KAR 63:420, 401 KAR 63:460, 401 KAR 63:520, 401 KAR 63:541, 401 KAR 63:560, 401 KAR 63:640, 401 KAR 63:680, [and] 401 KAR 63:701, 401 KAR 63:741, 401 KAR 63:780, 401 KAR 63:800, 401 KAR 63:820, 401 KAR 63:900, 401 KAR 63:920, 401 KAR 63:940, and 401 KAR 63:960.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation will repeal the existing administrative regulations which adopt the federal New Source Performance Standards codified in 40 CFR Part 60 and the federal National Emission Standards for Hazardous Air Pollutants codified in 40 CFR Parts 61 and 63 so that these standards may be incorporated by reference in 401 KAR 57:002, 60:005, and 63:002.

Section 1. The following administrative regulations are hereby repealed:

- (1) **401 KAR 57:005, General provisions;**
- (2) 401 KAR 57:015, National emission standard for beryllium;
- (3) 401 KAR 57:021, National emission standard for mercury;
- (4) 401 KAR 57:025, National emission standard for beryllium rocket motor firing;
- (5) 401 KAR 57:030, National emission standard for vinyl chloride;
- (6) 401 KAR 57:035, National emission standard for equipment leaks (fugitive emission sources);
- (7) 401 KAR 57:040, Equipment leaks of benzene;
- (8) 401 KAR 57:045, National emission standard for inorganic arsenic emissions from glass manufacturing plants;
- (9) 401 KAR 57:050, National emission standard for inorganic arsenic emissions from primary copper smelters;
- (10) 401 KAR 57:055, National emission standard for inorganic arsenic emissions from arsenic trioxide and metallic arsenic production facilities;
- (11) 401 KAR 57:130, National emission standard for benzene emissions from coke by-product recovery plants;
- (12) 401 KAR 57:270, National emission standard for benzene emissions from benzene storage vessels;
- (13) 401 KAR 57:300, National emission standard for benzene emissions from benzene transfer operations;
- ~~(14) 401 KAR 59:310, New nonmetallic mineral processing plants;~~
- (14) 401 KAR 59:450, Standards of performance for portland cement plants;
- (15) 401 KAR 59:455, Standards of performance for nitric acid plants;
- (16) 401 KAR 59:460, Standards of performance for sulfuric acid plants;
- (17) 401 KAR 59:465, Standards of performance for hot mix asphalt facilities;
- (18) 401 KAR 59:485, Standards of performance for volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984;
- (19) 401 KAR 59:490, Standards of performance for secondary lead smelters;
- (20) 401 KAR 59:495, Standards of performance for secondary brass and bronze production plants;
- (21) 401 KAR 59:500, Standards of performance for primary emissions from basic oxygen process furnaces for which construction is commenced after June 11, 1973;

(22) 401 KAR 59:505, Standards of performance for secondary emissions from basic oxygen process steel-making facilities for which construction is commenced after January 20, 1983;

(23) 401 KAR 59:535, Standards of performance for the phosphate fertilizer industry: wet-process phosphoric acid plants;

(24) 401 KAR 59:540, Standards of performance for the phosphate fertilizer industry: superphosphoric acid plants;

(25) 401 KAR 59:545, Standards of performance for the phosphate fertilizer industry: diammonium phosphate plants;

(26) 401 KAR 59:550, Standards of performance for the phosphate fertilizer industry: triple superphosphate plants;

(27) 401 KAR 59:555, Standards of performance for the phosphate fertilizer industry: granular triple superphosphate storage facilities;

(28) 401 KAR 59:570, Standards of performance for steel plants: electric arc furnaces constructed after October 21, 1974, and on or before August 17, 1983;

(29) 401 KAR 59:575, Standards of performance for steel plants: electric arc furnaces and argon-oxygen decarburization vessels constructed after August 7, 1983;

(30) 401 KAR 59:580, Standards of performance for kraft pulp mills;

(31) 401 KAR 59:585, Standards of performance for glass manufacturing plants;

(32) 401 KAR 59:590, Standards of performance for grain elevators;

(33) 401 KAR 59:595, Standards of performance for surface coating of metal furniture;

(34) 401 KAR 59:635, Standards of performance for the graphic arts industry: publication rotogravure printing;

(35) 401 KAR 59:705, Standards of performance for volatile organic compound (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) air oxidation unit processes;

(36) 401 KAR 59:725, Standards of performance for volatile organic compound (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) distillation operations;

(37) 401 KAR 59:740, Standards of performance for VOC emissions from petroleum refinery wastewater systems;

(38) 401 KAR 59:745, Standards of performance for new magnetic tape coating facilities;

(39) 401 KAR 59:750, Standards of performance for industrial surface coating: surface coating of plastic parts for business machines;

(40) 401 KAR 59:755, Standards of performance for polymeric coating of supporting substrates facilities;

(41) 401 KAR 60:042, Standards of performance for industrial-commercial-institutional steam generating units;

(42) 401 KAR 60:043, Standards of performance for small industrial-commercial-institutional steam generating units;

(43) 401 KAR 60:100, Standards of performance for petroleum refineries;

(44) 401 KAR 60:110, Standards of performance for storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after June 11, 1973, and prior to May 19, 1978;

(45) 401 KAR 60:111, Standards of performance for storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after May 18, 1978, and prior to July 23, 1984;

(46) 401 KAR 60:150, Standards of performance for sewage treatment plants;

(47) 401 KAR 60:160, Standards of performance for primary copper smelters;

(48) 401 KAR 60:170, Standards of performance for primary zinc smelters;

(49) 401 KAR 60:180, Standards of performance for primary lead smelters;

(50) 401 KAR 60:190, Standards of performance for primary aluminum reduction plants;

(51) 401 KAR 60:250, Standards of performance for coal preparation plants;

(52) 401 KAR 60:260, Standards of performance for ferroalloy

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production facilities;

(53) 401 KAR 60:330, Standards of performance for stationary gas turbines;

(54) 401 KAR 60:340, Standards of performance for lime manufacturing plants;

(55) 401 KAR 60:370, Standards of performance for lead-acid battery manufacturing plants;

(56) 401 KAR 60:380, Standards of performance for metallic mineral processing plants;

(57) 401 KAR 60:390, Standards of performance for automobile and light-duty truck surface coating operations;

(58) 401 KAR 60:400, Standards of performance for phosphate rock plants;

(59) 401 KAR 60:420, Standards of performance for ammonium sulfate manufacture;

(60) 401 KAR 60:440, Standards of performance for pressure sensitive tape and label surface coating operations;

(61) 401 KAR 60:450, Standards of performance for industrial surface coating: large appliances;

(62) 401 KAR 60:460, Standards of performance for metal coil surface coating;

(63) 401 KAR 60:470, Standards of performance for asphalt processing and asphalt roofing manufacture;

(64) 401 KAR 60:480, Standards of performance for equipment leaks of VOC in the synthetic organic chemicals manufacturing industry;

(65) 401 KAR 60:490, Standards of performance for the beverage can surface coating industry;

(66) 401 KAR 60:500, Standards of performance for bulk gasoline terminals;

(67) 401 KAR 60:540, Standards of performance for the rubber tire manufacturing industry;

(68) 401 KAR 60:560, Standards of performance for volatile organic compound (VOC) emissions from the polymer manufacturing industry;

(69) 401 KAR 60:580, Standards of performance for flexible vinyl and urethane coating and printing;

(70) 401 KAR 60:590, Standards of performance for equipment leaks of VOC in petroleum refineries;

(71) 401 KAR 60:600, Standards of performance for synthetic fiber production facilities;

(72) 401 KAR 60:620, Standards of performance for petroleum dry cleaners;

(73) 401 KAR 60:630, Standards of performance for equipment leaks of VOC from onshore natural gas processing plants;

(74) 401 KAR 60:640, Standards of performance for onshore natural gas processing: SO₂ emissions;

(75) 401 KAR 60:680, Standards of performance for wool fiberglass insulation manufacturing plants;

(76) 401 KAR 60:700, Standards of performance for volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industry (SOCMI) reactor processes;

(77) 401 KAR 60:730, Standards of performance for calciners and dryers in mineral industries;

(78) **401 KAR 60:750, Standards of performance for municipal solid waste landfills;**

(79) 401 KAR 63:070, Compliance extensions for early reductions of hazardous air pollutants;

(80) 401 KAR 63:100, General provisions;

(81) 401 KAR 63:101, National emission standards for organic hazardous air pollutants from the synthetic organic chemical manufacturing industry;

(82) 401 KAR 63:104, National emission standards for oil-water separators and organic-water separators;

(83) 401 KAR 63:110, National emission standards for organic hazardous air pollutants from the synthetic organic chemical manufacturing industry for process vents, storage vessels, transfer operations, and wastewater;

(84) 401 KAR 63:160, National emission standards for organic hazardous air pollutants for equipment leaks;

(85) 401 KAR 63:190, National emission standards for organic hazardous air pollutants for certain processes subject to the negotiated regulation for equipment leaks;

(86) 401 KAR 63:300, National emission standards for coke oven batteries;

(87) 401 KAR 63:320, National perchloroethylene air emission standards for dry cleaning facilities;

(88) 401 KAR 63:340, National emission standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks;

(89) 401 KAR 63:360, Ethylene oxide emissions standards for sterilization facilities;

(90) 401 KAR 63:400, National emission standards for organic hazardous air pollutants for industrial process cooling towers;

(91) 401 KAR 63:420, National emission standards for gasoline distribution facilities (bulk gasoline terminals and pipeline breakout stations);

(92) 401 KAR 63:460, National emission standards for halogenated solvent cleaning;

(93) 401 KAR 63:520, National emission standards for organic hazardous air pollutants for epoxy resins production and nonnylon polyamides production; **[and]**

(94) 401 KAR 63:541, National emission standards for hazardous air pollutants from secondary lead smelting;

(95) 401 KAR 63:560, National emission standards for marine tank vessel loading operations;

(96) 401 KAR 63:640, National emission standards for hazardous air pollutants from petroleum refineries;

(97) 401 KAR 63:680, National emission standards for hazardous air pollutants from off-site waste and recovery operations;

(98) 401 KAR 63:701, National emission standards for magnetic tape manufacturing operations;

(99) 401 KAR 63:741, National emission standards for aerospace manufacturing and rework facilities;

(100) 401 KAR 63:780, National emission standards for shipbuilding and ship repair (surface coating);

(101) 401 KAR 63:800, National emission standards for wood furniture manufacturing operations;

(102) 401 KAR 63:820, National emission standards for the printing and publishing industry;

(103) 401 KAR 63:900, National emission standards for tanks-Level 1;

(104) 401 KAR 63:920, National emission standards for containers;

(105) 401 KAR 63:940, National emission standards for surface impoundments; and

(106) 401 KAR 63:960, National emission standards for individual drain systems.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: April 6, 1999

FILED WITH LRC: April 7, 1999 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis

(1) Type and number of entities affected: In conjunction with the promulgation of the new administrative regulations, 401 KAR 57:002, 60:005, and 63:002, this administrative regulation will reduce the review requirements for promulgating the federal standards codified in 40 CFR Parts 60, 61, and 63, while maintaining the opportunity for review and comment. The administrative regulations that are being repealed are being repromulgated in the new administrative regulations, 401 KAR 57:002, 60:005, and 63:002. As a result of this action, the cabinet will be able to easily revise and update all the federal standards of 40 CFR Parts 60, 61, and 63 once a year when the Code of Federal Regulations is published. The most current federal standards will thus be more readily available to the regulated community and the general public.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings related to the cost of living and employment in the geographical area in which this administrative regulation will be

implemented.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in the geographical areas where it will be implemented.

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

1. First year following implementation: There are no reporting or paperwork requirements in this administrative regulation.

2. Second and subsequent years: There are no reporting or paperwork requirements in this administrative regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: A substantial savings in time and efficiency will be realized by promulgating three administrative regulations in lieu of the 106 administrative regulations which are being repealed.

2. Continuing costs or savings: The savings in time and efficiency should continue indefinitely, since there are additions and revisions made to the federal standards every year. These will be able to be handled by amending three administrative regulations.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements in this administrative regulation.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional funds will be required to implement and enforce this administrative regulation.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impact in the geographical area in which it will be implemented.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation repeals the existing administrative regulations that incorporate by reference the federal standards which are in turn being incorporated by reference in 401 KAR 57:002, 60:005, and 63:002.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There will be no effects on public health and environmental welfare in Kentucky because this administrative regulation repeals the existing administrative regulations that incorporate by reference the federal standards which are in turn being incorporated by reference in 401 KAR 57:002, 60:005, and 63:002.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal standards.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal standards.

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

(a) Necessity of proposed administrative regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet has no additional information or comments.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this administrative regulation because it repeals the existing admin-

istrative regulations which incorporate by reference the federal standards codified in 40 CFR Parts 60, 61, and 63. These standards are being incorporated by reference in the new administrative regulations, 401 KAR 57:002, 60:005, and 63:002.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for this administrative regulation.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate for this administrative regulation.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation does not affect any known unit, part or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any known aspect or service of local government.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (Amended After Hearing)

401 KAR 60:005. 40 CFR Part 60 standards of performance for new stationary sources.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.1 to 60.19, 60.40b to 60.54, 60.60 to 60.506, 60.540 to 60.668, 60.680 to 60.759, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.1 to 60.19, 60.40b to 60.54, 60.60 to 60.506, 60.540 to 60.668, 60.680 to 60.759, 42 USC 7411

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation incorporates by reference the Standards of Performance for New Stationary Sources (NSPS) codified in 40 CFR 60.1 to 60.19, 60.40b to 60.54, 60.60 to 60.506, 60.540 to 60.668, and 60.680 to 60.759. Delegation of implementation and enforcement authority for the federal NSPS program from the United States Environmental Protection Agency to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. Definitions. Terms used in this administrative regulation shall have the meaning given in this section unless the context

clearly indicates otherwise.

(1) "Part 60 NSPS" means Standards of Performance for New Stationary Sources codified in 40 CFR 60.1 to 60.19, 60.40b to 60.54, 60.60 to 60.506, 60.540 to 60.668, and 60.680 to 60.759 (Subparts A, Db to E, F to XX, BBB to NNN, and PPP to WWW).

(2) "Administrator", as used in 40 CFR 60.1 to 60.19, 60.40b to 60.54, 60.60 to 60.506, 60.540 to 60.668, and 60.680 to 60.759 (Subparts A, Db to E, F to XX, BBB to NNN, and PPP to WWW), means the Secretary of the Natural Resources and Environmental Protection Cabinet unless a specific provision of a Part 60 NSPS states that the United States Environmental Protection Agency shall retain enforcement authority.

Section 2. Applicability. This administrative regulation shall apply to sources that are subject to 40 CFR 60.1 to 60.19, 60.40b to 60.54, 60.60 to 60.506, 60.540 to 60.668, and 60.680 to 60.759 (Subparts A, Db to E, F to XX, BBB to NNN, and PPP to WWW). These sources shall comply with the following:

(1) The applicable provisions in 40 CFR 60.1 to 60.19 (Subpart A), General Provisions, which is incorporated by reference in Section 3 of this administrative regulation;

(2) The applicable methods, procedures, and reporting requirements contained in 40 CFR Part 60, Appendices A through F, which are incorporated by reference in Section 3 of this administrative regulation; and

(3) The applicable Part 60 NSPS incorporated by reference in Section 3 of this administrative regulation.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 40 CFR 60.1 to 60.19 (Subpart A), "General Provisions", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, **1998** [1997];

(b) 40 CFR 60.40b to 60.49b (Subpart Db), "Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, **1998** [1997];

(c) 40 CFR 60.40c to 60.48c (Subpart Dc), "Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, **1998** [1997];

(d) 40 CFR 60.50 to 60.54, (Subpart E), "Standards of Performance for Incinerators", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, **1998** [1997];

(e) 40 CFR 60.60 to 60.66 (Subpart F), "Standards of Performance for Portland Cement Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, **1998** [1997];

(f) 40 CFR 60.70 to 60.74 (Subpart G), "Standards of Performance for Nitric Acid Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, **1998** [1997];

(g) 40 CFR 60.80 to 60.85 (Subpart H), "Standards of Performance for Sulfuric Acid Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, **1998** [1997];

(h) 40 CFR 60.90 to 60.93 (Subpart I), "Standards of Performance for Hot Mix Asphalt Facilities", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, **1998** [1997];

(i) 40 CFR 60.100 to 60.109 (Subpart J), "Standards of Performance for Petroleum Refineries", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, **1998** [1997];

(j) 40 CFR 60.110 to 60.113 (Subpart K), "Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, **1998** [1997];

(k) 40 CFR 60.110a to 60.115a (Subpart Ka), "Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, **1998** [1997];

(l) 40 CFR 60.110b to 60.117b (Subpart Kb), "Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, **1998** [1997];

(m) 40 CFR 60.120 to 60.123 (Subpart L), "Standards of Performance for Secondary Lead Smelters", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, **1998** [1997];

(n) 40 CFR 60.130 to 60.133 (Subpart M), "Standards of Performance for Secondary Brass and Bronze Production Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, **1998** [1997];

(o) 40 CFR 60.140 to 60.144 (Subpart N), "Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, **1998** [1997];

(p) 40 CFR 60.140a to 60.145a (Subpart Na), "Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced after January 20, 1983", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, **1998** [1997];

(q) 40 CFR 60.150 to 60.156 (Subpart O), "Standards of Performance for Sewage Treatment Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, **1998** [1997];

(r) 40 CFR 60.160 to 60.166 (Subpart P), "Standards of Performance for Primary Copper Smelters", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, **1998** [1997];

(s) 40 CFR 60.170 to 60.176 (Subpart Q), "Standards of Performance for Primary Zinc Smelters", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, **1998** [1997];

(t) 40 CFR 60.180 to 60.186 (Subpart R), "Standards of Performance for Primary Lead Smelters", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, **1998** [1997];

(u) 40 CFR 60.190 to 60.195 (Subpart S), "Standards of Performance for Primary Aluminum Reduction Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, **1998** [1997];

(v) 40 CFR 60.200 to 60.204 (Subpart T), "Standards of Performance for the Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, **1998** [1997];

(w) 40 CFR 60.210 to 60.214 (Subpart U), "Standards of Performance for the Phosphate Fertilizer Industry: Superphosphoric Acid Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, **1998** [1997];

(x) 40 CFR 60.220 to 60.224 (Subpart V), "Standards of Performance for the Phosphate Fertilizer Industry: Diammonium Phosphate Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, **1998** [1997];

(y) 40 CFR 60.230 to 60.234 (Subpart W), "Standards of Performance for the Phosphate Fertilizer Industry: Triple Superphosphate Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, **1998** [1997];

(z) 40 CFR 60.240 to 60.244 (Subpart X), "Standards of Performance for the Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, **1998** [1997];

(aa) 40 CFR 60.250 to 60.254 (Subpart Y), "Standards of Performance for Coal Preparation Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, **1998** [1997];

(bb) 40 CFR 60.260 to 60.266 (Subpart Z), "Standards of Performance for Ferroalloy Production Facilities", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, **1998** [1997];

(cc) 40 CFR 60.270 to 60.276 (Subpart AA), "Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, **1998** [1997];

(dd) 40 CFR 60.270a to 60.276a (Subpart AAa), "Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, **1998** [1997];

(ee) 40 CFR 60.280 to 60.285 (Subpart BB), "Standards of Performance for Kraft Pulp Mills", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, **1998** [1997];

eral Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(ff) 40 CFR 60.290 to 60.296 (Subpart CC), "Standards of Performance for Glass Manufacturing Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(gg) 40 CFR 60.300 to 60.304 (Subpart DD), "Standards of Performance for Grain Elevators", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(hh) 40 CFR 60.310 to 60.316 (Subpart EE), "Standards of Performance for Surface Coating of Metal Furniture", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(ii) 40 CFR 60.330 to 60.335 (Subpart GG), "Standards of Performance for Stationary Gas Turbines", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(jj) 40 CFR 60.340 to 60.344 (Subpart HH), "Standards of Performance for Lime Manufacturing Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(kk) 40 CFR 60.370 to 60.374 (Subpart KK), "Standards of Performance for Lead-Acid Battery Manufacturing Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(ll) 40 CFR 60.380 to 60.386 (Subpart LL), "Standards of Performance for Metallic Mineral Processing Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(mm) 40 CFR 60.390 to 60.398 (Subpart MM), "Standards of Performance for Automobile and Light-Duty Truck Surface Coating Operations", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(nn) 40 CFR 60.400 to 60.404 (Subpart NN), "Standards of Performance for Phosphate Rock Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(oo) 40 CFR 60.420 to 60.424 (Subpart PP), "Standards of Performance for Ammonium Sulfate Manufacture", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(pp) 40 CFR 60.430 to 60.435 (Subpart QQ), "Standards of Performance for the Graphic Arts Industry: Publication Rotogravure Printing", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(qq) 40 CFR 60.440 to 60.447 (Subpart RR), "Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(rr) 40 CFR 60.450 to 60.456 (Subpart SS), "Standards of Performance for Industrial Surface Coating: Large Appliances", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(ss) 40 CFR 60.460 to 60.466 (Subpart TT), "Standards of Performance for Metal Coil Surface Coating", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(tt) 40 CFR 60.470 to 60.474 (Subpart UU), "Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(uu) 40 CFR 60.480 to 60.489 (Subpart VV), "Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(vv) 40 CFR 60.490 to 60.496 (Subpart WW), "Standards of Performance for the Beverage Can Surface Coating Industry", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(ww) 40 CFR 60.500 to 60.506 (Subpart XX), "Standards of Performance for Bulk Gasoline Terminals", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(xx) 40 CFR 60.540 to 60.548 (Subpart BBB), "Standards of Performance for the Rubber Tire Manufacturing Industry", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(yy) 40 CFR 60.560 to 60.566 (Subpart DDD), "Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(zz) 40 CFR 60.580 to 60.585 (Subpart FFF), "Standards of Performance for Flexible Vinyl and Urethane Coating and Printing", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(aaa) 40 CFR 60.590 to 60.593 (Subpart GGG), "Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(bbb) 40 CFR 60.600 to 60.604 (Subpart HHH), "Standards of Performance for Synthetic Fiber Production Facilities", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(ccc) 40 CFR 60.610 to 60.618 (Subpart III), "Standards of Performance for Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(ddd) 40 CFR 60.620 to 60.625 (Subpart JJJ), "Standards of Performance for Petroleum Dry Cleaners", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(eee) 40 CFR 60.630 to 60.636 (Subpart KKK), "Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(fff) 40 CFR 60.640 to 60.648 (Subpart LLL), "Standards of Performance for Onshore Natural Gas Processing: SO₂ Emissions", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(ggg) 40 CFR 60.660 to 60.668 (Subpart NNN), "Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(hhh) 40 CFR 60.680 to 60.685 (Subpart PPP), "Standards of Performance for Wool Fiberglass Insulation Manufacturing Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(iii) 40 CFR 60.690 to 60.699 (Subpart QQQ), "Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(jjj) 40 CFR 60.700 to 60.708 (Subpart RRR), "Standards of Performance for Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(kkk) 40 CFR 60.710 to 60.718 (Subpart SSS), "Standards of Performance for Magnetic Tape Coating Facilities", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(lll) 40 CFR 60.720 to 60.726 (Subpart TTT), "Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(mmm) 40 CFR 60.730 to 60.737 (Subpart UUU), "Standards of Performance for Calciners and Dryers in Mineral Industries", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(nnn) 40 CFR 60.740 to 60.748 (Subpart VVV), "Standards of Performance for Polymeric Coating of Supporting Substrates Facilities", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(ooo) 40 CFR 60.750 to 60.759 (Subpart WWW), "Standards of Performance for Municipal Solid Waste Landfills", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(ppp) "Appendix A, Test Methods", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(qqq) "Appendix B, Performance Specifications", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(rrr) "Appendix C, Determination Of Emission Rate Change", as published in the Code of Federal Regulations, 40 CFR Part 60, July

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1, 1998 [1997];

(sss) "Appendix D, Required Emission Inventory Information", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(ttt) "Appendix F, Quality Assurance Procedures", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997].

(2) This material may be inspected, copied, or obtained at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 746-7475;

(d) Florence Regional Office, **8020 Ewing Boulevard, Suite 110** [7964 Kentucky Drive, Suite 8], Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 85 State Police Road, London, Kentucky 40741, (606) 878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (502) 687-7304; and

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

(3) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: April 6, 1999

FILED WITH LRC: April 7, 1999 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis

(1) Type and number of entities affected: This administrative regulation incorporates by reference the federal New Source Performance Standards, 40 CFR 60.1 to 60.19, 60.40b to 60.54, 60.60 to 60.506, 60.540 to 60.668, and 60.680 to 60.759 (Subparts A, Db to E, F to XX, BBB to NNN, and PPP to WWW), as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998. The benefits expected from this administrative regulation are twofold. First, sources that are subject to the Part 60 NSPS will be able to work with the state rather than the United States Environmental Protection Agency (U.S. EPA) to demonstrate compliance with applicable requirements. Second, the Part 60 NSPS will be incorporated by reference in 1 administrative regulation instead of incorporating each in a separate administrative regulation. This will reduce the number of existing air administrative regulations by 65, and will allow the Division to easily revise and update the Part 60 NSPS once a year when the Code of Federal Regulations is published.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal rulemakings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in the geographical areas where it will be implemented beyond the costs described in the federal rulemakings.

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

1. First year following implementation: There are no reporting or paperwork requirements beyond those required in Part 60 NSPS.

2. Second and subsequent years: There are no requirements beyond those required in Part 60 NSPS.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: A substantial savings in time and efficiency will be realized by promulgating 1 administrative regulation for Part 60 NSPS in lieu of 66.

2. Continuing costs or savings: The savings in time and efficiency should continue indefinitely, since there are additions and revisions made to Part 60 NSPS every year. These can now be handled by amending 1 administrative regulation.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements beyond those in Part 60 NSPS.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impacts beyond those described in the federal rulemakings.

(b) Kentucky: This administrative regulation will have no economic impacts in any geographical location in Kentucky beyond those described in the federal rulemakings.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal Part 60 NSPS.

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal Part 60 NSPS program, which will be implemented by the U.S. EPA if Kentucky fails to do so.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal Part 60 NSPS program.

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

(a) Necessity of proposed administrative regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference 40 CFR 60.1 to 60.19, 60.40b to 60.54, 60.60 to 60.506, 60.540 to 60.668, and 60.680 to 60.759 (Subparts A, Db to E, F to XX, BBB to NNN, and PPP to WWW), July 1, 1998, so that Kentucky will continue to have the delegated authority to implement and enforce the federal Part 60 NSPS program.

(11) TIERING: Is tiering applied? No. The cabinet is incorporating by reference 40 CFR 60.1 to 60.19, 60.40b to 60.54, 60.60 to 60.506, 60.540 to 60.668, and 60.680 to 60.759 (Subparts A, Db to E, F to XX, BBB to NNN, and PPP to WWW), July 1, 1998, without change. There is no tiering of requirements beyond that contained in the federal Part 60 NSPS.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 40 CFR 60.1 to 60.19, 60.40b to 60.54, 60.60 to 60.506, 60.540 to 60.668, and 60.680 to 60.759

(Subparts A, Db to E, F to XX, BBB to NNN, and PPP to WWW), July 1, 1998. The United States Environmental Protection Agency (U.S. EPA) may grant states implementation and enforcement authority for the federal Part 60 NSPS program pursuant to 42 USC 7411(c)(1).

2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 60.1 to 60.19, 60.40b to 60.54, 60.60 to 60.506, 60.540 to 60.668, and 60.680 to 60.759 (Subparts A, Db to E, F to XX, BBB to NNN, and PPP to WWW), July 1, 1998, contain New Source Performance Standards that the U.S. EPA is required to promulgate pursuant to 42 USC 7411.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation does not affect any known unit, part or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any known aspect or service of local government.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (Amended After Hearing)

401 KAR 63:002. 40 CFR Part 63 national emission standards for hazardous air pollutants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.1 to 63.15, 63.70 to 63.81, 63.100 to [63.528, 63.701 to 63.708, 63.1310 to] 63.1335, 42 USC 7401, 7412, 7414, 7416, 7601

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.1 to 63.15, 63.70 to 63.81, 63.100 to [63.528, 63.701 to 63.708, 63.1310 to] 63.1335, 42 USC 7401, 7412, 7414, 7416, 7601

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation incorporates by reference the National Emission Standards for Hazardous Air Pollutants (NESHAP) codified in 40 CFR 63.1 to 63.15, 63.70 to 63.81, and 63.100 to [63.528, 63.701 to 63.708, and 63.1310 to] 63.1335. Delegation of implementation and enforcement authority for the federal NESHAP program from the United States Environmental Protection Agency to the Commonwealth of Kentucky

is provided under 42 USC 7412(l).

Section 1. Definitions. Terms used in this administrative regulation shall have the meaning given in this section unless the context clearly indicates otherwise.

(1) "Part 63 NESHAP" means National Emission Standard for Hazardous Air Pollutants codified in 40 CFR 63.1 to 63.15, 63.70 to 63.81, and 63.100 to [63.528, 63.701 to 63.708, and 63.1310 to] 63.1335 (Subparts A, D, and F to [I, F to W, EE, and] JJJ).

(2) "Administrator", as used in 40 CFR 63.1 to 63.15, 63.70 to 63.81, and 63.100 to [63.528, 63.701 to 63.708, and 63.1310 to] 63.1335 (Subparts A, D, and F to [I, F to W, EE, and] JJJ) means the Secretary of the Natural Resources and Environmental Protection Cabinet unless a specific provision of the Part 63 NESHAP states that the United States Environmental Protection Agency shall retain enforcement authority.

Section 2. Applicability. This administrative regulation shall apply to sources that are subject to 40 CFR 63.1 to 63.15, 63.70 to 63.81, and 63.100 to [63.528, 63.701 to 63.708, and 63.1310 to] 63.1335 (Subparts A, D, and F to [I, F to W, EE, and] JJJ). These sources shall comply with the following:

(1) The applicable provisions in 40 CFR 63.1 to 63.15 (Subpart A), General Provisions, which is incorporated by reference in Section 3 of this administrative regulation;

(2) For sources that applied for early reduction credit and wish to extend the deadline for compliance demonstration, the applicable provisions in 40 CFR 63.70 to 63.81 (Subpart D), Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants, which is incorporated by reference in Section 3 of this administrative regulation;

(3) The applicable test methods, procedures, and other provisions contained in 40 CFR Part 63, Appendices A through D, which are incorporated by reference in Section 3 of this administrative regulation; and

(4) The applicable Part 63 NESHAP incorporated by reference in Section 3 of this administrative regulation.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 40 CFR 63.1 to 63.15 (Subpart A), "General Provisions", as published in the Code of Federal Regulations, 40 CFR **Part 63, July 1, 1998** [Parts 63 to 71, July 1, 1997];

(b) 40 CFR 63.70 TO 63.81 (Subpart D), "Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants", as published in the Code of Federal Regulations, 40 CFR **Part 63, July 1, 1998** [Parts 63 to 71, July 1, 1997];

(c) 40 CFR 63.100 to 63.106 (Subpart F), "National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry", as published in the Code of Federal Regulations, 40 CFR **Part 63, July 1, 1998** [Parts 63 to 71, July 1, 1997];

(d) 40 CFR 63.110 to 63.152 (Subpart G), "National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater", as published in the Code of Federal Regulations, 40 CFR **Part 63, July 1, 1998** [Parts 63 to 71, July 1, 1997];

(e) 40 CFR 63.160 to 63.182 (Subpart H), "National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks", as published in the Code of Federal Regulations, 40 CFR **Part 63, July 1, 1998** [Parts 63 to 71, July 1, 1997];

(f) 40 CFR 63.190 to 63.193 (Subpart I), "National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulations for Equipment Leaks", as published in the Code of Federal Regulations, 40 CFR **Part 63, July 1, 1998** [Parts 63 to 71, July 1, 1997];

(g) 40 CFR 63.300 to 63.313 (Subpart L), "National Emission Standards for Coke Oven Batteries", as published in the Code of Federal Regulations, 40 CFR **Part 63, July 1, 1998** [Parts 63 to 71, July 1, 1997];

(h) 40 CFR 63.320 to 63.325 (Subpart M), "National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities", as

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published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997];

(i) 40 CFR 63.340 to 63.347 (Subpart N), "National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997];

(j) 40 CFR 63.360 to 63.367 (Subpart O), "Ethylene Oxide Emissions Standards for Sterilization Facilities", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997];

(k) 40 CFR 63.400 to 63.406 (Subpart Q), "National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997];

(l) 40 CFR 63.420 to 63.429 [62-429] (Subpart R), "National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997];

(m) 40 CFR 63.440 to 63.459 (Subpart S), "National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998;

(n) [(m)] 40 CFR 63.460 to 63.469 (Subpart T), "National Emission Standards for Halogenated Solvent Cleaning", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997];

(o) [(n)] 40 CFR 63.480 to 63.506 (Subpart U), "National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997];

(p) [(o)] 40 CFR 63.520 to 63.528 (Subpart W), "National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Nonnylon Polyamides Production", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997];

(q) 40 CFR 63.541 to 63.550 (Subpart X), "National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998;

(r) 40 CFR 63.560 to 63.567 (Subpart Y), "National Emission Standards for Marine Tank Vessel Loading Operations", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998;

(s) 40 CFR 63.640 to 63.654 (Subpart CC), "National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998;

(t) 40 CFR 63.680 to 63.698 (Subpart DD), "National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998;

(u) [(p)] 40 CFR 63.701 to 63.708 (Subpart EE), "National Emission Standards for Magnetic Tape Manufacturing Operations", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997];

(v) 40 CFR 63.741 to 63.753 (Subpart GG), "National Emission Standards for Aerospace Manufacturing and Rework Facilities", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998;

(w) 40 CFR 63.780 to 63.788 (Subpart II), "National Emission Standards for Shipbuilding and Ship Repair (Surface Coating)", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998;

(x) 40 CFR 63.800 to 63.808 (Subpart JJ), "National Emission Standards for Wood Furniture Manufacturing Operations", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998;

(y) 40 CFR 63.820 to 63.831 (Subpart KK), "National Emission Standards for the Printing and Publishing Industry", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998;

(z) 40 CFR 63.840 to 63.853 (Subpart LL), "National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998;

(aa) 40 CFR 63.900 to 63.907 (Subpart OO), "National Emission Standards for Tanks - Level 1", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998;

(bb) 40 CFR 63.920 to 63.928 (Subpart PP), "National Emission Standards for Containers", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998;

(cc) 40 CFR 63.940 to 63.948 (Subpart QQ), "National Emission Standards for Surface Impoundments", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998;

(dd) 40 CFR 63.960 to 63.966 (Subpart RR), "National Emission Standards for Individual Drain Systems", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998;

(ee) 40 CFR 63.1040 to 63.1049 (Subpart VV), "National Emission Standards for Oil-Water Separators and Organic-Water Separators", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998;

(ff) 40 CFR 63.1211 to 63.1216 (Subpart EEE), "National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998;

(gg) [(q)] 40 CFR 63.1310 to 63.1335 (Subpart JJJ), "National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997];

(hh) [(r)] "Appendix A to Part 63, Test Methods", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997];

(ii) [(s)] "Appendix B to Part 63, Sources Defined for Early Reduction Provisions", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997];

(jii) [(t)] "Appendix C to Part 63, Determination of the Fraction Biodegraded (Fbio) in a Biological Treatment Unit", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997]; and

(kk) [(u)] "Appendix D to Part 63, Alternative Validation Procedure for EPA Waste and Wastewater Methods", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997].

(2) This material may be inspected, copied, or obtained at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Western Avenue, Bowling Green, Kentucky 42104, (502) 746-7475;

(d) Florence Regional Office, 8020 Ewing Boulevard, Suite 110 [7964 Kentucky Drive, Suite 8], Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 85 State Police Road, London, Kentucky 40741, (606) 878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (502) 687-7304; and

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

(3) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: April 6, 1999

FILED WITH LRC: April 7, 1999 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis

(1) Type and number of entities affected: This administrative regulation incorporates by reference the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR 63.1 to 63.15, 63.70 to 63.81, and 63.100 to 63.1335 (Subparts A, D, and F to JJJ), as published in the Code of Federal Regulations, Part 63, July 1, 1998. The benefits expected from this administrative regulation are twofold. First, sources that are subject to the Part 63 NESHAP program will be able to work with the state rather than the United States Environmental Protection Agency (U.S. EPA) to demonstrate compliance with applicable requirements. Second, the emission standards in 40 CFR 63.1 to 63.15, 63.70 to 63.81, and 63.100 to 63.1335 (Subparts A, D, and F to JJJ) will be incorporated by reference in 1 administrative regulation instead of incorporating each in a separate administrative regulation. This will reduce the number of air regulations by 28, and will allow the division to easily revise and update the Part 63 NESHAP once a year when the Code of Federal Regulations is published. The cabinet has added 13 Part 63 NESHAP (promulgated in administrative regulations that became effective June 10, 1998) and 3 new Subparts (S, LL, and EEE) to be incorporated by reference in this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal rulemakings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in the geographical areas where it will be implemented beyond the costs described in the federal rulemakings.

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

1. First year following implementation: There are no reporting or paperwork requirements beyond those required in Part 63 NESHAP.

2. Second and subsequent years: There are no requirements beyond those required in Part 63 NESHAP.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: A substantial savings in time and efficiency will be realized by promulgating 1 administrative regulation for Part 63 NESHAP in lieu of 29.

2. Continuing costs or savings: The savings in time and efficiency should continue indefinitely, since there are additions and revisions made to the Part 63 NESHAP every year. These can now be handled by amending one (1) administrative regulation.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements beyond those in Part 63 NESHAP.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impacts beyond those described in the federal rulemakings.

(b) Kentucky: This administrative regulation will have no economic impacts in any geographical location in Kentucky beyond those described in the federal rulemakings.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal Part 63 NESHAP.

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal Part 63 NESHAP program, which will be implemented by the U.S. EPA if Kentucky fails to do so.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal Part 63 NESHAP program.

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

(a) Necessity of proposed administrative regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference 40 CFR 63.1 to 63.15, 63.70 to 63.81, and 63.100 to 63.1335 (Subparts A, D, and F to JJJ), July 1, 1998, so that Kentucky will continue to have the delegated authority to implement and enforce the federal Part 63 NESHAP program.

(11) TIERING: Is tiering applied? No. The cabinet is incorporating by reference 40 CFR 63.1 to 63.15, 63.70 to 63.81, and 63.100 to 63.1335 (Subparts A, D, and F to JJJ), July 1, 1998, without change. There is no tiering by the state beyond that contained in the federal Part 63 NESHAP.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 40 CFR 63.1 to 63.15, 63.70 to 63.81, and 63.100 to 63.1335 (Subparts A, D, and F to JJJ), July 1, 1998. The United States Environmental Protection Agency (U.S. EPA) may grant states implementation and enforcement authority for the federal Part 63 NESHAP program pursuant to 42 USC 7412(l).

2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 63.1 to 63.15, 63.70 to 63.81, and 63.100 to 63.1335 (Subparts A, D, and F to JJJ), July 1, 1998, contain National Emission Standards for Hazardous Air Pollutants that the U.S. EPA is required to promulgate pursuant to 42 USC 7412.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation does not affect any known unit, part or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any known aspect or service of local government.

4. Estimate the effect of this administrative regulation on the

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)**

405 KAR 7:097. Reclamation in lieu of cash payment of civil penalties.

RELATES TO: KRS 350.010, 350.020, 350.028, 350.130, 350.150, 350.151, 350.465, 350.550-597, 350.990, 30 CFR Parts 730-733, 735, 845, 846, 917, 30 USC 1253, 1255, 1268

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.151, 350.465, 350.990, 30 CFR Parts 730-733, 735, 845, 846, 917, 30 USC 1253, 1255, 1268

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1), (5), 350.151(1), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. KRS 350.990(11) authorizes the cabinet to allow a permittee, person, or operator to perform in-kind reclamation, environmental rehabilitation, or similar action to correct environmental pollution, instead of making cash payment of a civil penalty assessed under KRS 350.990. KRS 350.990(11) authorizes the cabinet to promulgate administrative regulations as necessary to implement and administer its provisions. This administrative regulation establishes criteria and procedures to implement KRS 350.990(11). This administrative regulation differs from federal regulations as follows: There are no corresponding federal regulations that establish specific requirements applicable to state regulatory programs that provide for reclamation in lieu of cash payment of civil penalties. As a condition of federal approval of KRS 350.990(11), the federal regulations at 30 CFR 917.16(c)(3) require the cabinet to obtain federal approval of administrative regulations prior to implementation of KRS 350.990(11).

Section 1. Applicability and General Provisions. (1) This administrative regulation shall apply to a permittee, person, or operator who has been assessed a civil penalty under KRS 350.990 by a final order of the secretary of the cabinet.

(2) The cabinet may, in accordance with KRS 350.990(11) and this administrative regulation, allow a permittee, person, or operator to perform activities in lieu of cash payment of one (1) or more civil penalties, if the aggregate amount of the civil penalties is \$2,500 or more.

(3) Activities under this administrative regulation shall be authorized under a binding agreement between the cabinet and the person owing the civil penalty. The agreement shall be termed a "Civil Penalty Reclamation Agreement."

(4) A permittee, person, or operator conducting activities authorized under this administrative regulation shall not be deemed an agent, contractor, or employee of the cabinet.

(5) A permittee, person, or operator conducting activities authorized under this administrative regulation shall obtain and maintain the legal right to enter upon the site and conduct the authorized activities.

(6)(a) A permittee, person, or operator conducting activities authorized under this administrative regulation shall obtain and maintain liability insurance coverage in accordance with this subsection.

(b) The permittee, person, or operator shall submit a certificate issued by an insurance company authorized to do business in Kentucky certifying that the permittee, person, or operator has a public liability insurance policy in force for the authorized activities. The policy shall provide for personal injury and property damage protec-

tion in an amount adequate to compensate for all personal injury and property damage resulting from the authorized activities, including damage caused by the use of explosives and damage to water wells. Minimum insurance coverage for bodily injury and property damage shall be \$300,000 for each occurrence and \$500,000 aggregate.

(c) The policy shall be maintained in force during the term of the Civil Penalty Reclamation Agreement, until the cabinet has determined in writing that the terms of the Civil Penalty Reclamation Agreement have been satisfied.

(d) The policy shall include a clause requiring that the insurer notify the cabinet whenever substantive changes are made in the policy, including any termination or failure to renew.

(e) In the event the insurer becomes unable to fulfill its obligations under the policy, notice shall be given immediately to the permittee, person, or operator and the cabinet.

(f) Upon the incapacity of an insurer by reason of bankruptcy, insolvency, or suspension or revocation of its license or certificate of authority, the permittee, person, or operator shall be deemed to be without insurance coverage and shall promptly notify the cabinet. However, nothing herein shall relieve the insurer of liability on its policy. The cabinet shall notify the permittee, person, or operator in writing, specifying a reasonable period to replace such coverage, not to exceed ninety (90) days. If adequate insurance coverage is not obtained by the end of the period allowed, the permittee, person, or operator shall cease the authorized activities and the cabinet may terminate the Civil Penalty Reclamation Agreement and require the permittee, person, or operator to pay the assessed civil penalty.

(7) If the activities authorized under this administrative regulation are for reclamation of a mine site, the permittee, person, or operator shall provide a performance bond. For activities other than reclamation of a mine site, the cabinet may require the permittee, person, or operator to provide a performance bond if the cabinet determines that the authorized activities could create a [substantial] risk of [significant] environmental harm. This bond shall be in addition to any bond required by any other federal, state, or local law. The cabinet shall determine the amount of the bond based upon site specific conditions. This subsection may be satisfied by a performance bond that meets the requirements of 405 KAR Chapter 10. The cabinet shall release the performance bond promptly after the cabinet has determined that the terms of the Civil Penalty Reclamation Agreement have been fulfilled, and the bond release procedures of 405 KAR 10:040 shall not apply.

(8) A permittee, person, or operator conducting activities authorized under this administrative regulation shall comply with applicable federal, state, and local laws and regulations.

(9) A permittee, person, or operator conducting activities authorized under this administrative regulation shall not engage in coal removal in connection with the authorized activities.

(10) Activities authorized under this administrative regulation shall be on-ground activities that directly result in reclamation, environmental rehabilitation, or correction of environmental pollution. Educational, promotional, training, and other activities that may indirectly affect the environment, shall not be authorized.

(11) Activities authorized under this administrative regulation shall not constitute government financed construction for the purposes of 405 KAR 7:030, Sections 2 and 3.

(12) The cabinet shall determine the location, scope, and time schedule for activities authorized under this administrative regulation.

(13) The Division of Abandoned Mine Lands shall determine the estimate of the cost of activities authorized or completed under this administrative regulation.

(14) Activities shall not be authorized under this administrative regulation unless their estimated cost exceeds the assessed amount of the civil penalty.

(15) The cost of activities in excess of the civil penalty amount covered in the Civil Penalty Reclamation Agreement shall not be credited or carried forward to satisfy a civil penalty not covered in the Civil Penalty Reclamation Agreement or any future civil penalty.

(16) The cabinet shall maintain appropriate records of activities conducted under this administrative regulation. The Department for Surface Mining Reclamation and Enforcement shall maintain cus-

tody of the records. The cabinet shall request an audit of these records and activities authorized under this administrative regulation, at intervals of not more than five (5) years.

Section 2. Ineligible Permittees, Persons, or Operators. The cabinet shall not authorize a permittee, person, or operator to perform activities under this administrative regulation if the permittee, person, or operator is ineligible to receive a permit under KRS Chapter 350 and 405 KAR Chapters 7-24 for reasons other than nonpayment of civil penalties. :

(1) ~~The cabinet has determined under KRS 350.130(3) that the permittee, person, or operator has demonstrated a pattern of willful violations of KRS Chapter 350 of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of KRS Chapter 350;~~

(2) ~~The permittee, person, or operator has had a permit revoked or a bond forfeited under KRS Chapter 350;~~

(3) ~~The permittee, person, or operator has an outstanding violation under KRS Chapter 350 and has not completed the on-ground work necessary to correct the violation;~~

(4) ~~The permittee, person, or operator owns or controls a surface coal mining operation for which the permit has been revoked or the bond forfeited; or which is currently in violation of KRS Chapter 350, and the on-ground work necessary to correct the violation has not been completed; or~~

(5) ~~The permittee, person, or operator is currently in violation of other federal, state, or local environmental laws;]~~

Section 3. Ineligible Civil Penalties. The cabinet shall not authorize activities in lieu of cash payment of a civil penalty if:

(1) A violation that led to the civil penalty remains unabated; or

(2) The permittee, person, or operator owing the civil penalty has entered into an agreed order with the cabinet to pay the civil penalty and has failed to comply with the terms of the agreed order.

Section 4. Ineligible Sites. The cabinet shall not authorize activities at the following sites:

(1) A site that is under a valid permit under KRS Chapter 350 for which the bond has not been forfeited;

(2) A site that is under another valid federal, state, or local permit, under which the permit holder has responsibility for environmental conditions at the site; or

(3) A site for which there is an ongoing enforcement action for violation of federal, state, or local environmental laws, unless the agency pursuing the enforcement action consents.

Section 5. Selection of Sites. (1) For informational and planning purposes only, the cabinet may develop and maintain a list of sites that may be suitable for activities under this administrative regulation, and may assign priorities to sites on the list. If the cabinet develops a list of sites, it shall be made available to the public. Authorization of a site for activities under this administrative regulation shall be made on a case-by-case basis and shall not be limited to sites on a list.

(2) The cabinet may consider sites and activities proposed by the permittee, person, or operator owing a civil penalty, but the cabinet shall have no obligation to authorize, or give preference to, the sites or activities.

(3) The cabinet shall consult with the county fiscal court before authorizing activities on a site in the county. The county fiscal court may recommend sites or activities, but the cabinet shall have no obligation to authorize, or give preference to, the sites or activities.

(4) The cabinet may consult with other federal, state, and local government agencies and officials, and with private organizations and individuals, as the cabinet deems appropriate, regarding selection of sites and activities to be authorized.

(5) The cabinet may seek public input regarding selection of sites and activities to be authorized, through newspaper notice or by other means.

(6) The cabinet may give preference to sites or activities that address environmental impacts resulting from coal mining.

Section 6. Criteria Applicable to Activities and Costs. (1) The

following activities shall not be authorized under this administrative regulation:

(a) Activities which the permittee, person, or operator owing the civil penalty has a duty to perform under KRS Chapter 350 or other federal, state, or local law;

(b) Activities which the permittee, person, or operator owing the civil penalty, or other person, has a legal obligation to perform under a valid contract; and

(c) Activities on land or waters in which the permittee, person, or operator owing the penalty has, directly or indirectly, an ownership interest or other financial interest.

(2) The following activities and costs shall not be credited toward the civil penalty:

(a) Activities begun or costs incurred prior to the Civil Penalty Reclamation Agreement;

(b) The cost of labor, equipment, time, materials, or services, donated by persons other than the permittee, person, or operator owing the civil penalty;

(c) Payments or gifts by the permittee, person, or operator owing the civil penalty to government agencies or private organizations in exchange for their participation in planning or carrying out activities;

(d) Purchase or lease of land, easements, rights of way, or other access to property;

(e) Construction, modification or repair of a building or other structure, unless the function of the building or other structure is prevention, control, or abatement of environmental pollution;

(f) Repair of a road, unless the purpose of the repair is abatement and control of environmental pollution;

(g) Transportation costs; and

(h) Administrative costs and overhead.

(3) Activities may be authorized in conjunction with an abandoned mine land reclamation project of the cabinet under KRS 350.550 - .597.

(4) Activities may be authorized in conjunction with reclamation of a bond forfeiture site by the cabinet under KRS 350.150, if the permittee, person, or operator owing the civil penalty did not own or control the site under KRS Chapter 350, was not an operator or agent on the site under KRS Chapter 350, and has no direct or indirect ownership or other interest in the land.

Section 7. Request. (1) A permittee, person, or operator desiring to perform in-kind reclamation, environmental rehabilitation, or similar action to correct environmental pollution in lieu of cash payment of a civil penalty shall make a written request to the Commissioner of the Department for Surface Mining Reclamation and Enforcement. The request shall not be made contingent upon any particular proposed site or activities.

(2) The request shall identify:

(a) The permittee and permit number associated with the civil penalty;

(b) The identifying number of the noncompliance or cessation order that resulted in the civil penalty;

(c) The assessed civil penalty amount and the amount that remains unpaid;

(d) The name, mailing address, and telephone number of the permittee, operator or person making the request; and

(e) The date of the request.

(3) If the civil penalty is owed by an individual, the request shall bear the signature of the individual.

(4) If the civil penalty is owed by a business entity, the request shall bear the signature and title of an authorized officer or agent of the business entity.

(5)(a) For a civil penalty assessed by final order of the secretary on or after July 1, 1999, the request shall be filed within thirty (30) days after the date of the final order [of the secretary assessing the civil penalty].

(b) For a civil penalty assessed by final order of the secretary prior to July 1, 1999, the request shall be filed not later than June 30, 2000.

(c) The filing of the request shall not stay the collection of the civil penalty.

(6) Within fifteen (15) days after receiving a request under this section, the cabinet shall notify the permittee, person, or operator, in

writing, of whether the cabinet intends to pursue a Civil Penalty Reclamation Agreement with the permittee, person, or operator. The cabinet may require additional information relevant to the request.

(7) The permittee, person, or operator may withdraw the request at any time prior to entering into a Civil Penalty Reclamation Agreement, by providing written notice to the Commissioner of the Department for Surface Mining Reclamation and Enforcement.

Section 8. Civil Penalty Reclamation Agreement. (1) The Civil Penalty Reclamation Agreement shall specify:

(a) The effective date of the Civil Penalty Reclamation Agreement;

(b) The names of the parties to the Civil Penalty Reclamation Agreement;

(c) The civil penalty amount;

(d) The identifying number of the noncompliance or cessation order that resulted in the civil penalty;

(e) The permit number and name of the permittee associated with the violation that led to the civil penalty;

(f) The activities authorized;

(g) The time span within which the authorized activities shall be completed;

(h) The site of the authorized activities;

(i) The requirements for legal right of entry, liability insurance, and performance bonding;

(j) The conditions under which the Civil Penalty Reclamation Agreement may be modified or terminated;

(k) The consequences of failure to satisfy the terms of the Civil Penalty Reclamation Agreement; and

(l) The effect of successful satisfaction of the terms of the Civil Penalty Reclamation Agreement.

(2) A Civil Penalty Reclamation Agreement may cover multiple civil penalties and sites:

(a) Multiple civil penalties may be covered at a single site; and

(b) A single civil penalty may be covered at multiple sites.

(3) The cabinet and the permittee, person, or operator owing the civil penalty shall be parties to the Civil Penalty Reclamation Agreement. Other parties may be included if the cabinet determines they are necessary parties to the Civil Penalty Reclamation Agreement.

(4) The Civil Penalty Reclamation Agreement may be modified or terminated at any time if approved in writing by all parties.

(5) The cabinet may terminate the Civil Penalty Reclamation Agreement at any time if the permittee, person, or operator owing the civil penalty fails to satisfactorily fulfill the terms of the Civil Penalty Reclamation Agreement.

(6) The cabinet shall conduct field inspections as necessary to monitor progress under the Civil Penalty Reclamation Agreement.

(7) The civil penalty shall remain due and payable until the cabinet has determined in writing that the permittee, person, or operator owing the civil penalty has satisfactorily fulfilled the terms of the Civil Penalty Reclamation Agreement.

(8) The full assessed civil penalty shall be due and payable if the Civil Penalty Reclamation Agreement is breached.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: April 9, 1999

FILED WITH LRC: April 9, 1999 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Jim Villines

(1) Type and number of entities affected: Each permittee, person, or operator that is assessed a civil penalty under KRS Chapter 350 is potentially affected. Only those permittees, persons, or operators that voluntarily request to perform in-kind reclamation, environmental rehabilitation, or similar actions to correct environmental pollution in lieu of cash payment of the civil penalty, will actually be affected. In FY 98, 406 enforcement cases resulted in civil penalties.

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

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

is anticipated.

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

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

1. First year following implementation: The cabinet expects that relatively few entities will seek to perform in-kind work in lieu of cash payment of civil penalties, since KRS 350.990(11) requires that the estimated cost of the in-kind work must exceed the amount of the assessed civil penalty. Those that seek to perform in-kind work must file a written request. Those that are authorized to perform in-kind work must enter into a binding Civil Penalty Reclamation Agreement with the cabinet to perform work selected by the cabinet. No fees are required for the written request or the Civil Penalty Reclamation Agreement. Those entities that enter into a Civil Penalty Reclamation Agreement must obtain legal right of entry to the work site, must maintain liability insurance coverage, will in some cases be required to obtain a performance bond, and must perform the work activities set out in the Civil Penalty Reclamation Agreement. If the in-kind work is not completed in accordance with the Civil Penalty Reclamation Agreement, the full amount of the assessed civil penalty must be paid.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The cabinet will experience some administrative costs in processing written requests and Civil Penalty Reclamation Agreements. Additional costs will result from the necessity for the Division of Abandoned Mine Lands to determine the cost estimates of work to be authorized, and for the cabinet to perform field inspections as necessary for the preparation of, and to monitor work progress under, Civil Penalty Reclamation Agreements.

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

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

(b) Reporting and paperwork requirements: The cabinet must process paperwork concerning requests and Civil Penalty Reclamation Agreements. No special reporting requirements are necessary.

(4) Assessment of anticipated effect on state and local revenues: Penalties that are worked off will not accrue to state revenues. This will not affect the General Fund, which receives the first \$800,000 of civil penalties collected per year, but may reduce deposits to the Bond Pool Fund and the Supplemental Bond Fund which receive the excess over \$800,000. Local revenues will not be affected.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will be implemented through existing personnel of the cabinet. Some additional state funds may be needed to carry out the responsibilities of the Division of Abandoned Mine Lands. The division's administrative functions on AML-eligible lands are covered by 100% federal funds by a grant under Title 4 of PL 95-87. The division's administrative functions on non-AML eligible lands such as bond forfeiture sites are covered 50% by state funds and 50% by federal funds under the cabinet's regulatory program grant under Title 5 of PL 95-87. The making of cost estimates and inspections under this administrative regulation on lands that are not AML-eligible will be covered 50% by state funds, so these new responsibilities will likely result in some additional expenditures of state funds. The need for funds will be determined by actual experience in the first year under this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: The administrative regulation will be implemented statewide, but most activity will occur in the coal fields. Economic impacts, if any, will be positive, but will tend to be small and localized.

(b) Kentucky: No significant impacts are anticipated statewide.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives to the promulgation of an administrative regulation were considered, since the federal mandate at 30 CFR 917.16(c)(3) expressly requires that administrative regulations to implement KRS 350.990(11) (H. B. 839) be developed and submitted to the U.S. Office of Surface Mining for approval.

(8) Assessment of expected benefits of the administrative regulation: The expected benefits of this administrative regulation are implementation of KRS 350.990(11) in compliance with the federal mandate, and achievement of some environmental remediation that may otherwise be unlikely to occur. Further, a permittee, person, or operator that elects to come under this administrative regulation presumably will do so because he finds it beneficial to perform in-kind work instead of paying a civil penalty in cash.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Each project undertaken under this administrative regulation will necessarily have a positive impact on the environment or public health in the local area. The only activities authorized by the statute and this administrative regulation are those that result in "reclamation, environmental rehabilitation, or similar action to correct environmental pollution".

(b) State whether a detrimental effect on the environment and public health would result if not implemented: No direct detrimental effect would result if this administrative regulation is not implemented. The status quo would be maintained. However, opportunities for environmental and public health improvements would be foregone.

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

(10) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: This administrative regulation implements KRS 350.990(11), which is the only statutory or regulatory provision that addresses in-kind work in lieu of cash payment of civil penalties under KRS Chapter 350.

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

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

(11) Any additional information or comments: No additional information or comments.

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 917.16(c)(3). The federal requirement that Kentucky amend its approved program by obtaining federal approval of administrative regulations to implement 1986 Kentucky House Bill 839 (KRS 350.990(11)) was codified at 30 CFR 917.16(c) as follows:

"(c) Pursuant to 30 CFR 732.17, Kentucky is required, prior to implementation of the following statutory amendments, to submit to the Director proposed regulations to implement the amendments, and to receive the Director's approval of the regulations:

(1)...

(2)...

(3) Statutory amendments contained in House Bill 839, submitted to OSMRE on April 29, 1986."

2. State compliance standards. This administrative regulation establishes procedures and criteria under which a permittee, person, or operator assessed a civil penalty under KRS 350.990 may request, and the cabinet may authorize, performance of in-kind reclamation, environmental rehabilitation, or similar actions to correct environmental pollution, in lieu of making cash payment of the civil penalty. It establishes: procedures and criteria for a written request by the permittee, person, or operator that wishes to perform in-kind activities, and processing of the request by the cabinet; criteria under which certain permittees, persons, or operators, certain civil

penalties, and certain sites, are ineligible for in-kind activities; criteria under which certain specific kinds of activities and costs shall not be authorized; criteria for selection of sites for in-kind activities; criteria applicable to authorized activities, including legal right of entry, liability insurance, and performance bonding in some cases; and requirements for Civil Penalty Reclamation Agreements which authorize the in-kind activities.

3. Minimum or uniform standards contained in the federal mandate. The federal surface mining law and regulations do not establish criteria applicable to state programs regarding reclamation in lieu of cash payment of civil penalties. OSM approved HB 839 conditioned upon federal approval of state regulations to implement the statute. The federal decision (51 FR 26006, July 18, 1986) stated as follows:

...Although SMCRA and the federal regulations do not provide for in-kind reclamation in lieu of payment of assessed penalty amounts, Kentucky's statutory amendment does not conflict with the federal requirements for payment of civil penalties. Since the statutory amendment makes clear that operator violations would not be included as possible sites for in-kind reclamation, the operator would be required to correct any violations besides performing the in-kind reclamation work.

Therefore, the director finds the amendment to be consistent with the requirements for payment of penalties in SMCRA section 518. However, prior to the implementation of this statutory amendment, Kentucky is required to submit to the director proposed regulations to implement the statutory amendment and receive the director's approval of the regulations. This required amendment is being codified in 30 CFR 917.16."

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

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

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part, or division of local government this administrative regulation will affect. The fiscal courts of some counties, primarily the coal producing counties.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate directly to existing services provided by the county fiscal courts. KRS 350.990(11) and this administrative regulation require the cabinet to consult with the county fiscal court regarding the cabinet's allowing a person assessed a civil penalty for a violation under KRS Chapter 350 to perform in-kind reclamation, environmental rehabilitation, or similar actions to control environmental pollution, in lieu of paying the civil penalty in cash.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation is not expected to have a direct effect upon the routine expenditures or revenues of the county government. The impact on the county fiscal court relates primarily to consultation with the cabinet regarding potential in-kind environmental work in the county. It is possible that county expenditures could be reduced in some cases, if the in-kind work accomplishes corrective environmental actions that the county would have otherwise undertaken.

TRANSPORTATION CABINET
Department of Fiscal Management
(Amended After Hearing)

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.

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 for three (3) years from the final payment or until an audit has been performed, whichever is first. [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 originating office within 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 external audit staff [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 external audit staff [Transportation Cabinet], the railroad or utility may request a review by the External 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 External 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 Accounts, 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: April 5, 1999

FILED WITH LRC: April 12, 1999 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Contact person: Charles Harman

(1) Type and number of entities affected: in excess of 250 utility and railroad companies.

(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 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 need 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 (Amended After Hearing)

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 supplemental guide 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 supplemental guide 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 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 supplemental guide signs in accordance with the MUTCD and this administrative regulation.

Section 3. Applications and Contracts for Cultural and Recreational Supplemental Guide Signs. An application for cultural and recreational supplemental guide 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 Supplemental Guide 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 supplemental guide 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 supplemental guide signs will be placed for the identification of cultural and recreational activities. The directions of traffic are the following:

1. A left [right] turn;

2. A right [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 Supplemental Guide Sign Design and Composition. (1) Each cultural and recreational supplemental guide 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 supplemental guide 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 may be shown beneath the arrow;

(c) Arrows pointing to the right at the extreme right of the cultural and recreational supplemental guide sign; and

(d) Arrows pointing to the left or up at the extreme left of the cultural and recreational supplemental guide sign.

(3)(a) The arrangement of the cultural and recreational supplemental guide 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 supplemental guide 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 supplemental guide signs shall be installed on a single information panel.

(5) Cultural and recreational supplemental guide 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 supplemental guide signs are to be installed on an approach to an intersection, the cultural and recreational supplemental guide signs may be combined on the same information panel with the cultural and recreational supplemental guide sign for left turns placed above the cultural and recreational supplemental guide signs for right turns.

(6) The standard lettering for cultural and recreational supplemental guide 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 supplemental guide sign shall not exceed seventy-two (72) inches wide and eighteen (18) inches tall.

(b) The cultural and recreational supplemental guide 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 twelve (12) [~~sixteen (16)~~] inches wide and sixteen (16) inches tall.

(d) **Cultural and recreational interstate area symbols may be used. These symbols shall be consistent with the MUTCD.**

(e) There shall be a one (1) inch white border surrounding the sign and separating the directional arrow and legend.

(f) [(e)] There shall be a one (1) inch spacing between the border and legend and two (2) inch spacing between lines of legend.

(g) [(f)] The maximum length of the legend shall be five (5) feet and four (4) inches per line.

(h) [(g)] In areas of reduced speeds or forty-five (45) mph or less the size of the cultural and recreational **supplemental guide** 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 and recreational activity shall meet the following requirements to qualify for cultural and recreational signing. A cultural and recreational **supplemental guide** 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 **supplemental guide** 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 **supplemental guide** 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 **supplemental guide** 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 **or eligible for listing on** the [~~state or~~] National Register of Historic **Places** [~~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 **supplemental guide** 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 **TC 99-1 "Encroachment Permit", March 1999 Edition.** [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: April 6, 1999

FILED WITH LRC: April 7, 1999 at 10 a.m.

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.

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(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
Kentucky Department of Education
Bureau for Learning Support Services
(Amended After Hearing)

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 statistics [thresholds] shall be calculated only for those schools classified as A1 schools.

Section 3. ~~If a local board [A2-A6 Schools may issue Diplomas: However, if an A2-A6 school] issues a high school diploma or a certificate under 704 KAR 3:305 to students in an A2 to A6 school [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 program 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: April 14, 1999
FILED WITH LRC: April 14, 1999 at 4 p.m.

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 (Amended After Hearing)

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 school [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 1998 [1999]-2000 biennium index [in its comparison group of schools], the school shall be eligible to receive a reward if the school meets the dropout criteria under KRS 158.6455(5)(b)1.

(3) If a school's accountability index [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 a review by a scholastic audit team, eligibility for school improvement funds, and [developing] a required school improvement plan.

Section 3. Nonacademic Index Calculations. (1) The values for attendance rate and successful transition to adult life shall be the actual percentage reported. The values entered into formula calculations for retention rate and dropout rate shall be 100 minus the actual percentage calculated. Nonacademic data for a particular assessment year shall be calculated using the data from the previous school year. Nonacademic data shall be based on all grades within a school building generating appropriate data as follows:

- (a) Attendance, primary through grade twelve (12);
- (b) Retention rates, grades four (4) through (12);
- (c) Dropout rates, grades seven (7) through twelve (12); and
- (d) Successful transition to adult life for the graduating students.

Section 4. Alternative Portfolios. Scores from alternate portfolios shall be included in the academic indices so that the data from an alternative portfolio completed by a student eligible to participate with an alternate portfolio contributes the same weight to the academic component of the accountability index as would the data for a student participating in the regular components of the assessment program at the elementary, middle, or high school levels.

Section 5. Schools Not Conforming to the Standard Grade Configuration. (1) If a school does not have grades four (4) and five (5) at the elementary level, grades seven (7) and eight (8) at the middle school level, or grades ten (10), eleven (11), and twelve (12) at the high school level, the school shall be combined with the school or schools having the missing grade(s) its students previously attended or would subsequently attend, forming a single school accountability unit.

(2) A school or school district may request a waiver of the requirements of subsection (1) of this section or from the normal configuration of schools (elementary, middle, or high school) from the Kentucky Board of Education specifying other combinations of schools and assessment data if all students in an accountability grade are included, and all schools are accountable for all content areas assessed. A condition for the granting of a waiver shall be that each affected school and school district shall waive the basis of a subsequent appeal of a school's classification. A waiver request shall be received by the Kentucky Department of Education by September 1, 1999.

Section 6. Schools Having More than One (1) Accountability Level. If a school has more than one (1) accountability level, the school's accountability index shall be the average of the academic and nonacademic data for the school.

Section 7. School Service Area Reconfigurations. (1) If as a result of a change in service area boundaries or local board of education policies affecting student population served by a school, less than eighty (80) percent of a school's student population at its accountability grades is stable, the school shall be considered a reconfigured school. To determine if eighty (80) percent of the population is stable, the number of students in the stable population shall be divided by the sum of that number, plus the lost population, plus the gained population. If the result is less than eight-tenths (.8), the school shall be considered a reconfigured school.

(2) A school that would be considered a reconfigured school in the first year of the accountability cycle shall be treated as if it were not reconfigured, with the exception that the nonacademic index for the district from the previous year at the corresponding level (elementary, middle, or high school) shall be substituted for that school's nonacademic data.

(3) A school that is considered a reconfigured school in the second year of the accountability cycle shall have its baseline calculated from the second year of the accountability cycle, as opposed to the normal weighted average of the first two (2) years of the cycle, with the nonacademic index for the district from the previous year at the corresponding level (elementary, middle, or high school) substituted for that school's nonacademic data.

(4) A school that is considered a reconfigured school in the third or fourth year of an accountability cycle shall have the performance judgment that would have applied to the district at that level (elementary, middle, or high school), if separate decisions were to be applied at the district level.

(5) A school that has contained more than one (1) level (elementary, middle, or high school) and is reconfigured by removing an entire level of the accountability grades may re-

quest that the portion of the school remaining stable be considered within the accountability system using its established historical data.

(6) A school in transition because of a new building or a new policy affecting population served and being phased in may request that the Department of Education establish data to maintain the continuity of accountability data if the request does not require the tracking of individual student data. This request shall require the approval of each affected school council (or the principal, if a school does not have a council) and the local board of education upon the recommendation of the superintendent.

(7) A school district shall notify the Department of Education of any school considered a reconfigured school as provided in this administrative regulation by September 30 of the school year in which the reconfiguration occurs.

WILMER S. CODY, Commissioner of Education
HELEN MOUNTJOY, Chairperson

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: April 14, 1999

FILED WITH LRC: April 14, 1999 at 4 p.m.

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.

CABINET FOR FAMILIES AND CHILDREN
Department for Community-Based Services
Division of Policy Development
(Amended After Hearing)

904 KAR 2:006. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP).

RELATES TO: KRS 205.010, 205.200(2), (3), 205.2003, 205.2005, 205.703, 45 CFR 205.10, 205.52, 232.11-12, 232.40-48, 233.10, 233.40, 233.50, 233.90, 233.100, 8 USC 1611-1645, 42 USC 601 et seq., [602;] [~~Expansion of Definition of Specified Caretaker Relative~~], Transmittal No. AGF-AT-91-33 (December 12, 1991), U.S. Department of Health and Human Services, Administration for Children & Families, Office of Family Assistance, "Determining AFDC Eligibility When the Only Dependent Child Receives Foster Care Benefits", Transmittal No. AGF-AT-94-5 (February 28, 1994), U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance] [, PL 104-208]

STATUTORY AUTHORITY: KRS 194B.050 [194.050(1)], 205.010, 205.200(2), (3), 42 USC 601 et seq., EO 98-731 [96-862]

NECESSITY, FUNCTION, AND CONFORMITY: [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children.] The Cabinet for Families and Children has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program, [of Aid to Families with Dependent Children, now named] the Kentucky Transitional Assistance Program, the block grant program funded under 42 USC 601 et seq. KRS 205.200(2) requires that the conditions of eligibility to receive money grants [from Aid to Families with Dependent Children, now named the Kentucky Transitional Assistance Program,] be prescribed by administrative regulations in conformity with 42 USC 602 and federal regulations. This administrative regulation sets forth the technical requirements of school attendance, residence, citizenship, deprivation, living with a relative, age, one (1) category of assistance, cooperation in child support enforcement activities, strikers, minor teenage parent provisions, time limits and potential entitlement for other programs for eligibility for benefits from the Kentucky Transitional Assistance Program.

Section 1. Definitions. (1) "Battered or subjected to extreme cruelty" means an individual who has been subjected to:

- (a) Physical acts that resulted in, or threatened to result in, physical injury to the individual;
- (b) Sexual abuse;
- (c) Sexual activity involving a dependent child;
- (d) Being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities;
- (e) Threats of, or attempts at, physical or sexual abuse;
- (f) Mental abuse; or
- (g) Neglect or deprivation of medical care.
- (2) "Cabinet" means the Cabinet for Families and Children.
- (3) "Child" means an individual:
 - (a) [1-] Age fifteen (15) or under;
 - (b) [2-] Age sixteen (16), [or] seventeen (17), or eighteen (18) in regular full-time attendance in elementary, junior high, or high school or equivalent level of vocational or technical school; or
 - (c) [3-] Age eighteen (18), in regular full-time attendance in high school or equivalent level of vocational or technical school and expected to complete a course of study;
 - a. Before reaching age nineteen (19); or
 - b. During the month of the 19th birthday; or
 - 4-] Under age eighteen (18) and a high school graduate.
- (4) "Domestic violence" means "battered or subjected to extreme cruelty" as defined in subsection (1) of this section.

(5) "Kentucky Transitional Assistance Program (K-TAP)", Kentucky's Temporary Assistance for Needy Families (TANF) program, means a money payment program for children who are deprived of parental support or care due to:

- (a) Death, continued voluntary or involuntary absence of a parent;
- (b) Physical or mental incapacity of one (1) parent when both parents are in the home; or

(c) Unemployment of at least one (1) parent when both parents are in the home.

(6) "Kentucky Works" means a program which assists recipients of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance.

(7) "Minor teenage parent" means an individual who:

- (a) Has not attained eighteen (18) years of age;
- (b) Is not married or is married and not living with the spouse; and
- (c) Has a minor child in the applicant's or recipient's care.

(8) "Parent" means the natural, adoptive, or adjudicated (including administrative establishment of paternity) parent of the child.

[(8) "Principal wage earner (PWE)" means the parent who earned the greater amount of income in the twenty-four (24) months immediately preceding the month of application for K-TAP benefits based on the deprivation of unemployment.]

(9) "Prior labor market attachment (PLMA)" means the parent has earned not less than \$1,000 [fifty (50) dollars] during the twenty-four (24) [twelve (12)] months prior to each of six (6) or more calendar quarters ending on March 31, June 30, September 30 or December 31, with any thirteen (13) calendar quarter period ending within one (1) year of the application, for K-TAP benefits based on the deprivation of unemployment.

(10) "Qualified alien" means an alien who, at the time the alien applies for, receives, or attempts to receive K-TAP, is:

- (a) Lawfully admitted for permanent residence under 8 USC 1101 et seq.;
- (b) Granted asylum under 8 USC 1158;
- (c) A refugee who is admitted to the United States under 8 USC 1157;
- (d) Paroled into the United States under 8 USC 1182(d)(5) for a period of at least one (1) year;
- (e) An alien whose deportation is being withheld under:
 1. 8 USC 1253(h), as in effect prior to April 1, 1997; or
 2. 8 USC 1231(b)(3);
- (f) Granted conditional entry pursuant to 8 USC 1153(a)(7) as in effect prior to April 1, 1980; or
- (g) An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 USC 1522; [Lawfully residing in any state and is:
 1. A veteran as defined in 38 USC 101 with a discharge characterized as an honorable discharge and not on account of alienage;
 2. On active duty other than active duty for training in the Armed Forces of the United States; or
 3. The spouse or unmarried dependent child of an individual described in paragraph (g) 1 or 2 of this subsection;]
- (h) Battered or subjected to extreme cruelty in the United States by:

1. A spouse or a parent; or
2. A member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, the battery or cruelty; or
- (i) An alien, a child of an alien or a child who is an alien who has been battered or subjected to extreme cruelty in the United States by:
 1. A spouse or a parent of the alien without the active participation of the alien in the battery or cruelty; or
 2. A member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to the battery or cruelty.

(j) Provisions in paragraph (h) and (i) of this subsection shall apply only if:

1. The alien no longer resides in the household with the individual responsible for the battery or cruelty;
2. There is a substantial connection between the battery or cruelty and the need for the benefit; and
3. The alien has been approved or has a petition pending for:
 - a. Status as a spouse or child of a United States citizen pursuant to clause (ii), (iii), or (iv) of 8 USC 1154(a)(1)(A);
 - b. Classification pursuant to clause (ii) or (iii) of 8 USC 1154(a)(1)(B); or
 - c. Suspension of deportation and adjustment of status pursuant to 8 USC 1254(a)(3).

(k) An alien who is lawfully residing in Kentucky and is:

1. A veteran as defined in 38 USC 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and

not on account of alienage;

2. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements pursuant to 38 USC 5303A(d); or

3. The spouse or unremarried surviving spouse if the marriage fulfills the requirements in 38 USC 1304, or unmarried dependent child of an individual described in clause a or b of this subparagraph.

(1) An alien who is admitted to the United States as an Amerasian immigrant pursuant to 8 USC 1101.

(11) "Qualifying parent" means the parent who meets PLMA [earned the greater amount of income in the twenty-four (24) months immediately preceding the month of application for K-TAP benefits based on the deprivation of unemployment].

(12) "Second chance home" means an entity that provides a minor teenage parent a supportive and supervised living arrangement in which a minor teenage parent is required to learn parenting skills, including child development, family budgeting, health and nutrition, and other skills to promote long-term economic independence and the well-being of the child of the minor teenage parent.

(13) "Striker" means an employed individual who is participating in:

- (a) A work stoppage;
- (b) A concerted slowdown of work; or
- (c) An interruption of operations at his place of employment.

(14) "Supplemental Security Income (SSI)" means monthly cash payments made under the authority of:

- (a) 42 USC 1381 to 1385 to the aged, blind and persons with a disability;
- (b) 42 USC 1382e; or
- (c) 42 USC 1382.

(15) "Unemployed parent" (UP) case means K-TAP benefits paid to a family when both parents are in the home and at least one (1) parent is unemployed.

(16) "Work" means participation in the following:

(a) [Except for two (2) parent cases, for all families work means at least twenty (20) hours or more per week of:

- 1. Unsubsidized employment;
- (b) [2.] Subsidized employment;
- (c) [3.] Work experience training;
- (d) [4.] Community services; or
- (e) [5. Participation in] Work programs established by the cabinet.

[(b) For two (2) parent cases work means at least thirty-five (35) hours or more per week of:

- 1. Unsubsidized employment;
- 2. Subsidized employment;
- 3. Work experience training;
- 4. Community services; or
- 5. Participation in work programs established by the cabinet.]

Section 2. Age and School Attendance. (1) The definition of a "child", as specified in Section 1 of this administrative regulation shall be met for at least one (1) person in the home.

(2) Verification of school attendance shall be required for:

(a) A child who is sixteen (16), seventeen (17), or eighteen (18) years of age, in order to determine his continuing eligibility; or

(b) A minor teenage parent pursuant to Section 18(1) of this administrative regulation.

(3) Full- and part-time school attendance is defined in 904 KAR 2:016, Standards for need and amount for K-TAP.

(4) Unless the parent states the child shall not reenter school, a child shall be considered in regular attendance in months in which he is not attending because of:

- (a) Official school or training program vacation;
- (b) Illness;
- (c) Convalescence; or
- (d) Family emergency.

(5) Verification of a high school diploma for a child under age eighteen (18) who is a high school graduate shall be required.

Section 3. Enumeration. (1) Each person included in the K-TAP case shall furnish his Social Security number or apply for a number if

one has not been issued.

(2) Refusal to furnish the Social Security number or apply for a number shall result in the ineligibility of the person whose Social Security number is not furnished.

(3) The agency shall assist an individual in making application for a Social Security number, if needed.

Section 4. Residence and Citizenship. (1) Residence. A resident shall be anyone who:

(a) Is living in the state voluntarily and not for a temporary purpose; or

(b) Entered the state with a job commitment or seeking employment; and

(c) Is not receiving assistance funded by a block grant program under 42 USC 601 et seq. from another state.

(2) Citizenship.

(a) Except as provided in paragraphs (b) and (c) of this subsection, K-TAP shall be provided only to United States citizens.

(b) A qualified alien, as defined in Section 1(10) of this administrative regulation, who entered the United States before August 22, 1996, who is otherwise eligible for K-TAP, shall be eligible for assistance.

(c) A qualified alien, as defined in Section 1(10) of this administrative regulation, who entered the United States on or after August 22, 1996, shall not be eligible for K-TAP for a period of five (5) years beginning on the date of the alien's entry into the United States. The following exceptions apply to this provision:

1. An alien who is admitted to the United States as a refugee under 8 USC 1157.

2. An alien who is granted asylum under 8 USC 1158.

3. An alien whose deportation is being withheld pursuant to:
a. [under] 8 USC 1253(h), as in effect prior to April 1, 1997; or
b. 8 USC 1231(b);

4. An alien who is lawfully residing in Kentucky and is:

a. A veteran as defined in 38 USC 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

b. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements pursuant to 38 USC 5303A(d); or

c. The spouse or unremarried surviving spouse if the marriage fulfills the requirements in 38 USC 1304, or unmarried dependent child of an individual described in clause a or b of this subparagraph;

5. An alien who is a Cuban and Haitian entrant pursuant to 8 USC 1522; or

6. An alien who is admitted to the United States as an Amerasian immigrant pursuant to 8 USC 1101.

(d) Failure of the parent or other adult, applying for or receiving benefits, to sign a citizenship or alien status declaration shall cause the needs of the parent or other adult to be removed from the case.

Section 5. Deprivation. (1) To be eligible for K-TAP, a child shall be in need and shall be deprived of parental support or care as specified in Section 1(5) [(4)] of this administrative regulation.

(2) A specific deprivation factor shall be verified for each child for whom assistance is approved.

Section 6. Deprivation Due to Death. The death of either parent shall qualify a child as deprived due to death.

Section 7. Deprivation Due to Absence. (1) To be considered deprived due to absence, a needy child shall be physically separated from the parent [and:

~~(a) The nature of the absence of the parent interrupts or terminates the parent's functioning as a provider of maintenance, physical care, or guidance for the child; and~~

~~(b) The known or indefinite duration of absence precludes counting on the parent's performance of his function in planning for the present support or care of the child].~~

(2) Absence may be voluntary or involuntary.

(a) Voluntary absence includes:

- 1. Divorce;
- 2. Legal separation;
- 3. Marriage annulment;

4. Desertion:

a. Of thirty (30) days or more if:

- (i) The parent voluntarily leaves; or
- (ii) The parent refuses to accept the child into his home; or

b. Of less than thirty (30) days if:

(i) The child leaves the parent because the parent was requiring the child to live under circumstances hazardous to the health or morals of the child; or

(ii) One (1) of the parents in the home is required by the court to leave the home because that parent was requiring the child to live under circumstances hazardous to the health or morals of the child; or

(iii) The child is voluntarily placed with relatives following a finding by the cabinet [Department for Social Services] that the home is unsuitable; or

(iv) The child is placed by the court with a specified relative other than the parent; or

(v) The child is eligible and receiving benefits based on the unemployment or the incapacity of a parent and one (1) of the parents subsequently leaves the home; or

(vi) Both parents are absent from the home;

5. Forced separation [of seven (7) days or more]; or

6. Birth out-of-wedlock.

(b) Involuntary absence includes:

- 1. Commitment to a penal institution for thirty (30) days or more;
- 2. Long-term hospitalization;
- 3. Deportation; or
- 4. Single parent adoption.

(3) A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday shall be considered absent from the home.

Section 8. Deprivation Due to Incapacity. (1) Each determination of a deprivation of incapacity shall be based on a full consideration and assessment of the following factors affecting the claimant:

(a) Medical;

(b) Social; and

(c) Economic.

(2) If a verified medical condition exists, then all relevant social and economic factors shall be considered to determine whether the parent's condition is the cause of and results in the parent's inability to support or care for the child.

(3) Incapacity exists in a case when the following criteria are met:

(a) It is medically determined that one (1) parent has a physical or mental disability, illness or impairment which was:

- 1. Present at the time of application; and
- 2. Which has continued or is expected to last for a period of at least thirty (30) calendar days.

(b) The thirty (30) day period may include a period in which the claimant is undergoing:

- 1. Planned diagnostic studies; or
- 2. Evaluation of rehabilitation potential; and

(c) It is determined by nonmedical evaluation that the disability, illness or impairment is debilitating to the extent of reducing substantially or eliminating the parent's ability to support or care for an otherwise eligible child.

(4) A determination regarding incapacity shall be made by:

(a) [a:] Field staff if the following criteria are met:

- 1. The parent declares physical inability to work;
- 2. The worker observes some physical or mental limitation; and
- 3. The parent:

a. Is receiving SSI; or

b. Is age sixty-five (65) or over; or

c. Has been determined to meet the definition of blindness as contained in 42 USC 1382c or 42 USC 416 by the Social Security Administration; or

d. Has been determined to meet the definition of permanent and total disability as contained in 42 USC 1382c or 42 USC 416 by either:

(i) The Social Security Administration; or

(ii) The medical review team of the Department for Community-Based Services [Social Insurance]; or

e. Has previously been determined to be incapacitated or permanently and totally disabled by the medical review team, hearing officer,

appeal board, or court of proper jurisdiction with no reexamination requested and there is no visible improvement in condition; or

f. Is receiving Retirement, Survivors and Disability Insurance, federal black lung benefits, or railroad retirement benefits based on disability as evidenced by an award letter; or

g. Is receiving Veterans Administration benefits based on 100 percent disability, as verified by an award letter; or

h. Is currently hospitalized and a statement from the attending physician indicates that incapacity will continue for at least thirty (30) days. If application was made prior to the admission, the physician is also requested to indicate if incapacity existed as of application date; or

i. Is recovering from surgery, illness or injury which requires a period of time for recovery, up to six (6) weeks, as specified by a physician statement. Periods longer than six (6) weeks shall be determined through the medical review team; or

j. Is on approved sick leave recovering from surgery, illness or injury for the duration of the approved sick leave if the employer is holding the job for the individual's return, as verified by the employer; or

k. Is a woman in a high risk pregnancy, during the duration of the pregnancy, as verified by physician statement.

(b) The medical review team, consisting of a licensed physician and a social worker employed by the agency, if a determination by field staff is precluded.

(5) Factors to be considered by the medical review team in making the medical determination shall include:

(a) The claimant's medical history and subjective complaints regarding an alleged physical or mental disability, illness or impairment; and

(b) Competent medical testimony relevant to:

1. Whether a physical or mental disability, illness or impairment exists;

2. Whether the disability, illness or impairment is sufficient to reduce the parent's ability to support or care for a child; and

3. Whether the disability, illness or impairment is likely to last thirty (30) days.

(6) Factors to be considered in making the nonmedical evaluation shall include:

(a) The claimant's:

1. Age;

2. Employment history;

3. Vocational training;

4. Educational background; and

5. Subjective complaints regarding the alleged effect of the physical or mental condition on the claimant's ability to support or care for the child; and

(b) The extent and accessibility of employment opportunities available in the claimant's area of residence.

(7) In determining the extent and accessibility of available employment opportunities, the limited employment opportunities of individuals with a disability shall be taken into account; and

(a) Available printed materials that provide information regarding available employment opportunities shall be researched;

(b) The local Department for Employment Service office shall be contacted regarding accessible employment opportunities within the claimant's area of residence; and

(c) The claimant shall be referred, if necessary, for further appraisal of his abilities.

(8) A written report shall be made of the determination under this subsection.

(9) Each claimant shall be provided timely and adequate notice of and an opportunity for a fair hearing as provided in 921 [904] KAR 2:055.

Section 9. Deprivation Due to Unemployment. (1) The determination that a child is deprived of parental support due to the unemployment of a parent when both parents are in the home shall be based on the determination that the qualifying parent [principal wage earner] meets the criteria of unemployment and has a PLMA, as defined in Section 1 of this administrative regulation.

(2) The determination of the qualifying parent [PWE] shall include the following:

(a) If the agency is unable to secure primary evidence of earnings to determine which parent is the qualifying parent [PWE], the agency shall designate the qualifying parent [PWE] using the best evidence available.

(b) If both parents earned identical amounts of income, or no income, the agency shall designate the parent meeting the criteria of unemployment, as specified in subsection (3) of this section.

(c) Earnings of each parent shall be considered in determining the qualifying parent [PWE] regardless of when their relationship began.

(d) The qualifying parent [PWE] designation shall remain with the same parent as long as assistance is received on the basis of the same application.

(3) Unemployment. A parent shall be considered to be unemployed if:

(a) Employed less than 100 hours in a calendar month; or

(b) Employment exceeds 100 hours in a particular month, but the work is intermittent and the excess is of a temporary nature. This would be evidenced by the fact that the parent:

1. Was under the 100 hour standard in the prior two (2) months, from the month of application for K-TAP; and

2. Is expected to be under the 100 hour standard in the following month of application for K-TAP.

(c) The 100 hour requirement for unemployment in paragraphs (a) and (b) of this subsection shall apply to K-TAP applicants.

(4) PLMA shall be established if the parent:

(a) Attests to the amount of earnings [an employment history] meeting the definition in Section 1(9) of this administrative regulation;

1. Gross income from self-employment and farming qualify as earned income in determining PLMA; and

2. The self-employed individual does not have to realize a profit to meet this requirement.

(b) Within twelve (12) months prior to application, received unemployment compensation; or

(c) Is currently receiving unemployment compensation or if potentially eligible, has made application for and complies with the requirements to receive unemployment insurance benefits.

(5) In determining whether or not criteria in subsection (4) of this section is met, two (2) semesters of [the following shall be taken into consideration:

(a) Participation in the Kentucky Works Program shall be considered as earning an income in determining PLMA.

(b) full-time school attendance, as defined by the school or institution, may be substituted for \$500 of the \$1000 earnings. [two (2) of the six (6) calendar quarters. Qualifying activities shall be:

1. An elementary;

2. Secondary; or

3. Vocational or technical training course designed to prepare the individual for gainful employment.

(c) Gross income from self-employment and farming qualify as earned income in determining PLMA. The self-employed individual does not have to realize a profit to meet this requirement.]

(6) Restrictions. Unemployment shall not exist if the qualifying parent [PWE]:

(a) Is on strike;

(b) Is temporarily unemployed:

1. Due to weather conditions or lack of work;

2. If there is a job to return to; and

3. Return can be anticipated within thirty (30) days or at the end of a normal vacation period;

(c) Is unavailable for full-time employment;

(d) Is under contract for employment, unless a written statement from the employer verifies that the individual is subject to release from the contract if full-time employment is secured;

(e) Has not met the criteria of unemployment for at least thirty (30) days;

(f) Is not:

1. Registered for work pursuant to 904 KAR 2:370, Section 4(3);

or

2. Subject to Kentucky Works, as specified in 904 KAR 2:370; or

(g) Has refused a bona fide offer of employment or training for employment without good cause in the thirty (30) days prior to UP eligibility or during the course of receipt of UP benefits. Good cause exists if criteria specified in 904 KAR 2:370, Section 6(1) [2:016; Sec-

tion 4(4)(a)1, 2, 3, or 4] are met.

Section 10. Living with a Specified Relative. To be eligible for K-TAP a needy child shall be living in the home of a relative or legal guardian as follows:

(1) A blood relative, including[:

(a) Father;

(b) Mother;

(c) Grandfather;

(d) Grandmother;

(e) Brother;

(f) Sister;

(g) Uncle;

(h) Aunt;

(i) Nephew;

(j) Niece;

(k) First cousin; and

(l) First cousin once removed;

(2) a relative of the half-blood;

[(3) Preceding generations denoted by prefixes of:

(a) Grand;

(b) Great;

(c) Great-great; or

(d) Great-great-great;

(4) A stepfather, stepmother, stepbrother, stepsister;]

(2) [(5)] Any person listed in subsection [subsections] (1) [through (4)] of this section if the alleged father has had paternity established through the administrative determination process as specified in Section 11 of this administrative regulation;

(3) [(6)] An adoptive parent, the natural and other legally adopted child and other relative of the adoptive parent;

(4) Legal guardian;

(5) A relative by marriage [(7) The husband or wife of any person listed in subsections (1) through (6) of this section], even if the marriage may have terminated, providing termination occurred after the birth of the child.

(a) For K-TAP eligibility purposes, a couple that has been considered married by a state with common-law marriage provisions shall be considered married.

(b) The statement of the applicant or recipient that he resides in a state which recognizes common-law marriage shall be accepted as verification by the agency.

(6) [(8)] Cash assistance shall not be provided for a child who is absent, or expected to be absent, from the home for a period of thirty (30) consecutive days or more unless good cause exists. Good cause for absence, or expected absence, of the child from the home for a period of thirty (30) consecutive days or more, shall exist if the parent continues to exercise care and control of the child and the child is absent due to:

(a) Medical care;

(b) Attendance at school including boarding school;

(c) College or vocational school;

(d) Emergency foster care, as verified by the cabinet [Department for Social Services]; or

(e) If it is intended that the child will return to the home and the parent or specified relative maintains parental control of the child, short visits with friends or relatives.

(7) [(9)] A child shall be removed from the benefit group the first administratively feasible month following thirty (30) consecutive days from the date the child is placed in emergency foster care. If the only eligible child in the benefit group is absent due to emergency foster care, the otherwise eligible parent or parents in the benefit group shall:

(a) Remain eligible for sixty (60) days from the date the child is placed in emergency foster care; and

(b) If no other eligible child is in the benefit group, be discontinued the first administratively feasible month following sixty (60) days from the date the child is placed in emergency foster care.

(8) [(10)] If a specified relative fails to notify the agency of a thirty (30) consecutive day or more absence of the child for a reason other than one (1) of the good cause reasons listed in subsection (8) of this section, the specified relative shall not be eligible for his share of K-TAP benefits during the period of the child's unreported absence of thirty (30) consecutive days or more. Ineligible benefits received by the

specified relative and child during the period of the child's unreported absence of thirty (30) consecutive days or more shall be recouped pursuant to Section 10 of 904 KAR 2:016.

Section 11. Administrative Establishment of Paternity. (1) An administrative determination of paternity as set forth in this administrative regulation shall be used only to establish relationship for K-TAP eligibility and shall be limited to situations in which the following types of evidence are present:

- (a) A birth certificate listing the alleged parent; or
- (b) Legal documents such as:
 - 1. Hospital records;
 - 2. Juvenile court records;
 - 3. Wills; and
 - 4. Other court records which clearly indicate the relationship of the alleged parent or relative; or
- (c) Receipt of statutory benefits as a result of the alleged parent's circumstances; or
- (d) A sworn statement or affidavit of either parent acknowledging paternity plus one (1) of the following:
 - 1. School records;
 - 2. Bible records;
 - 3. Immigration records;
 - 4. Naturalization records;
 - 5. Church documents, such as baptismal certificates;
 - 6. Passport;
 - 7. Military records;
 - 8. U.S. Census records; or
 - 9. Notarized statement or affidavit from an individual having specific knowledge about the relationship between the alleged parent and child.

(2) Rebuttal of administrative paternity may occur if:

- (a) The parent or, in the absence of the parent, the caretaker relative alleges the evidence present in subsection (1)(a) or (b) of this section is erroneous and provides substantiation of the erroneous information; and
 - (b) The parent or caretaker relative provides a notarized statement or affidavit acknowledging the erroneous information and containing the correct information on the actual alleged parent.
- (3) Presence of the notarized statement or affidavit specified in subsection (2)(b) of this section shall serve as rebuttal to the evidence present in subsection (1)(a) or (b) of this section and a determination of paternity shall not be acknowledged.

Section 12. One (1) Category of Assistance. (1) A child or adult relative shall not be eligible for K-TAP if receiving SSI.

(2) If a child who receive SSI meets the K-TAP requirements of age, deprivation and living in the home of a specified relative, the specified relative may be approved for K-TAP if all other eligibility factors are met.

(3) If a child who receives foster care benefits meets the K-TAP requirements of age, deprivation and living in the home of a specified relative, the specified relative may be approved for K-TAP if all other eligibility factors are met.

Section 13. Strikers. (1) A family shall be ineligible for benefits for any month in which the parent, with whom the child is living is, on the last day of the month, participating in a strike; and

(2) A specified relative other than the parent shall be ineligible for benefits for any month if, on the last day of the month, the relative is participating in a strike.

Section 14. Work Registration. An adult applicant or recipient of the K-TAP benefit group shall register for work pursuant to 904 KAR 2:370, Section 4(3).

Section 15. Kentucky Works. The technical requirements for participation in the Kentucky Works Program are specified in 904 KAR 2:370.

Section 16. Cooperation in Child Support Enforcement Activities. (1) The Department for Community-Based Services [~~Social Insurance~~] shall attempt to secure parental support, and if necessary establish

paternity, for children receiving K-TAP based on the following voluntary absence deprivation factors:

- (a) Divorce;
- (b) Desertion;
- (c) Birth out-of-wedlock;
- (d) Legal separation;
- (e) Forced separation; or
- (f) Marriage annulment.

(2) With the exception of good cause reasons, specified in subsection (4) of this section, avoidance of the twenty-five (25) percent reduction of the amount of the payment maximum in K-TAP benefits pursuant to subsection (7) of this section shall be dependent upon the applicant's or recipient's cooperation in child support activities. This includes:

- (a) Identifying the noncustodial parent or obligor;
 - (b) Providing information to assist in the location of the noncustodial parent or obligor;
 - (c) Establishing paternity; and
 - (d) Forwarding child support payments received to the agency.
- (3) The Cabinet for Families and Children shall provide written notice to the applicant or recipient that he may claim good cause for refusing to cooperate.

(4) The applicant or recipient shall be determined to have "good cause" for failing to cooperate only when one (1) or more of the following criteria is met:

- (a) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to the child; or
- (b) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to himself to such an extent that it would reduce his capacity to care for the child adequately; or
- (c) The child was conceived as a result of incest or forcible rape and the department believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or
- (d) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction and the department believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or
- (e) The applicant or recipient is being assisted by a public or licensed private social service agency:

- 1. To resolve whether to keep the child or release him for adoption; and
- 2. Discussion has not gone on for more than three (3) months; and
- 3. The cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation.

(5) Unless an extension is granted, the applicant or recipient shall have twenty (20) days from the date the good cause claim is filed to provide evidence to substantiate the claim.

(a) Evidence upon which a determination of good cause shall be made includes the following:

- 1. Birth certificates, medical, or law enforcement records indicating that the child was conceived as a result of incest or forcible rape;
- 2. Court documents or other records indicating legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction;
- 3. Records (court, medical, criminal, child protective services, social services, psychological or law enforcement) indicating the non-custodial parent or obligor, or the alleged parent might inflict physical or emotional harm on the child or caretaker relative;
- 4. A written statement from a public or licensed private social service agency that assistance is being given to the applicant or recipient to resolve the issue of whether to keep the child or relinquish the child for adoption and the issue has not been pending more than three (3) months; or
- 5. Notarized statements from individuals, other than the applicant or recipient, with knowledge of the circumstances which provide the basis for the "good cause" claim.

(b) In each good cause determination based upon anticipation of serious emotional harm to the child or caretaker relative, the following shall be considered:

- 1. The present emotional state of the individual subject to emo-

tional harm;

2. The emotional health history of the individual;
3. The extent and probable duration of the individual's emotional impairment; and

4. The extent of involvement required by the individual in establishing paternity or enforcing support obligations.

(c) When the good cause claim is based on the anticipation of physical harm to the child or caretaker relative, and corroborative evidence is not submitted:

1. The agency shall conduct an investigation if it is believed that:
 - a. Corroborative evidence is not available; and
 - b. The claim is credible without corroborative evidence.
2. If the agency conducts an investigation of a good cause claim, it shall not contact the noncustodial parent or obligor, or the alleged parent regarding support unless the contact is necessary to establish the good cause claim.
3. If it is necessary for the agency to make the contact, the worker shall notify the applicant or recipient of the proposed contact to either:
 - a. Obtain permission for the contact; or
 - b. To enable the applicant or recipient to:
 - (i) Present additional evidence or information so that such contact is unnecessary;
 - (ii) Withdraw the application for assistance or request discontinuance of K-TAP; or
 - (iii) Have the good cause claim denied.

(6) After receipt of evidence to substantiate the good cause claim or conducting an investigation, the agency shall:

- (a) Document the case;
- (b) Determine that:
 1. Good cause exists and support activities cannot be initiated without endangering:
 - a. The best interests of the child; or
 - b. The physical or emotional health of the child or the relative; or
 2. Good cause does not exist.

(c) Advise the applicant or recipient in writing of the result of the good cause claim determination; and

(d) Identify each case in which good cause is established, but may be subject to change, for subsequent review.

(7) If the specified relative refuses to cooperate without good cause criteria being claimed, or claimed but not deemed to be met by the agency:

(a) K-TAP benefits shall be reduced by twenty-five (25) percent of the amount of the maximum payment for the appropriate family size pursuant to Section 8 of 904 KAR 2:016; and

(b) The agency shall attempt to obtain a protective payee to administer the K-TAP payment on behalf of the child.

(8) If, after the reduction of the K-TAP payment for failure to cooperate, the specified relative states he will cooperate, the agency shall:

(a) Remove the twenty-five (25) percent reduction in benefits effective the first administratively feasible month if the individual states he will cooperate and verification of cooperation is provided timely;

(b) Remove the protective payee from the case; and

(c) Not authorize back payments for the period of time for which the individual did not cooperate.

Section 17. Potential Entitlement for Other Programs. (1) An applicant or recipient shall apply for and comply with the requirements to receive any benefit if potential entitlement exists.

(2) [Except for the PWE in an UP case.] Failure to apply for another benefit or comply with its requirements shall result in ineligibility for K-TAP.

(3) [If a PWE or second parent in an UP case fails to apply for unemployment insurance benefits or comply with its requirements, the PWE or second parent shall have his needs removed from the case.]

(4) If an applicant or recipient voluntarily reduces the amount of benefits received from another source, other than for the purpose of reimbursing the source for a previous overpayment, this action shall result in ineligibility.

Section 18. Minor Teenage Parents. (1) A minor teenage parent shall participate in educational activities directed toward the attainment of a high school diploma, or its equivalent, or a cabinet approved alternate education or training program if the minor teenage parent:

(a) Has a minor child at least twelve (12) weeks of age in his care; and

(b) Has not completed a high school education (or its equivalent).

(2) Except as provided in subsection (4) of this section, a minor teenage parent and his minor child shall reside in:

(a) A place of residence maintained by:

1. A parent;

2. A legal guardian;

3. An adult relative as described in Section 10 of this administrative regulation; or

(b) An appropriate adult supervised supportive living arrangement, that includes a second chance home or maternity home, taking into consideration the needs and concerns of the minor teenage parent.

(3) The cabinet shall provide or assist the minor teenage parent in locating a second chance home, maternity home, or other appropriate adult supervised supportive living arrangement if:

(a) The minor teenage parent does not have:

1. A parent, legal guardian or appropriate adult relative as described in Section 10 of this administrative regulation who is living or whose whereabouts are known; or

2. A living parent, legal guardian, or other appropriate adult relative as described in Section 10 of this administrative regulation who otherwise meets applicable state criteria to act as the legal guardian of the minor teenage parent, who would allow the minor teenage parent to live in the home of the parent, guardian, or relative as described in Section 10 of this administrative regulation; or

(b) The cabinet determines:

1. The minor teenage parent or the minor child of the teenage parent is being or has been subjected to serious physical or emotional harm, sexual abuse, or exploitation in the residence of the minor teenage parent's own parent or legal guardian; or

2. Substantial evidence exists of an act or failure to act that presents an imminent or serious harm if the minor teenage parent and the minor child lived in the same residence with the minor teenage parent's own parent or legal guardian.

(4) The requirement in subsection (2) of this section shall be waived if:

(a) The cabinet determines living in the place of residence maintained by the parent, legal guardian, or adult relative as described in Section 10 of this administrative regulation is not in the best interest of the minor child taking into consideration the needs and concerns of the minor child; or

(b) The cabinet determines the minor teenage parent's current living arrangement is appropriate.

(5) If circumstances change and the current arrangement ceases to be appropriate based on the needs and concerns of the minor teenage parent, the cabinet shall assist the minor teenage parent in finding an alternate appropriate arrangement.

(6) The minor teenage parent shall complete a "Teen Parent Personal Responsibility Plan", form PA-202TP.

(7) If the minor teenage parent is determined to be ineligible for K-TAP as a result of not complying with provisions found in Section 18 of this administrative regulation, payments to a protective payee shall continue for the eligible child of the minor teenage parent.

(8) Even if exemption criteria is met and the cabinet determines the minor teenage parent's current living arrangement is appropriate, a minor teenage parent and his child, who do not reside in a place of residence maintained by a parent, legal guardian, other adult relative as described in Section 10 of this administrative regulation, second chance home or maternity home, shall be considered an adult regarding benefit time limitations pursuant to Section 19 of this administrative regulation.

Section 19. Benefit Time Limits. (1) K-TAP shall not be provided to a benefit group, as defined by Section 1 of 904 KAR 2:016, that includes an adult, or minor teenage parent pursuant to Section 18(8) of this administrative regulation, who has received assistance for sixty (60) months from a federally-funded program funded under 42 USC 601 et seq., whether or not consecutive.

(2) A month or months of assistance received by an otherwise eligible benefit group shall not be counted toward the sixty (60) months lifetime limit:

(a) If the benefit group contains an adult who is battered or sub-

jected to extreme cruelty pursuant to Section 23 of this administrative regulation; or

(b) During a month or months the benefit group is not issued a K-TAP check in accordance with 921 [904] KAR 2:050.

(3) After assistance has been received for sixty (60) months, an otherwise eligible benefit group containing one (1) of the following individuals shall be allowed an extension of the sixty (60) months time limit, during the period the individual:

(a) Is battered or subjected to extreme cruelty;

(b) Has a physical or mental disability prohibiting work as determined by the cabinet;

(c) Is required to provide constant care of a household member who is a parent, spouse or child with a disability and no alternative care arrangement is available; or

(d) Is a grandparent caring for an eligible child who would otherwise be placed in foster care.

(4) If otherwise eligible, a benefit group containing a member who has lost a job within thirty (30) days of reaching the sixty (60) month time limit shall receive a three (3) month extension of the time limitation.

(5) Each month of participation in the wage supplementation component of Kentucky Works, pursuant to 904 KAR 2:370, Section 2 shall count toward the sixty (60) month lifetime limit.

(6)(a) Within twenty-four (24) months of receiving K-TAP assistance, whether or not consecutive, a parent or caretaker relative receiving assistance, shall work or participate in approved work activities, if available, as defined in Section 1(16) [(15)] of this administrative regulation.

(b) The twenty-four (24) month limitation shall not be applied until the individual has been penalized for failure to participate in Kentucky Works, pursuant to 904 KAR 2:370, Section 7, for a period of six (6) cumulative months.

(7) Time limitations shall apply to a sanctioned or penalized individual as defined in 904 KAR 2:016, Section 1(22).

Section 20. Receiving Assistance in Two (2) or More States. K-TAP assistance shall be denied for ten (10) years to a person who has:

(1) Been convicted in federal or state court of having made a fraudulent statement or representation committed after August 22, 1996, with respect to the place of residence of the individual in order to receive assistance simultaneously from two (2) or more states:

(a) Under a program funded under:

1. 42 USC 601 et seq.;

2. 42 USC 1396; or

3. 7 USC 2011 et seq.; or

(b) For benefits received under supplemental security income.

(2) The requirement in subsection (1) of this section shall not apply to a conviction for any months beginning after the granting of a pardon by the President of the United States with respect to the conduct which was the subject of the conviction.

Section 21. Fugitive Felons. (1) K-TAP assistance shall not be provided to:

(a) An individual fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or an attempt to commit a crime, committed or attempted to be committed after August 22, 1996, which is a felony; or

(b) Violating a condition of probation or parole imposed under federal or state law.

(2) Subsection (1) of this section shall not apply with respect to conduct of an individual for any month beginning after the President of the United States grants a pardon with respect to the conduct.

(3) The sixty (60) month lifetime benefit limitation in Section 19 of this administrative regulation shall apply to a benefit group containing an adult who is ineligible for K-TAP as a result of subsection (1) of this section.

Section 22. Denial of Assistance for Drug Felons. (1) An individual convicted under federal or state law of an offense committed after August 22, 1996, classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use or distribution of a controlled substance as defined in 21 USC 802(6), shall not

be eligible for K-TAP benefits, except as provided by KRS 205.2005.

(2) Each individual applying for K-TAP benefits shall be required to state in writing whether the individual or any member of the household has been convicted of a crime described in subsection (1) of this section.

Section 23. Domestic Violence. (1)(a) A K-TAP applicant or recipient shall be screened for a history of domestic violence.

(b) If the applicant or recipient is identified as a victim of domestic violence or with a history of domestic violence and at risk of further domestic violence as determined by the cabinet, the individual shall be referred to counseling and supportive services.

(2) If compliance with the following K-TAP requirements would make it more difficult for an individual receiving K-TAP to escape domestic violence or unfairly penalize the individual who is or has been victimized by domestic violence, or an individual who is at risk of further domestic violence, as determined by the cabinet, the individual shall not be required to meet:

(a) Residency requirements pursuant to Section 4 of this administrative regulation;

(b) Child support cooperation requirements pursuant to Section 16 of this administrative regulation;

(c) Time limitations, for so long as necessary and otherwise eligible, pursuant to Section 19 of this administrative regulation; or

(d) Participation in Kentucky Works requirements pursuant to 904 KAR 2:370.

Section 24. Immunizations. (1) Except as provided under KRS 214.036, a recipient of K-TAP shall maintain current immunizations for an under school age child, pursuant to the Cabinet for Health Services, Department for Public Health Immunization Schedule in 902 KAR 2:060.

(2) The parent or caretaker relative shall be sanctioned, as defined in 904 KAR 2:016, Section 1, for failure to maintain current immunizations.

Section 25. Incorporation [Material Incorporated] by Reference. (1) The following material is incorporated by reference: [Forms necessary to establish technical eligibility requirements for the K-TAP program; with the exception of Kentucky Works participation, are being incorporated. These forms include:]

(a) PA-1C Supplement D, "Qualifying Parent Eligibility [Fact Sheet], edition 5/99 [5/97]";

(b) PA-14, "Declaration of citizenship or Alien Status, edition 8/97";

(c) PA-33D, "Child's Certification of School Enrollment/Attendance, edition 8/97";

(d) PA-121, "Good Cause Claim/Determination, edition 5/99 [8/97]";

(e) PA-202TP, "Teen Parent Personal Responsibility Plan, edition 8/97 [2/97]";

(f) PA-219, "Kentucky Works Program Fact Sheet, edition 11/98 [4/97]";

(g) CS-333, "Facts About the Child Support [Enforcement] Program, edition 4/99 [5/97]"; and

(h) CS-333.1, "Facts About the Right to Claim Good Cause, edition 4/99 [5/97]".

(2) This material [incorporated by reference] may be inspected, [and] copied, or obtained at the Department for Community-Based Services [Social Insurance], 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, [-Office hours are] 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: April 6, 1999

FILED WITH LRC: April 7, 1999 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley

(1) Type and number of entities affected: The affected entities are families who apply for or receive benefits under the Temporary Assistance for Needy Families (TANF) block grant program called

Kentucky Transitional Assistance Program (K-TAP). In Kentucky the TANF block grant program to implement the work requirements is called Kentucky Works. As of January 1999, approximately 43,648 families in Kentucky (monthly average) receive K-TAP, which includes 29,581 adults. Adults receiving K-TAP are required to participate in work activities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: A request for a hearing was received as a result of the publication of the Notice of Intent for February 22, 1999, but was withdrawn; however, written comments were received by close of business on February 22, 1999. No written comments were received regarding cost of living and employment in the geographical area.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: A request for a hearing was received as a result of the publication of the Notice of Intent for February 22, 1999, but was withdrawn; however, written comments were received by close of business on February 22, 1999. No written comments were received regarding cost of doing business in the geographical area.

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

1. First year following implementation: The individuals who are applicants or recipients of K-TAP, who are required to participate in work activities, will have no additional compliance, reporting or paperwork requirements due to the amendments to this administrative regulation. K-TAP recipients in 20 hour per week work activities will be increasing minimum participation by an additional 5 hours per week, an additional 10 hours per week for FY 2000. This increase will create minimum impact to the recipient. We are clarifying that time limitations apply to the family of adults who are not eligible for K-TAP because they are considered a fugitive felon in Section 21 or drug felon in Section 22. Pursuant to KRS 205.2005, created as a result of HB 864 passed in the 1998 General Assembly, we will allow a public assistance recipient, who would otherwise be ineligible due to a conviction of a drug felony, to remain eligible if the recipient has been assessed as chemically dependent and is participating in or has successfully completed a chemical dependency treatment program or is pregnant. A case will not be discontinued as a result of not working within 24 months unless the adult has refused to participate in Kentucky Works for at least 6 months.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to the agency:

1. First year: The breakdown of costs and savings to the agency for the first year are listed below: Adult K-TAP recipients must participate in work activities. Adults participating in Kentucky Works must participate for a minimum of 25 hours per week instead of 20 hours per week pursuant to 904 KAR 2:370 in order to meet federally mandated participation rates. To comply with 904 KAR 2:370 we are removing the 20 hour restriction from the definition of "work". We project minimal additional costs to the agency for recipients in 20 hour per week work activities to meet this 5 hour per week increase in participation, (10 hour per week increase for FY 2000). This minimal cost is for sending notices to recipients informing them of the increase of the per week minimum participation in Kentucky Works. Any additional cost for notices is budgeted for both years of the biennium. However, if this increase in minimum participation in work activities is not implemented, participation rates will not be met. A penalty resulting in a minimum of a 5 percent decrease in the TANF block grant (increasing by an additional 2 percent each year up to a maximum loss of 21 percent) would occur requiring state funds be utilized to replace the percentage loss due to the penalty. Total impact for 5 percent penalty is \$18.0 million - maximum of 21 percent penalty is \$76.0 million. A possible penalty for not meeting this increase in hours is not budgeted. The change to the "prior labor market attachment" to having wages of a total of \$1,000 in the previous 24 months instead of 12 months will have minimal fiscal impact to the agency. Changing the definition for "qualifying parent" will have

minimal impact to the agency. However, determining prior labor market attachment for the Unemployed Parent program will simplify eligibility for the agency and applicant. Removing the 100 hour limitation for working for Unemployed Parent program recipients will comply with the minimum number of hours mandated to work as contained in 904 KAR 2:370 which is greater than 100 hours per month. We anticipate minimal impact to the agency, increasing caseloads by approximately 2 to 3 cases per month statewide. Changes to eligibility for aliens will conform with PL 105-33 which will be minimal impact to the agency. Clarifying the definition for "qualified alien" will have no impact on the agency. We removed the exception allowed in Section 17 for UP cases who refuse to apply for unemployment benefits so requirements regarding the potential entitlement to other program will be the same as basic K-TAP recipients. This change is no impact to the agency. Removing the seven (7) day timeframe for eligibility for K-TAP due to forced separation will allow victims of domestic violence to become potentially eligible for assistance sooner which will be minimal impact to the agency. Allowing an 18 year old child to continue to receive K-TAP assistance who is in school but not graduating prior to age 19 will have minimal impact to the agency. Replacing the list of eligible relatives with a reference to a relative related by blood, adoption, or marriage and adding living with a legal guardian will have minimal impact to the agency since most of these relatives have been eligible under the old policy. Removing criteria in the administrative regulation regarding the absence of the parent regarding maintenance, physical care, and guidance previously required under AFDC will allow clarity in determination of absence of the child and will have minimal impact on the agency. A few additional families may be eligible as a result of this policy. The deprivation factors regarding absence are unchanged.

2. Continuing costs or savings: The breakdown of costs and savings to the agency for the second year and continuing are listed below: Same as impact in number 1.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: none

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State funds would have to be used to cover a penalty. However, it is the intent of the Cabinet for Families and Children to implement the increase in participation and not incur a penalty.

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

(a) Geographical area in which administrative regulation will be implemented: A request for a hearing was received as a result of the publication of the Notice of Intent for February 22, 1999, but was withdrawn; however, written comments were received by close of business on February 22, 1999. No written comments were received regarding the economic impact in the geographical area.

(b) Kentucky: A request for a hearing was received as a result of the publication of the Notice of Intent for February 22, 1999, but was withdrawn; however, written comments were received by close of business on February 22, 1999. No written comments were received regarding the economic impact in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the state does not want to incur a penalty; therefore, the increased hours in required participation will be met.

(8) Assessment of expected benefits:

(a) Identify effects on public welfare and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is needed to comply with the minimum number of hours per week to participate in work activities requirements found in 42 USC 607(c). A parent or caretaker relative receiving assistance, is required to work or participate in approved work activities a minimum of 25 hours per week pursuant to 904 KAR 2:370. To comply with this administrative regulation we are removing the 20 hour restriction from the definition of "work".

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

welfare would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Title IV-A Block grant funding (K-TAP) for public assistance benefits (including supportive services) received by needy Kentuckians may be jeopardized if Kentucky does not meet the mandates delineated in our Title IV-A state plan as required by 42 USC 601 et seq. If this increase in minimum participation in work activities is not implemented, participation rates will not be met resulting in penalties and loss of federal funds. If public assistance benefits received by needy Kentuckians are jeopardized, these individuals would lose a source of support for their family including assistance for supportive services which enables the parent to remain in the work activity. However, it is the intent of the Cabinet for Families and Children to implement the increase in participation and not incur a penalty.

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: A request for a hearing was received as a result of the publication of the Notice of Intent for February 22, 1999, but was withdrawn; however, written comments were received by close of business on February 22, 1999. A Statement of Consideration was completed in response to written comments received.

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 607(c).

2. State compliance standards. KRS 205.2003; 205.2005.

3. Minimum or uniform standards contained in the federal mandate. The minimum number of hours of participation in work activities is set in 42 USC 607(c).

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

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

CABINET FOR FAMILIES AND CHILDREN Department for Community-Based Services Division of Policy Development (Amended After Hearing)

904 KAR 2:016. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP).

RELATES TO: KRS 205.200(2), 205.210(1), 205.211, 205.2001, 42 CFR 435.831, 45 CFR 233, 233.20(a)(13), 25 USC 1408, 42 USC 602, ~~"Treatment of Retroactive SSI and Child Support Collected During the SSI Retroactive Period"~~, Transmittal No. ACF-AT-93-20 (November 2, 1993), U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance, Transmittal No. ACF-AT-94-17 (August 3, 1994), U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance]

STATUTORY AUTHORITY: KRS 194B.050 [194.050(+)], 205.200(2), 42 USC 601 et seq., EO 98-731 [96-862]

NECESSITY, FUNCTION, AND CONFORMITY: [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children.] The Cabinet for Families and Children is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for [the Aid to Families with Dependent Children Program, now named] the Kentucky Transitional Assistance Program (K-TAP), the block grant program funded by 42 USC 601 et seq. This administrative

regulation sets forth the standards of the need for and the amount of a Kentucky Transitional Assistance Program payment [including ~~Relocation Assistance Program and Family Alternatives Diversion~~].

Section 1. Definitions. (1) "Benefit group" means a group composed of one (1) or more children and may include as specified relative any person specified in 904 KAR 2:006, Section 10.

(a) The benefit group shall include:

1. The dependent child;

2. The child's parent living in the home with the needy child who is:

a. Eligible for K-TAP; or

b. Ineligible for K-TAP due to benefit time limitations pursuant to 904 KAR 2:006, Section 19; and

3. All eligible siblings living in the home with the needy child.

(b) If the benefits to the household would be greater by excluding an otherwise eligible child related by subsidized adoption to the other members, this child shall not be included in the benefit group.

(c) If the dependent child's parent is a minor living in the home with his eligible parent, the minor's parent shall also be included in the benefit group if the minor's parent applied for assistance.

(d) The incapacitated or unemployed natural or adoptive parent of the child who is living in the home shall be included as second parent if the technical eligibility factors are met.

(2) "Beyond the control" means:

(a) Loss or theft of the money;

(b) The individual to whom the lump sum was designated no longer lives in the household, making the lump sum income inaccessible; or

(c) Expenditure of the lump sum income to meet extraordinary expenses, that are not included in the K-TAP Standard of Need.

(3) "Burial space" means a space and certain related services used for the remains of a deceased person. This includes:

(a) A grave site;

(b) Costs to open and close the grave;

(c) A crypt;

(d) A mausoleum space;

(e) A casket;

(f) A vault;

(g) An urn; and

(h) A headstone.

(4) "Change in circumstances" means a change in income and or dependent care expenses which affects the ongoing K-TAP payment. This shall include:

(a) Beginning or ending employment;

(b) Change in employers or obtaining additional employment;

(c) Increase or decrease in the number of work hours;

(d) Increase or decrease in the rate of pay;

(e) Increase or decrease in the dependent care expense due to a change in provider, number of hours of care, number of individuals for whom care is given, or amount charged; or

(f) Change in farm cropping arrangements or type of self-employment activities.

(5) "Claimant" means the individual responsible for an overpayment.

(6) "Countable income" means income which remains after excluded income and appropriate deductions are removed from gross income.

(7) "Deduction" means an amount subtracted from gross income to determine countable income.

(8) "Excluded income" means income that is received but not counted in the gross income test.

(9) ~~["Family Alternatives Diversion (FAD) Program" means the Kentucky Transitional Assistance Program benefit paid to a FAD-eligible family to meet a short-term need.~~

(10) "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(11) "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in an adult basic education program, a general educational development program or a literacy program; or

(b) Twelve (12) semester hours or more in a college or university; or six (6) semester hours or more during the summer term; or the

equivalent in a college or university if other than a semester system is used; or

(c) The number of hours required by the individual high school or vocational school to fulfill their definition of full time.

(11) "Gross income limitation standard" means 185 percent of the assistance standard, as set forth in Section 8 of this administrative regulation.

(12) "Job Training Partnership Act Program (JTPA)" means a program that prepares youth and unskilled adults for entry into the labor force. Only those individuals who are certified as eligible for the program can benefit from JTPA funds.

(13) "Kentucky Transitional Assistance Program (K-TAP)", Kentucky's Temporary Assistance for Needy Families (TANF) Program, means a money payment program for children who are deprived of parental support or care pursuant [due] to 904 KAR 2:006, Section 1, [:

(a) Death, continued voluntary or involuntary absence of a parent;

(b) Physical or mental incapacity of one (1) parent when both parents are in the home; or

(c) Unemployment of at least one (1) parent when both parents are in the home;]

(14) "Kentucky Works" means a program which assists recipients of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance.

(15) "Lump sum income" means income that does not occur on a regular basis, and does not represent accumulated monthly income received in a single sum.

(16) "Minor" means any person who is under the age of eighteen

(18) or under the age of nineteen (19) in accordance with 904 KAR 2:006, Section 1. [EXCEPTION: For the purpose of deeming income, a minor parent is a parent under the age of eighteen (18).]

(17) "Minor teenage parent" means an individual who:

(a) Has not attained eighteen (18) years of age;

(b) Is not married or is married and not living with the spouse; and

(c) Has a minor child in the applicant's or recipient's care.

(18) "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month or not employed throughout the entire month.

(19) "Part-time school attendance" means a workload of anything less than "full-time school attendance."

(20) "Penalized individual" means a person who is required to be included in the benefit group but fails to fulfill an eligibility requirement which causes a pro rata reduction in benefits of the benefit group. If otherwise eligible, a penalized individual remains a member of the benefit group.

(21) "Prospective budgeting" means computing the amount of assistance based on income and circumstances which will exist in the month(s) for which payment is made.

(22) "Recoupment" means recovery of overpayments of assistance payments.

[~~(23) "Relocation Assistance Program (RAP)" means the K-TAP benefit for a RAP eligible K-TAP recipient to meet moving-related expenses when a specific job opportunity exists for the K-TAP recipient requiring the recipient to relocate in order to access the employment.~~]

(23) "Sanctioned individual" means any person who is required to be included in the benefit group but who is excluded from the benefit group due to failure to fulfill an eligibility requirement.

(24) "Self-employment income" means income from a business enterprise from which no taxes are withheld prior to receipt of the income by the individual.

(25) "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.

(26) "Unavailable" means that the income is not accessible to the K-TAP benefit group for use toward basic food, clothing, shelter, and utilities.

(27) "Work expense standard deduction" means a deduction from earned income intended to cover mandatory pay check deductions, union dues, tools and transportation.

Section 2. Resource Limitations. (1) Real and personal property shall be considered if:

(a) Available to the benefit group; and

(b) Owned in whole or in part by:

1. An applicant or recipient;

2. A sanctioned or penalized individual; or

3. The parent of a dependent child, even if the parent is not an applicant or recipient, if the dependent child is living in the home of the parent.

(2) The amount that can be reserved by each benefit group shall not be in excess of \$2,000 equity value excluding those items specifically listed in subsection (3) of this section:

(3) Excluded resources. The following resources shall be excluded from consideration:

(a) One (1) owner-occupied home;

(b) One (1) motor vehicle;

(c) Basic household items essential for day-to-day living, including:

1. Furniture;

2. Appliances; and

3. Clothing.

(d) Gift or inheritance not legally available until a later date;

(e) Nonessential item with a value of less than fifty (50) dollars;

(f) All resources of a recipient of SSI or the state supplementation program living in the home;

(g) Equity value of all equipment, livestock or other inventory used in a farming or self-employment enterprise;

(h) Crops and animals raised for home consumption.

(i) Real property which the benefit group is making a good faith effort to sell, for a period of nine (9) months or less. If excluded:

1. The benefit group shall agree to repay K-TAP benefits received beginning with the first month of the exemption.

2. Any amount of K-TAP paid during that period that would not have been paid if the disposal of property had occurred at the beginning of the period is considered an overpayment.

3. The amount of the repayment shall not exceed the net proceeds of the sale.

4. If the property has not been sold within the nine (9) months, or if eligibility stops for any other reason, the entire amount of assistance paid during the nine (9) month period shall be treated as an overpayment;

(j) Children's toys and bicycles;

(k) Household pets;

(l) Resources of a child excluded from the K-TAP grant;

(m) Resources of an individual not receiving assistance but living in the home including:

1. The stepparent;

2. Parent or legal guardian of a minor parent;

3. The spouse of a nonresponsible specified relative; or

4. The spouse of a minor dependent child;

(n) Amount of the K-TAP grant;

(o) Proceeds (sale price less indebtedness) from the sale of a home, including initial or down payment from land contract sale, for six (6) months if client plans to invest in another home.

(p) Funds in an individual retirement account, retirement or deferred compensation account during the period of unavailability;

(q) Excluded income, as specified in Section 4 of this administrative regulation;

(r) Principal and accrued interest of an irrevocable trust during periods of unavailability;

(s) One (1) burial space per K-TAP family member;

(t) \$1,500 of the value of prepaid burial funds and cash surrender value of burial insurance policies per family member;

(u) Principal of a verified loan;

(v) Up to \$12,000 to Aleutians and \$20,000 to individuals of Japanese ancestry for payment made by the United States Government to compensate for hardship experienced during World War II;

(w) Payment made from the Agent Orange Settlement Fund issued by Aetna Life and Casualty to veterans or their survivors;

(x) Earned income tax credit payments in the month of receipt and the following month;

(y) Any payment received from the Radiation Exposure Compensation Trust Fund;

(z) A nonrecurring lump sum SSI retroactive payment that is made to a K-TAP recipient who is not ongoing eligible for SSI, in the month paid and the next following month; and

(aa) Up to a total of \$5,000 in individual development accounts, excluding interest accruing, pursuant to subsection (7) of this section.

(4) Disposition of resources.

(a) An applicant or recipient shall not have transferred or otherwise divested himself of property without fair compensation in order to qualify for assistance.

(b) The household's application shall be denied, or assistance discontinued if:

1. It is determined by the cabinet that the transfer was made expressly for the purpose of qualifying for assistance; and

2. The uncompensated equity value of the transferred property, when added to total resources, exceeds the resource limit.

(c) The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer.

(d) If the amount of excess transferred resources does not exceed \$500, the period of ineligibility shall be one (1) month; the period of ineligibility shall be increased one (1) month for every \$500 increment up to a maximum of twenty-four (24) months.

(5) Lifetime care agreement.

(a) The existence of a valid agreement between the applicant or recipient and another individual or organization in which the applicant or recipient has surrendered his resources in exchange for lifetime care shall make the case ineligible.

(b) The agreement shall be considered invalid if the individual or organization with whom the agreement was made provides a written statement that the resources have been exhausted.

(6) Resources held jointly by more than one (1) person.

(a) Bank accounts requiring one (1) signature for withdrawals.

1. Unless the other owner is a recipient of SSI, the total balance of the account is considered available to the K-TAP applicant or recipient.

2. If the other owner receives SSI, the balance is divided evenly by the number of owners and only the K-TAP applicant or recipient's share is considered available.

(b) For bank accounts which require more than one (1) signature for withdrawals, determine the K-TAP applicant or recipient's share by obtaining a written statement from the other owners as to the division.

(c) If there is no predetermined allocation of shares from a business enterprise, determine applicant or recipient's available share by dividing the value of the business enterprise by the number of owners.

(d) If resources are held jointly other than those listed in paragraphs (a) through (c) of this subsection, the applicant or recipient's share is determined by dividing the value of the resource by the number of owners.

(e) Rebuttal of ownership may be accomplished if the applicant or recipient asserts he does not contribute to or benefit from a jointly held resource and he provides:

1. A written statement regarding ownership, who deposits and withdraws; and

2. A written statement from each of the other owners which corroborates the applicant's or recipient's statement, unless the account holder is a minor or is incompetent; and

3. Verification that the applicant's or recipient's name has been removed from the resource.

(7)(a) To be considered an exempt resource, the individual development account shall have been established on or after May 1, 1997, funded through periodic contributions by a member of the benefit group using funds derived from earned income which was earned after May 1, 1997, for a qualified purpose.

(b) A qualified purpose to establish an individual development account shall be for:

1. Postsecondary educational expenses which shall include:

a. Tuition and fees required for the enrollment or attendance of a student at an eligible educational institution; and

b. Fees, books, supplies and equipment required for courses of instruction at an eligible educational institution;

c. An eligible educational institution shall be:

(i) An institution described in 20 USC 1088(a)(1) or 1141(a); or

(ii) An area vocational education school as defined by 20 USC 2471(4)(C) or (D);

2. First home purchase which includes:

a. Costs of acquiring, constructing, or reconstructing a residence; and

b. Usual or reasonable settlement, financing, or other closing costs;

3. Business capitalization expenditures for a business that does not contravene any law or public policy, as determined by the cabinet, pursuant to a qualified plan. A qualified plan shall:

a. Include capital, plant, equipment, working capital, and inventory expenses;

b. Be approved by a financial institution; and

c. Include a description of services or goods to be sold, a marketing plan, and projected financial statements. Assistance of an experienced entrepreneurial advisor may be required; or

4. Other purpose allowed by federal regulations or clarifications.

(c) Funds held in an individual development account shall not be withdrawn except for one (1) or more of the qualified purposes listed in paragraph (b) of this subsection;

(d) To be considered an exempt resource, an individual development account shall be matched by funds from:

1. A nonprofit organization; or

2. Funding permitting, a state or local government agency acting in cooperation with an organization described in subparagraph 1 of this paragraph.

Section 3. Income Limitations. In determining eligibility for K-TAP the following shall apply:

(1) Gross income test.

(a) The total gross non-K-TAP income shall not exceed the gross income limitation standard. This income includes:

1. Income of the benefit group;

2. Income of a parent who does not receive SSI or state supplementation;

3. Income of a sanctioned or penalized individual;

4. An amount deemed available from the parent of a minor parent living in the home with the benefit group;

5. An amount deemed available from a stepparent living in the home;

6. An amount deemed available from the spouse of a minor dependent child living in the home; and

7. An amount deemed available from an alien's sponsor and sponsor's spouse if living with the sponsor.

(b) Excluded income types specified in Section 4(1) of this administrative regulation shall apply.

(c) If total gross income exceeds the gross income limitation standard, the benefit group is ineligible.

(2) [Applicant eligibility test:

(a) An applicant eligibility test shall be applied if:

1. The gross income is below the gross income limitation standard; and

2. The benefit group has not received assistance during the four (4) months prior to the month of application; or

3. The benefit group has a member added to the case and that member:

a. Has earned income; and

b. Has not received assistance during the four (4) months prior to being added to the case;

(b) The total gross income after application of excluded income and deduction policy set forth in Section 4(1) and (2) of this administrative regulation shall be compared to the standard of need set forth in Section 8 of this administrative regulation.

(c) If income exceeds this standard, the benefit group is ineligible.

(d) For a benefit group which meets the gross income test but has received assistance any time during the four (4) months prior to the application month, the applicant eligibility test shall not apply.

(3) Benefit calculation.

(a) If the benefit group meets the criteria set forth in subsection [subsections] (1) [and (2)] of this section, benefits shall be determined by subtracting excluded income and applicable deductions in Section 4(1), (2), and (3) of this administrative regulation.

(b) If the benefit group's income, after subtracting excluded income and applicable deductions, exceeds the standard of need for the appropriate benefit group size as set forth in Section 8 of this adminis-

trative regulation, the benefit group is ineligible.

(c) Amount of assistance shall be determined prospectively.

(3) [(4)] Ineligibility period.

(a) A period of ineligibility shall be established for a benefit group whose income in the month of application or during any month for which assistance is paid exceeds the limits as set forth in subsection [subsections] (2) [or-(3)] of this section due to receipt of lump sum income.

(b) The ineligibility period shall be:

1. The number of months which equals the quotient of the division of total countable income by the standard of need as set forth in Section 8 of this administrative regulation for the appropriate benefit group size; and

2. Effective with the month of receipt of the nonrecurring lump sum amount.

(c) The ineligibility period shall be recalculated if any of the following circumstances occur:

1. The standard of need set forth in Section 8 of this administrative regulation increases and the amount of grant the benefit group would have received also changes;

2. Income, which caused the calculation of the ineligibility period, has become unavailable for reasons that were beyond the control of the benefit group;

3. The benefit group incurs and pays necessary medical expenses not reimbursable by a third party;

4. An individual, who is required to be a member of the benefit group, joins the K-TAP household during an established ineligibility period; or

5. The benefit group reapplies during an established ineligibility period and the agency determines that policy has changed to exclude the criteria originally used to establish the ineligibility period.

Section 4. Excluded Income and Deductions. All gross non-K-TAP income received or anticipated to be received by the benefit group, sanctioned or penalized individual, natural parent, spouse of a dependent child and parent of a minor parent living in the home with the benefit group and stepparent living in the home, shall be considered with the application of excluded income and deduction policy as set forth in the following subsections:

(1) Gross income test. Incomes listed in this subsection shall be excluded:

(a) Deductions applicable to stepparent income, income of the spouse of a minor dependent child, or income of the parent of a minor parent in the home with the benefit group, as set forth in Section 6 of this administrative regulation;

(b) Deductions applicable to alien sponsor's income, as set forth in Section 7 of this administrative regulation;

(c) Deductions applicable to self-employment income;

(d) The difference between the standard of need and the payment maximum for the benefit group, as specified in Section 8 of this administrative regulation, for households in which a member receives a JTPA stipend;

(e) Value of United States Department of Agriculture program benefits including:

1. Donated foods;
2. Supplemental food assistance received under 42 USC 1771;
3. Special food service program for children under 42 USC 1775;
4. Nutrition program for the elderly under 42 USC 3001; and
5. The monthly food stamp allotment;

(f) Reimbursement for transportation in performance of employment duties, if identifiable;

(g) The value of Kentucky Works supportive services payments authorized under 904 KAR 2:017;

(h) Nonemergency medical transportation payments;

(i) Payments from complementary programs if no duplication exists between the other assistance and the assistance provided by the K-TAP program;

(j) Educational grants, loans, scholarships, and work study income, including:

1. Payments obtained and used under conditions that preclude their use for current living costs; and

2. All education grants and loans to any undergraduate made or insured under any program administered by:

a. The United States Commissioner of Education; or

b. The Bureau of Indian Affairs.

(k) Highway relocation assistance;

(l) Urban renewal assistance;

(m) Federal disaster assistance and state disaster grants;

(n) Home produce utilized for household consumption;

(o) Housing subsidies received from federal, state or local governments;

(p) Receipts distributed to members of certain Indian tribes by the federal government under 25 USC 459, 1261 and 1401;

(q) Funds distributed per capita to or held in trust for members of any Indian tribe by the federal government under 25 USC 459, 1261 and 1401;

(r) Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving under programs authorized by 42 USC 5001 and 42 USC 5011, including:

1. Foster grandparents;

2. Senior health aides;

3. Senior companions;

4. Service Corps of Retired Executives; and

5. Active Corps of Executives;

(s) Payments to "Volunteers in Service to America" (VISTA) participants under 42 USC 1451 if less than the minimum wage under state or federal law, whichever is greater;

(t) Payments from the Cabinet for Families and Children[~~Department for Social Services~~] for child foster care, or adult foster care;

(u) Payments made under the Low Income Home Energy Assistance Program under 42 USC 8621, and other energy assistance payments which are made to an energy provider or provided in-kind;

(v) ~~[The first fifty (50) dollars of]~~ Child support payments until K-TAP is received, ~~[collected in a month which represents the current month's support obligation]~~

(w) Earnings of an individual ~~[a dependent child]~~ attending school who is:

1. A child; or

2. A parent who is:

a. Under the age of eighteen (18); or

b. Age eighteen (18) or nineteen (19);

(x) Earnings of a dependent child under eighteen (18) who is a high school graduate;

(y) Nonrecurring gifts of thirty (30) dollars or less received per calendar quarter for each individual included in the assistance group;

(z) The principal of a verified loan;

(aa) Up to \$12,000 to Aleuts and \$20,000 to individuals of Japanese ancestry for payments made by the United States Government to compensate for hardships experienced during World War II;

(bb) Income of an individual receiving SSI;

(cc) The essential person's portion of the SSI check;

(dd) Income of an individual receiving mandatory or optional state supplementary payments;

(ee) The advance payment or refund of earned income tax credit;

(ff) Payments made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;

(gg) Child support received in a month for which the K-TAP payment is suspended;

(hh) In-kind income;

(ii) Income of a technically ineligible child;

(jj) Payments made from the Agent Orange Settlement Fund;

(kk) K-TAP back payments;

(ll) Income of legal guardian of a minor parent, unless the guardian meets the degree of relationship as specified in 904 KAR 2:006, Section 10;

(mm) Payments made from the Radiation Exposure Compensation Trust Fund;

(nn) Up to \$2,000 per year of income received by individual Indians denied from leases or other uses of individually-owned trust or restricted lands; ~~and~~

(oo) Payments made to individuals because of their status as victims of Nazi persecution; ~~and~~

(pp) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census.

(2) Benefit calculation. ~~[Applicant eligibility test.]~~ Excluded income in subsection (1) of this section and any applicable deduction listed in

this subsection shall be applied:

(a) Standard work expense deduction of ninety (90) dollars for full-time and part-time employment; and

(b) On or after November 1, 1995, if the caregiver is not the parent, legal guardian or a member of the benefit group, the dependent care disregard shall:

1. Be allowed as a work expense for:

a. An able bodied child age thirteen (13) or over and not under court supervision;

b. An incapacitated adult living in the home and receiving K-TAP;

c. A sanctioned individual whose earned income is considered available to the K-TAP household;

d. At the option of the recipient, a K-TAP case which would otherwise be ineligible for K-TAP without the benefit of the disregard for child care; or

e. The month of application for K-TAP benefits; and

2. Shall not exceed:

a. \$175 per month per individual for full-time employment; or

b. \$150 per month per individual for part-time employment; or

c. \$200 per month per individual for child under age two (2).

~~[(3) Benefit calculation. After eligibility is established, exclude or deduct all incomes listed in subsections (1) and (2) of this section as well as deductions listed in this subsection.]~~

(c) ~~[(a)]~~ Child support payments assigned and actually forwarded or paid to the department; and

~~(d) [(b)]~~ First thirty (30) dollars and one-third (1/3) of the remainder of earned income not already deducted for each member of the benefit group.

1. The one-third (1/3) portion of this deduction shall ~~[not]~~ be applied to ~~each member's [an individual after the fourth consecutive month it has been applied to his]~~ earned income ~~for four (4) months.~~

2. The thirty (30) dollar portion of this deduction shall be applied concurrently with the one-third (1/3) deduction and for an additional eight (8) consecutive months following the expiration of the concurrent period.

3. These deductions shall not be available to the individual until he has earnings reported timely from new employment ~~[not been a recipient for twelve (12) consecutive months]; and~~

~~(e) [(c)]~~ For new employment, or increased wages, acquired after approval and reported timely, a one (1) time only disregard per employed adult member of the benefit group, the amount of two (2) full calendar months earnings.

1. The two (2) months earnings disregard shall be consecutive, and at the option of the recipient.

2. If otherwise eligible, a sanctioned or penalized member of the benefit group may receive the two (2) months earnings disregard.

~~(3) [(4)-Exceptions:]~~ Deductions from earnings in subsection ~~[subsections]~~ (2)(a), ~~[and]~~ (b) and ~~(d) [(3)(b)]~~ of this section shall not apply for any month in which the individual:

(a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists pursuant to 904 KAR 2:370, Section 6(1). ~~[as follows:~~

1. ~~The individual is unable to engage in the employment or training for mental or physical reasons; or~~

2. ~~The individual has no way to get to and from the work site or the site is so far removed from the home that commuting time would exceed three (3) hours per day; or~~

3. ~~Working conditions at a prospective job or training site would be a risk to the individual's health or safety; or~~

4. ~~A bona fide offer of employment at a minimum wage customary for this work in the community was not made; or~~

5. ~~The child care arrangement is terminated through no fault of the applicant or recipient; or~~

6. ~~The available child care does not meet the needs of the child, for example, a child with a disability; or~~

7. ~~The parent is temporarily absent from work on approved educational leave; or~~

8. ~~The individual is needed in the home to care for another ill or incapacitated household member and no other household member is available to provide needed care.]~~

(b) Requests assistance be terminated for the primary purpose of evading the four (4) month limitation on the deduction in subsection ~~(2)(d) [(3)(b)]~~ of this section;

(c) Fails to report and increase in earnings, which impacts eligibility, within ten (10) days of the change, unless good cause exists as follows:

1. The benefit group has been directly affected by a natural disaster;

2. An immediate family member living in the home was institutionalized or died during the ten (10) day report period; or

3. The responsible relative in the case, and if different, the member employed, is out of town for the entire ten (10) day report period.

~~(4) [(5)]~~ Changes in income and resources of the benefit group that contains a member who is participating in the wage supplementation component of Kentucky Works pursuant to 904 KAR 2:370 shall be disregarded for the first six (6) months of wage supplementation component participation.

Section 5. Child Care Payments. With the exception of those circumstances outlined in Section 4(2)(b) of this administrative regulation~~[-on or after November 1, 1995,]~~ child care expenses incurred as a result of employment shall be paid according to 905 KAR ~~2:160 [2:150]~~.

Section 6. Income and Resources of an Individual Not Included in the Benefit Group. (1) The income provisions of this section shall apply to the following individuals, living in the home but not included in the benefit group, as described in subsection (2) of this section:

(a) A stepparent;

(b) The spouse of a minor dependent child;

(c) The spouse of a specified relative other than a parent;

(d) A parent barred from receiving assistance due to failure to meet alien status; or

(e) A parent of a minor parent.

(2) Income. The gross income of the individual is considered available to the benefit group, subject to the following deductions:

(a) The first ninety (90) dollars of the gross earned income;

(b) An amount equal to the K-TAP standard of need for the appropriate family size, as set forth in Section 8 of this administrative regulation for:

1. The support of the individual; and

2. Any other person living in the home if:

a. His needs are not taken into consideration in the K-TAP eligibility determination; and

b. He is or may be claimed as a dependent for purposes of determining his federal personal income tax liability by the individual.

(c) Any amount actually paid to a person not living in the home who is or may be claimed by him as a dependent for purposes of determining his personal income tax liability by the individual;

(d) Payments for alimony or child support to a person not living in the home by the individual;

(e) Income of an SSI recipient who is listed in subsection (1) of this section; or

(f) A retroactive SSI payment, which is counted in determining eligibility and the amount of payment to the K-TAP unit in the month received, in any subsequent month.

(3) Sanction exception. The income of any sanctioned individual is not eligible for the deductions listed in this section.

(4) Resources which belong solely to the stepparent, spouse of a minor dependent child, spouse of a specified relative other than a parent or parent of a minor parent are not considered in determining eligibility of the parent, minor dependent child, or specified relative other than a parent or the benefit group.

Section 7. Alien Income and Resources. (1) For the purposes of this section the alien's sponsor and sponsor's spouse (if living with the sponsor) shall be referred to as sponsor. This subsection and subsections (2), (3), (4), (5), and (6) of this section apply to immigrants who have an agreement executed other than pursuant to 8 USC 1183a.

(2) The gross non-K-TAP income and resources of an alien's sponsor shall be deemed available to the alien, subject to deductions set forth in this section, for a period of three (3) years following entry into the United States.

(3) If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens.

(4) A sponsored alien is ineligible for any month in which adequate

information on the sponsor or sponsor's spouse is not provided.

(5) If an alien is sponsored by an agency or organization, which has executed an affidavit of support, that alien is ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization:

- (a) Is no longer in existence; or
- (b) Does not have the financial ability to meet the alien's needs.

(6) The provisions of this subsection shall not apply to those aliens identified in subsection (5) or (7) of this section.

(a) Income. The gross income of the sponsor is considered available to the benefit group subject to the following deductions:

1. Twenty (20) percent of the total monthly gross earned income, not to exceed \$175;

2. An amount equal to the K-TAP standard of need for the appropriate family size as set forth in Section 8 of this administrative regulation of:

- a. The sponsor; and
- b. Other persons living in the household:

(i) Who are or may be claimed by the sponsor as dependents in determining his federal personal income tax liability; and

(ii) Whose needs are not considered in making a determination of eligibility for K-TAP;

3. Amounts paid by the sponsor to nonhousehold members who are or may be claimed as dependents in determining his federal personal tax liability;

4. Actual payments of alimony or child support paid to nonhousehold members; and

5. Income of a sponsor receiving SSI or K-TAP.

(b) Resources. Resources deemed available to the alien shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if he were a K-TAP applicant in this state, less \$1,500.

(7)(a) For sponsored aliens who enter the United States on or after December 19, 1997, who are required to complete a sponsorship agreement pursuant to 8 USC 1183a, the total gross income and resources of an alien's sponsor and sponsor's spouse shall be deemed available to the alien. The sponsor's obligation shall be available until:

1. The immigrant:

a. Becomes a United States citizen;

b. Can be credited with forty (40) quarters of work; or

c. Ceases to hold the status of an alien lawfully admitted for permanent residence; or

2. The sponsor dies.

(b) The immigrant shall provide the sponsorship agreement pursuant to 8 USC 1183a.

(8) If an amount less than the amount in the sponsorship agreement is made available to the immigrant, the actual amount provided by the sponsor shall be considered for a period up to twelve (12) months from the month of the determination if an alien is determined indigent. An alien is determined indigent if:

(a) The amount of the sponsor's income and resources given to the alien is less than the amount in the agreement; and

(b) Without K-TAP assistance and after consideration of the alien's own income, cash, food, housing or assistance provided by other individuals including the sponsor, the alien would be unable to obtain food and shelter;

(9) Deeming of the sponsor's income shall not apply for twelve (12) months if:

(a) The alien or alien's child has been subjected to extreme cruelty or battery while living in the United States and the individual committing the battery or extreme cruelty does not live with the child or parent if committed by:

1. A spouse or parent; or

2. A spouse or parent's family living with the alien or alien's child and the spouse or parent allows the cruelty or battery; or

(b) The alien is a child who lives with a parent who has been subjected to extreme cruelty or battery while living in the United States and the individual committing the battery or extreme cruelty does not live the child or parent if committed by:

1. A spouse; or

2. A member of the spouse's family living in the same household and the spouse allows the cruelty or battery.

Section 8. Payment Maximum. (1) The K-TAP payment maximum includes amounts for food, clothing, shelter, and utilities.

(2)(a) Countable income, as determined by the provisions of Section 9 of this administrative regulation, is subtracted in determining eligibility for and the amount of the K-TAP assistance payment, as follows:

Effective December 1, 1995		
Number of Eligible Persons	Payment Maximum	Standard of Need
1 person	\$186	\$394
2 persons	\$225	\$460
3 persons	\$262	\$526
4 persons	\$328	\$592
5 persons	\$383	\$658
6 persons	\$432	\$724
7 or more persons	\$482	\$790

(b) The gross income limit is as follows for the appropriate family size:

Number of Eligible Persons	Maximum Gross Income Limits
1 Person	\$ 729
2 Persons	\$ 851
3 Persons	\$ 974
4 Persons	\$1096
5 Persons	\$1218
6 Persons	\$1340
7 or more Persons	\$1462

(3) Since the payment maximum does not meet full need, effective July 1, 1989, a forty-five (45) percent ratable reduction shall be applied to the deficit between the family's countable income and the standard of need for the appropriate family size.

(4)(a) The assistance payment shall be fifty-five (55) percent of the deficit or the payment maximum, whichever is the lesser amount.

(b) As a result of applying the forty-five (45) percent ratable reduction listed in subsection (3) of this section, an eligible payment to an otherwise eligible family with no income shall be calculated in accordance with KRS 205.200(2).

Section 9. Best Estimate. (1) The agency shall compute the benefit using its best estimate of income which will exist in the payment month.

(2) The following methods shall be used by the agency to calculate a best estimate:

(a) For cases with earned income, other than self-employment earned income:

1. The agency:

a. Shall not round cents to the nearest dollar before adding or multiplying hourly or daily earnings; but

b. Shall round cents to the nearest dollar before adding or multiplying weekly, biweekly, semimonthly, monthly, quarterly, or annual amounts.

2. Unless it does not represent the ongoing situation, the agency shall use income from all pay periods in the preceding two (2) calendar months.

3. The agency shall determine a monthly amount by:

a. Adding gross income from each pay period;

b. Dividing by the total number of pay periods considered;

c. Converting the pay period figure to a monthly figure by multiplying a weekly amount by four and one-third (4 1/3), a biweekly amount by two and one-sixth (2 1/6), or a semimonthly amount by two (2); and

d. Rounding to the nearest dollar.

4. If income has recently begun and the applicant or recipient has not received two (2) calendar months of earned income, the agency shall compute the anticipated monthly income by:

a. Multiplying the hourly rate by the estimated number of hours to be worked in a pay period; or

b. Multiplying the daily rate by the estimated number of days to be worked in the pay period; and

c. Converting the resulting pay period figure to a monthly amount by multiplying a weekly amount by four and one-third (4 1/3), a bi-

weekly amount by two and one-sixth (2 1/6), or a semimonthly amount by two (2); and

d. Rounding to the nearest dollar.

(b) For cases with unearned income, other than unearned self-employment income, the agency shall determine a monthly amount by:

1. Rounding cents to the nearest dollar;

2. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis;

3. Unless it does not represent the ongoing situation, averaging the amount of nonstable unearned income received in the three (3) prior calendar months.

(c) For cases with self-employment income:

1. If the self-employment enterprise has been in operation for at least a year, the agency shall prorate the income by dividing the income from the last calendar year by twelve (12).

2. If the self-employment enterprise has been in operation for less than a year, the agency shall prorate the income by dividing by the number of months the business has been in existence.

3. The agency shall determine profit by:

a. Rounding the total gross income to the nearest dollar;

b. Rounding the total amount of allowable expenses to the nearest dollar;

c. Dividing each by twelve (12), or the appropriate number of months, and rounding to the nearest dollar; and

d. Subtracting the rounded monthly expense from the rounded monthly income.

(3) The best estimate shall be recalculated:

(a) At six (6) month intervals for cases with:

1. Earned or unearned income other than self-employment; or

2. Income from a self-employment enterprise which has not been in existence for at least one (1) year;

(b) At twelve (12) month intervals for cases with a self-employment enterprise which has been in existence for at least one (1) year;

(c) Whenever the agency becomes aware of a change in circumstances; or

(d) To reflect a mass change in the standard of need or payment maximum standard as set forth in Section 8 of this administrative regulation.

Section 10. K-TAP Recoupment. Except for those overpayments in administrative regulation 904 KAR 2:017, the following provisions are effective for ~~an overpayment~~ [all overpayments] discovered on or after April 1, 1982, regardless of when the overpayment occurred.

(1) Necessary action will be taken promptly to correct and recoup ~~an overpayment~~ [any overpayments].

(2) ~~An overpayment~~ [Overpayments], including assistance paid pending hearing decisions, shall be recovered from:

(a) The claimant;

(b) The overpaid ~~benefit group~~ [assistance unit];

(c) Any ~~benefit group~~ [assistance unit] of which a member of the overpaid ~~benefit group~~ [assistance unit] has subsequently become a member; or

(d) Any individual member of the overpaid ~~benefit group~~ [assistance unit] whether or not currently a recipient.

(3) ~~An overpayment~~ [Overpayments] shall be recovered through:

(a) Repayment by the individual to the cabinet; or

(b) Reduction of future K-TAP benefits, which shall result in the ~~benefit group~~ [assistance group] retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income in accordance with Section 8 of this administrative regulation; or

(c) Civil action in the court of appropriate jurisdiction.

(4) In cases which have both an overpayment and an underpayment, the cabinet shall offset one against the other in correcting the payment to current recipients.

(5) Neither reduction in future benefits nor civil action shall be taken except after notice and an opportunity for a fair hearing as specified in ~~921~~ [904] KAR 2:055 is given and the administrative and judicial remedies have been exhausted or abandoned.

Section 11. Avoiding an Overpayment. (1) A K-TAP recipient may

voluntarily return a benefit check to avoid an overpayment if:

(a) The case is totally ineligible for the month for which the check is issued; and

(b) The check has not been reduced for recoupment of a previous overpayment.

(2) If a check is voluntarily returned, the agency shall determine whether or not the recipient is due a refund as described in Section 12 of this administrative regulation.

Section 12. Refund. A recipient shall be due a refund in the following situations:

(1) The agency recoups an amount in excess of the actual overpayment;

(2) The agency offsets an overpayment and an underpayment and finds a balance owed to the recipient;

(3) A recipient voluntarily returns a K-TAP check to avoid an overpayment and the current month obligation of child support was collected by the agency during the month the K-TAP check was intended to cover, leaving a balance owed to the recipient.

Section 13. Correction of Underpayments. The following provisions apply to all K-TAP payments:

(1) The department shall promptly correct an underpayment to:

(a) A current K-TAP recipient; and

(b) One (1) who would be a current recipient if the error causing the underpayment had not occurred.

(2) The difference between the payment received by the recipient and the actual entitlement amount shall be issued to the underpaid assistance group.

(3) In a determination of ongoing eligibility, the corrective payment to the assistance group shall not be considered as income or a resource in:

(a) The month the payment is paid; or

(b) The next following month.

Section 14. Incorporation [Family Alternatives Diversion (FAD)]. (1) ~~The cabinet shall make available in limited areas family alternatives diversion assistance to eligible families to allow the family to maintain self-sufficiency. The cabinet shall expand the program into additional areas until statewide implementation is completed.~~

(2) ~~To qualify for family alternatives diversion benefits, the K-TAP benefit group as defined in Section 1(1) of this administrative regulation shall:~~

(a) ~~Meet K-TAP income and resource requirements pursuant to Sections 2, 3(1), 4(1), and 6 of this administrative regulation;~~

(b) ~~Meet technical requirements of K-TAP pursuant to 904 KAR 2:006;~~

(c) ~~Not be currently receiving ongoing K-TAP benefits;~~

(d) ~~Have a verified short-term need to include:~~

1. ~~Transportation;~~

2. ~~Child care;~~

3. ~~Child support;~~

4. ~~Housing; or~~

5. ~~Employment related problem.~~

(e) ~~Be determined by the cabinet to be self-supporting or would be self-supporting if the short-term need is met; and~~

(f) ~~Not have received a FAD payment anytime during the previous twelve (12) months.~~

(3) ~~The Transitional Assistance Self-assessment Survey Form, FA-1, shall be used to screen applicants for K-TAP and to determine eligibility for FAD along with the FA-2, Family Alternatives Assessment form.~~

(4) ~~The cabinet shall determine through the screening process if a potential K-TAP eligible benefit group may be an eligible family to receive FAD benefits. The K-TAP eligible benefit group shall be notified of the option to decline FAD benefits in lieu of applying for ongoing K-TAP benefits. FAD shall be utilized instead of K-TAP if requested by the benefit group and if the benefit group is deemed eligible for FAD.~~

(5)(a) ~~The benefit group's countable gross income shall include the earned and unearned income listed in Sections 3 and 4 of this administrative regulation.~~

(b) ~~The benefit group's gross income shall be computed using the best estimate of income pursuant to Section 9 of this administrative~~

regulation:

(c) The benefit group's total gross earned and unearned income as determined in paragraph (b) of this subsection shall be compared to the maximum gross income scale for K-TAP pursuant to Section 8(2)(b) of this administrative regulation.

(d) If the benefit group's total gross earned and unearned income exceed the maximum gross income limit for the appropriate benefit group size, pursuant to Section 8(2) of this administrative regulation, the family shall not be eligible for a FAD payment.

(e) The total FAD payment for an eligible family shall be the amount necessary to resolve the emergency, not to exceed \$1,500 per application for FAD.

(f) The amount of the eligible FAD payment may be issued in one (1) or more checks or vouchers to the eligible FAD benefit group or to a vendor for payment of the short-term need, as determined by the cabinet.

(g) For an eligible family, only one (1) approval shall be necessary to issue one (1) or more checks, as needed, to resolve one (1) or more emergencies during the twelve (12) month FAD application period, not to exceed a total of \$1,500.

(6) Receipt of a FAD payment shall exclude the benefit group from receiving ongoing K-TAP benefits for twelve (12) months unless non-receipt would result in:

(a) Abuse or neglect of a child, as determined by the cabinet; or

(b) The parent's inability to provide adequate care or supervision due to the loss of employment through no fault of the parent as determined by the cabinet.

(7) An application shall be taken or a referral made for the following benefits as needed for a FAD-eligible family:

(a) Food stamps;

(b) Medicaid; and

(c) Child care.

(8) For a FAD-eligible benefit group, referrals for other services shall be made as needed to:

(a) Other agencies including:

1. The Division of Child Support Enforcement;

2. The Department for Social Services;

3. The Cabinet for Health Services; and

4. The Department for Employment Services; or

(b) Charitable organizations.

(9) Other services shall be offered as needed through the Department for Employment Services or other contractors to the FAD eligible benefit group to include the following services:

(a) Job search;

(b) Job readiness assessment; and

(c) Life skills.

(10) Hearing rights for FAD shall be the same as hearing rights for a K-TAP recipient pursuant to 904 KAR 2:055.

Section 15. Relocation Assistance Program. (1) If an employment opportunity exists for a K-TAP recipient and relocation to the area of the employment would be required in order to access the employment, the K-TAP recipient may qualify for a Relocation Assistance Program payment. To qualify the applicant for the Relocation Assistance Program shall:

(a) Be a current recipient of K-TAP;

(b) Have a verified offer of employment with wages in an amount equal to thirty (30) hours or more per week at the minimum hourly wage rate; and

(c) Be required to move to access the verified offer of employment and have a new residence available.

(2) The eligible payment shall be issued to assist an eligible K-TAP recipient in meeting moving-related expenses. Moving-related expenses shall include:

(a) Moving van rental to the area of the verified employment;

(b) Apartment or house rental for the first month's rent in the area of the verified employment; and

(c) Security deposit, utility hook-up fees, or other moving-related fees approved by the cabinet for the apartment or house listed in paragraph (b) of this subsection.

(3) The Relocation Assistance Program payment amount shall be a payment of:

(a) \$500; or

(b) Up to \$900 based on the actual verified moving-related expenses as listed in subsection (2) of this section.

(4) An otherwise eligible recipient of the Relocation Assistance Program shall receive no more than two (2) payments in a five (5) year period; however, additional payments may be received with approval of management staff of the Department for Social Insurance.

(5) The cabinet shall assist the applicant for relocation assistance to determine if income received from employment from the new location is sufficient to cover living expenses at the new residence including the completion of a household budget with the applicant in order to make this determination.

(6) The offer of employment, including hourly wage and number of hours, and the availability of a new residence shall be verified by written statement or phone contact.

(7) The cabinet shall provide follow-up case management to assist the family with the transition.

(8) Families who are not currently receiving K-TAP but would be eligible for K-TAP may receive assistance to relocate through FAD.

(9) A K-TAP recipient may refuse without penalty any offer of employment which would require relocation.

(10) Hearing rights for the Relocation Assistance Program shall be the same as hearing rights for a K-TAP recipient pursuant to 904 KAR 2:055.

Section 16. Material Incorporated] by Reference. (1) The following material is incorporated by reference: [Forms necessary for the determination of financial eligibility and recovery of overpayments in the K-TAP program are incorporated. These forms include:]

(a) PA-30.2, "Payment Receipt, edition 2/97";

(b) PA-35, "Sale of Property Agreement to Repay K-TAP Benefits to the Commonwealth of Kentucky, edition 8/97";

(c) [PA-37, "Bridge-the-Gap Payment Form, edition 5/97";

(d) FA-1, "Transitional Assistance Self-assessment, edition 5/99 [2/97]";

(e) FA-2, "Family Alternatives Assessment, edition 8/97";

(f) RA-1, "Application for Relocation Assistance, edition 2/97".

(2) These forms may be inspected and copied at the Department for Community-Based Services (Social Insurance), 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: April 6, 1999

FILED WITH LRC: April 7, 1999 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley

(1) Type and number of entities affected: The affected entities are families who apply for or receive benefits under the Temporary Assistance for Needy Families (TANF) block grant program called Kentucky Transitional Assistance Program (K-TAP). In Kentucky the TANF block grant program to implement the work requirements is called Kentucky Works. As of January 1999, there were a total of 42,846 basic K-TAP cases and 802 UP cases (Unemployed Parent cases), for a total of 43, 648 K-TAP cases. In January 1999, there were approximately 29,581 adults in those cases. Adults receiving K-TAP are required to participate in work activities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: A request for a hearing was received as a result of the publication of the Notice of Intent for February 22, 1999, but was withdrawn; however, written comments were received by close of business on February 22, 1999. No written comments were received regarding cost of living and employment in the geographical area.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: A request for a hearing was received as a result of the publication of the Notice of Intent for February 22, 1999, but was withdrawn; however, written comments were

received by close of business on February 22, 1999. No written comments were received regarding cost of doing business in the geographical area.

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

1. First year following implementation: The individuals who are applicants or recipients of AFDC, now K-TAP, will not have any additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The breakdown of costs and savings to the agency for the first year are listed below: The applicant eligibility test is being eliminated; however, the gross income scale and current budget calculations are being retained. Also, until the first K-TAP check is received, disregard all child support payments, instead of the first \$50. These 2 changes will simplify eligibility determinations and will insignificantly increase the number of eligible recipients therefore no fiscal impact to the agency. To encourage working, in cases when the 4 months of the 1/3 deduction have been used, we are eliminating the 12 month waiting period to allow the deduction to be applied again when earnings, reported timely, have been received from new employment. We anticipate negligible fiscal impact to the agency. To comply with Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Balanced Budget Act of 1997, we are amending the alien income and resources section regarding the methods of calculating the deeming of sponsor's income. We anticipate no fiscal impact to the agency. We are clarifying that the exclusion of earnings of a child attending school also includes the earnings of a minor teenage parent under age 18. We are excluding the earnings of a teenage parent age 18 or 19 attending school. These changes will encourage school attendance and working for these individuals with negligible fiscal impact to the agency. We are clarifying that all work study income and income received from temporary Census employment is disregarded. We anticipate negligible impact to the agency. Due to the subject matter and to comply with KRS Chapter 13A requirements, we are transferring the Family Alternatives Diversion Program in Section 14 and Relocation Assistance Program in Section 15 to new topical regulations. We are concurrently filing 904 KAR 2:500, Family Alternatives Diversion (FAD) and 904 KAR 2:510, Relocation Assistance Program. Adding a definition for a "minor parent" will have no fiscal impact to the agency since this is a clarification of current policy.

2. Continuing costs or savings: The breakdown of costs and savings to the agency for the second year are listed below: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

(a) Geographical area in which administrative regulation will be implemented: A request for a hearing was received as a result of the publication of the Notice of Intent for February 22, 1999, but was withdrawn; however, written comments were received by close of business on February 22, 1999. No written comments were received regarding the economic impact in the geographical area.

(b) Kentucky: A request for a hearing was received as a result of the publication of the Notice of Intent for February 22, 1999, but was withdrawn; however, written comments were received by close of business on February 22, 1999. No written comments were received regarding the economic impact in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the state is responsible under federal requirements to implement a program funded under 42 USC 601 et seq.

(8) Assessment of expected benefits:

(a) Identify effects on public welfare and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is needed to eliminate the applicant eligibility test and until the first K-TAP check is received, disregard all child support payments, instead of the first \$50 will simplify eligibility determinations for recipients and the agency. To encourage working we are eliminating the 12 month waiting period to allow the deduction to be applied again when earnings, reported timely, have been received from new employment. To encourage school attendance and working for these individuals, we are clarifying that the exclusion of earnings of a child attending school also includes the earnings of a minor teenage parent under age 18 and we are excluding the earnings of a teenage parent age 18 or 19 attending school. To comply with Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Balanced Budget Act of 1997, we are required to amend the alien income and resources section regarding the methods of calculating the deeming of sponsor's income.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public welfare would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Public assistance benefits received by needy Kentuckians may be jeopardized if Kentucky does not meet the mandates delineated in our Title IV-A state plan as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. If public assistance benefits received by needy Kentuckians are jeopardized, these individuals would lose a source of support for their family including assistance for supportive services such as transportation and child care which enables the parent to remain employed.

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: A request for a hearing was received as a result of the publication of the Notice of Intent for February 22, 1999, but was withdrawn; however, written comments were received by close of business on February 22, 1999. A Statement of Consideration was completed in response to written comments received.

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 601 et seq.

2. State compliance standards. KRS 205.200

3. Minimum or uniform standards contained in the Federal mandate. None

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

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

CABINET FOR FAMILIES AND CHILDREN Department for Community-Based Services Division of Policy Development (Amended After Hearing)

904 KAR 2:017. Kentucky Works [child-care and] supportive services.

RELATES TO: KRS 205.200(2), 205.211, 205.2003, 42 USC 601 et seq.

STATUTORY AUTHORITY: KRS 194B.050 [194-050(1)], 205.200(2), 205.2003, 42 USC 601 et seq., EO 98-731 [96-862]

NECESSITY, FUNCTION, AND CONFORMITY: [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human

Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children.] The Cabinet for Families and Children is required to administer the public assistance programs. KRS 205.200(2) requires that the conditions of eligibility to receive K-TAP money grants be prescribed by administrative regulations in conformity with 42 USC 601 et seq. and federal regulations. KRS 205.2003 requires administrative regulations for the development of a work program for recipients of public assistance to provide for immediate employment or preparation for employment and to provide supportive services to assist in the pursuit of work and self-sufficiency. This administrative regulation sets forth the requirements for receiving Kentucky Works [child care and] supportive services.

Section 1. Definitions. (1) "Approved Kentucky Works activities" means participation in an allowable activity pursuant to 904 KAR 2:370, Section 2(2)(c).

(2) "Cabinet" means the Cabinet for Families and Children.

(3) "Component" means services and activities pursuant to 904 KAR 2:370, Section 2(2)(c).

(4) "Component preparation" means the period in which assessment, testing, completion of the transitional assistance agreement Form KW-202 "K-TAP Transitional Assistance Agreement", incorporated by reference in 904 KAR 2:370, and referrals for removal of concerns takes place.

(5) "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(6) "Kentucky Transitional Assistance Program (K-TAP)", Kentucky's Temporary Assistance for Needy Families (TANF) program, means a money payment program for children pursuant to 904 KAR 2:006, Section 1.

(7) "Kentucky Works" means a program which assists recipients of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance [gainful employment and self-support].

(8) "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month or not employed throughout the entire month.

(9) "Precomponent" means a waiting period between the dates of component assignment and component commencement.

(10) "Preemployment" means a waiting period between the dates of hiring and employment commencement.

(11) "Transitional extension" means a period of up to ninety (90) days subsequent to the discontinuance of the K-TAP case in which supportive service payments may continue if:

(a) The case is not discontinued due to fraudulent activity; and

(b) The case is not discontinued due to failure to comply with procedural requirements; and

(c) The Kentucky Works participant elects to continue the approved component activity in which he is engaged at the time of discontinuance.

Section 2. Payment Entitlement. (1) Except for the exclusions listed in this administrative regulation, those individuals participating in the Kentucky Works Program shall be entitled to payment off:

(a) Child care;

(b) Transportation; and

(c) Other supportive services costs necessary for participation in an approved Kentucky Works activity [as described in Section 4 of this administrative regulation].

(2) Kentucky Works activities are described in 904 KAR 2:370, Section 2(2)(c).

Section 3. [Child Care Eligibility in Kentucky Works Components:

(1) Child care shall be paid for a child meeting the following criteria:

(a) The child is under thirteen (13); or

(b) A dependent child who is physically or mentally incapable of caring for himself, as verified by the written determination of:

1. A physician; or

2. A licensed or certified psychologist; or

(c) A needy dependent child under court supervision; or

(d) Would be a dependent child except for the receipt of benefits under supplemental security income (SSI) under 42 USC 1382 or foster care under 42 USC 672.

(2) Child care shall be provided in the following situations:

(a) Precomponent;

(b) Component preparation;

(c) Component participation;

(d) Preemployment; or

(e) On-the-job training (OJT) participants discontinued from K-TAP, until the end of the component placement.

Section 4. Child Care Payments. Child care payments shall be paid pursuant to 905 KAR 2:150.

Section 5. Authorization of Child Care Payment. (1) Child care payments shall be authorized upon the receipt of appropriate verification of the cost of care.

(2) Departmental forms required for verification are incorporated by reference in this administrative regulation.

(3) Payments shall be authorized in accordance with 904 KAR 2:050.

Section 6. Restrictions on Authorization of Child Care Payments. Payment shall not be made if:

(1) Verification is not returned by the end of the month following the month in which the cost was incurred; or

(2) The participant is penalized for noncompliance with Kentucky Works activities, as specified in 904 KAR 2:370.

Section 7. Transportation Payments in Kentucky Works components. Transportation reimbursement shall be paid in the following situations:

(1) Precomponent;

(2) Component preparation;

(3) Component participation, with the exception of OJT and unsubsidized employment, while the K-TAP case remains active. Transportation expenses for individuals in unsubsidized employment are covered by the work expense standard deduction as defined in 904 KAR 2:016, Section 1;

(4) Transitional extension; or

(5) On-the-job training (OJT) participants discontinued from K-TAP, until the end of the component placement.

Section 4. [8.] Transportation Payment Amount and Authorization.

(1) If free transportation is unavailable which meets the needs of the recipient, transportation shall be provided for individuals participating in approved Kentucky Works activities through:

(a) Arrangement by the state K-TAP agency or contractor; and

(b) After receipt of verification a direct payment to the individual shall be made through the System Tracking for Employability Program (STEP), as follows:

1. If low-cost transportation is available and meets the needs of the individual, actual transportation costs shall be paid up to the maximum payment rates listed in subparagraph 2 of this paragraph; or

2. If free or low-cost transportation that meets the needs of the individual is unavailable, a direct payment shall be made to the individual per month as follows:

a. Nine (9) dollars for less than four (4) days per month;

b. Thirty-five (35) dollars for four (4) to sixteen (16) days per month; or

c. Sixty (60) dollars for seventeen (17) or more days per month.

(c) For a special circumstance, as determined by the cabinet, when actual transportation costs exceed the maximum payment rates in paragraph (b) of this subsection, if approved by the cabinet, the actual negotiated rate not to exceed \$100 per month may be paid.

(d) Payments shall be made as specified in 921 [904] KAR 2:050.

(2) [Transportation payments shall be limited in the same manner as child care payments.

(3) In precomponent, if necessary to guarantee that the transportation arrangement shall not be lost, transportation payments shall be provided for the period of:

(a) Up to two (2) weeks prior to the scheduled start of component activity; and

(b) Up to one (1) month during a break in component activity if subsequent component activity is scheduled to begin within that period.

Section 5. [9:] Restrictions on Authorization of Transportation Payments. Payments shall not be made if:

- (1) Appropriate verification is not returned by the end of the month prior to the month in which the cost will be incurred;
- (2) The participant is penalized for noncompliance with Kentucky Works activities, as specified in 904 KAR 2:370.

Section 6. Transportation Services in a Regional Capitalized Transportation Network. Initially in limited areas until statewide implementation is completed, the transportation service shall be provided pursuant to 904 KAR 2:018, Section 2 and 603 KAR 7:080.

Section 7. [10:] Other Supportive Services in Kentucky Works Components. (1) Other supportive services shall be provided if necessary for participation in the approved Kentucky Works activities of:

- (a) Component preparation;
- (b) Component participation while the K-TAP case remains active;
- (c) Transitional extension;
- (d) OJT participants discontinued from K-TAP, until the end of the component placement; or
- (e) Acceptance of a new job or retention of an existing one if the parent or other adult:

1. Has accepted employment and a start date of employment is provided, except when an item is required as a condition of being hired by the employer; or

2. Is employed;

(2) Other supportive services shall be approved by the cabinet. Items and services that shall be approved are the purchase of an item or service needed by the K-TAP recipient for participation in the Kentucky Works activity, as determined by the cabinet. [:

(a) Drug screening test if:

1. Required by a potential employer; and

2. Paid directly to the potential employer with no reimbursements allowed to an individual who has paid his own test fee;

(b) Uniforms required by education or training provider;

(c) Suitable clothing for a job interview;

(d) Uniforms or specialized clothing particular to a service, profession or company excluding clothing used for every day wear at work or elsewhere;

(e) School supplies other than books;

(f) Licensing fees which include:

1. Exam costs required to obtain a professional license or certificate; or

2. Driver's license fee;

(g) Timepieces that are necessary for training or employment including watches and alarm clocks;

(h) GED test fee if the following criteria are met:

1. The individual does not have a high school diploma or GED and the individual is expected to pass the test;

2. The test is required as a condition of employment;

3. The fee is paid directly to the test agency with no reimbursement allowed to the individual; or

4. A fee is required at the completion of the GED preparation;

(i) The cost to have a photo identification made in order to take a GED test;

(j) The cost of a criminal records check fee if the provider or employer requires verification;

(k) Driver's education; or

(l) Tools required for employment.]

(3) Other supportive services shall be a cumulative limit of \$600 [400] in a twelve (12) month period, beginning with the first day of the month in which the appropriate verification [form] is issued.

(4) A payment may be authorized for an eligible parent or other adult included as a specified relative pursuant to Section 10 of 904 KAR 2:006;

(5) Penalized and sanctioned K-TAP ineligible adults are not eligible for other supportive services;

(6) A retroactive payment for other supportive services shall not be made for an item purchased by a penalized or sanctioned individual who later cures the penalty. After the parent or other adult cures the penalty or sanction, eligible expenses may be authorized.

(7) Except as allowed by Section 8 of this administrative regulation, a medical service or item shall not be an allowable supportive

service.

Section 8. Allowable Medical Service or Item. If non-TANF funding is used and as long as funding is available, the purchase of the following item or service shall be allowed for a K-TAP recipient, if needed for participation in the Kentucky Works activity and not reimbursable through Medicaid, as determined by the cabinet and limited to:

(1) Eyeglasses or corrective lens;

(2) Dentures; [and]

(3) Hearing aids; and

(4) Medical service or item required as a condition of employment.

Section 9. [11:] Car Repairs. (1) Car repairs shall be provided if necessary for participation in the approved Kentucky Works activities of:

- (a) Component preparation;
- (b) Component participation, including unsubsidized employment while the K-TAP case remains active;
- (c) Transitional extension; or
- (d) OJT participants discontinued from K-TAP, until the end of the component placement.

(2) Car repair expenses shall meet the following criteria to be considered for payment:

(a) Car repair which makes the car functional;

(b) Property taxes on vehicle;

(c) Vehicle registration;

(d) Licenses fees; [and]

(e) [Three (3) months of] Liability insurance to drive a vehicle; and

(f) Other car expense needed by the K-TAP recipient which would allow participation in the Kentucky Works activity, as determined by the cabinet.

(3) All car repair expenditures listed in subsection (2) of this section shall require:

(a) An estimate of the cost; and

(b) Approval by the cabinet.

(4) All auto repair work shall be completed by garages;

(5) Prior to approval of car repair expenditures, the cabinet shall verify the participant owns the vehicle;

(6) The payment maximum for car repair expenditures shall be up to a maximum of \$500 [300] per year per eligible family.

Section 10. [12:] Short-term Training. A fee for a short-term training program shall be eligible for payment for a K-TAP recipient if the training program:

(1) Is not eligible for federal financial aid; and

(2) Is likely to lead to paid employment and is in accordance with the participant's Transitional Assistance Agreement, form KW-202, "K-TAP Transitional Assistance Agreement", as determined by the cabinet.

Section 11. [13:] Other Fees. (1) The following fee payments may be made for an eligible recipient:

(a) Registration fees;

(b) Financial aid application fees;

(c) Testing fees;

(d) Application fees required by vocational schools for specified programs;

(e) Liability insurance fees;

(f) Copy of records;

(g) Activity fees if mandated by the institution; and

(h) Other required fees.

(2) Other fees shall not exceed \$200 per each payment.

Section 12. Work Incentive Bonus. (1) A job retention bonus of \$250 shall be paid to a K-TAP adult who:

(a) Obtains full-time unsubsidized employment which shall be at least thirty (30) hours per week at no less than the federal minimum wage;

(b) Reports and provides timely verification of the wages;

(c) Remains K-TAP eligible [or becomes ineligible for K-TAP due to the reported earnings];

(d) Maintains employment for at least ninety (90) days; [whether

~~or not the K-TAP case is active during the entire ninety (90) days]; and~~

- ~~(e) At the end of the ninety (90) day period, [:~~
~~1.] requests the bonus within thirty (30) days[; and~~
~~2. Provides the cabinet with a current mailing address].~~

~~(f) [(2)] The work incentive bonus shall be limited to one (1) time only during the lifetime of the K-TAP adult.~~

~~(2) A job retention bonus of \$500 shall be paid to an adult who:~~

- ~~(a) Becomes ineligible for K-TAP due to reported earnings;~~
~~(b) Obtains and maintains full-time unsubsidized employment which shall be at least thirty-five (35) hours per week at no less than the federal minimum wage;~~
~~(c) Reports and provides timely verification of the wages;~~
~~(d) Maintains continuous employment for at least ninety (90) days; and~~

~~(e) At the end of the ninety (90) day period;~~

~~1. Requests a bonus within thirty (30) days of the end of the ninety (90) day period; and~~

~~2. Provides the cabinet with a current mailing address.~~

~~(f) If the adult described in paragraph (a) of this subsection maintains continuous employment for 180 days an additional \$500 shall be paid, if requested;~~

~~(g) If the adult described in paragraph (a) of this subsection maintains continuous employment for 270 days an additional \$500 shall be paid, if requested.~~

~~(h) The work incentive bonus for an adult discontinued from K-TAP as a result of earnings shall be limited to three (3) payments of \$500 during the lifetime of the adult.~~

Section 13. Educational Bonus. (1) An educational bonus of \$250 per individual shall be paid to a K-TAP adult or child who reports and verifies receiving a:

- (a) High school diploma;
(b) GED certificate; or
(c) Postsecondary school certificate or degree;

(2) Short-term training programs shall not qualify for postsecondary education.

Section 14. Restrictions on Authorization of Supportive Service Payments. Payments shall not be made for the period during which:

- (1) Verification is not returned [by the service provider]; or
(2) The participant is penalized for noncompliance with Kentucky Works activities, as specified in 904 KAR 2:370, or is ineligible.

Section 15. Hearings and Appeals. Applicants or recipients of benefits under programs described herein who are dissatisfied with any action or inaction on the part of the cabinet shall have the right to a hearing under 921 [904] KAR 2:055.

Section 16. Incorporation [Material Incorporated] by Reference. (1) The following material is incorporated by reference: [Forms necessary for verification of child care and supportive services payments in the Kentucky Works program are incorporated. These forms include:]

- (a) PA-32, "Authorization for Supportive Services Payments, edition 8/97";
(b) PA-33, "Verification of Education/Training, [Child-Care,] and Transportation, edition 1/98 [4/97]"; and
(c) PA-33N, "Verification of Education/Training, [Child-Care,] and Transportation, edition 1/98 [4/97].

(2) This material [These forms] may be inspected, [and] copied, or obtained at the Department for Community-Based Services [Social Insurance], 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, [-Office hours are] 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: April 7, 1999

FILED WITH LRC: April 8, 1999 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley

(1) Type and number of entities affected: The affected entities are families who apply for or receive benefits under the Temporary Assistance for Needy Families (TANF) block grant program called Kentucky Transitional Assistance Program (K-TAP). As of January 1999, approximately 43,648 families in Kentucky (monthly average) receive K-TAP, which includes 29,581 adults.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: A request for a hearing was received as a result of the publication of the Notice of Intent for February 22, 1999, but was withdrawn; however, written comments were received by close of business on February 22, 1999. No written comments were received regarding cost of living and employment in the geographical area.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: A request for a hearing was received as a result of the publication of the Notice of Intent for February 22, 1999, but was withdrawn; however, written comments were received by close of business on February 22, 1999. No written comments were received regarding cost of doing business in the geographical area.

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

1. First year following implementation: The individuals who are applicants or recipients of K-TAP will not have any additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The breakdown of costs and savings to the agency for the first year are listed below: (The following figures are for the remainder of SFY 99)

a. Increase in "Other Supportive" services from \$400 to \$600 cumulative limit. \$125,000 cost to the agency (federal TANF funds).

b. Increase in "Car Repairs" services from \$300 to \$500 cumulative limit. \$50,000 cost to the agency (federal TANF funds).

c. Add state funded only supportive services to provide for the purchase of dentures, eyeglasses or corrective lens, hearing aids, and other allowable medical expense or item required as a condition of employment, not reimbursable through Medicaid. These services will be provided as long as funding is available. \$100,000 cost to the agency for the remainder of SFY 99 (state funds).

d. Job retention (work incentive) bonuses: \$250 bonus- \$52,100 cost to the agency for the remainder of FY 99 (federal TANF funds).

\$500 bonus- \$100,000 cost to the agency for the remainder of FY 99 (federal TANF funds).

e. Educational bonuses of \$250 per individual. \$156,200 cost to the agency (federal TANF funds)

f. Replacing the list of other supportive services in Section 7(2) with language that will allow for a wider range of necessary items or services needed for participation in Kentucky Works activities, as determined by the cabinet, is no fiscal impact to the agency.

2. Continuing costs or savings: The breakdown of costs and savings to the agency for the second year are listed below: (SFY 2000)

a. Increase in "Other Supportive" services from \$400 to \$600 cumulative limit. \$500,000 cost to the agency (federal TANF funds)

b. Increase in "Car Repairs" services from \$300 to \$500 cumulative limit.

\$200,000 cost to the agency. (federal TANF funds)

c. Add state funded only supportive services to provide for the purchase of dentures, eyeglasses or corrective lens, hearing aids, and other allowable medical expense or item required as a condition of employment, not reimbursable through Medicaid. These services will be provided as long as funding is available. \$300,000 cost to the agency for SFY 2000 (state funds)

d. Job retention (work incentive) bonuses:
\$250 bonus- \$625,000 cost to the agency for FY 2000 (federal TANF funds)

\$500 bonus- \$1,200,000 cost to the agency for FY 2000 (federal TANF funds)

e. Educational bonuses of \$250 per individual. \$625,000 cost to the agency (federal TANF funds)

f. Replacing the list of other supportive services in Section 7(2) with language that will allow for a wider range of necessary items or services needed for participation in Kentucky Works activities, as determined by the cabinet, is no fiscal impact to the agency.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds (TANF block grant funding) and state funds.

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

(a) Geographical area in which administrative regulation will be implemented: A request for a hearing was received as a result of the publication of the Notice of Intent for February 22, 1999, but was withdrawn; however, written comments were received by close of business on February 22, 1999. No written comments were received regarding the economic impact in the geographical area.

(b) Kentucky: A request for a hearing was received as a result of the publication of the Notice of Intent for February 22, 1999, but was withdrawn; however, written comments were received by close of business on February 22, 1999. No written comments were received regarding the economic impact in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the state is responsible under federal requirements to implement a program funded under 42 USC 601 et seq.

(8) Assessment of expected benefits:

(a) Identify effects on public welfare and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is needed to comply with the mandated requirements found in 42 USC 601 et seq., and to implement supportive services for the Kentucky Transitional Assistance Program (K-TAP) pursuant to KRS 205.2003.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public welfare would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Public assistance benefits received by needy Kentuckians may be jeopardized if Kentucky does not meet the mandates delineated in our Title IV-A state plan as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. If public assistance benefits received by needy Kentuckians are jeopardized, these individuals would lose a source of support for their family including assistance for supportive services, such as transportation, which enables the parent to remain employed.

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: A request for a hearing was received as a result of the publication of the Notice of Intent for February 22, 1999, but was withdrawn; however, written comments were received by close of business on February 22, 1999. A Statement of Consideration was completed in response to written comments received.

(11) TIERING: Is tiering applied? No (Explain why tiering was or was not used) Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 601 et seq.

2. State compliance standards. KRS 205.200; 205.2003

3. Minimum or uniform standards contained in the federal mandate. None

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

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

CABINET FOR FAMILIES AND CHILDREN Department for Community-Based Services Division of Policy Development (Amended After Hearing)

904 KAR 2:370. Technical requirements for Kentucky Works.

RELATES TO: KRS 205.200(7), 205.2003, 42 USC 601 et seq.
STATUTORY AUTHORITY: KRS 194B.050 [194.050(t)], 205.200(2), 205.200(7), 205.2003, 42 USC 601 et seq., EO 98-731 [96-862]

NECESSITY, FUNCTION, AND CONFORMITY: [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children.] The Cabinet for Families and Children has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program for [of Aid to Families with Dependent Children, which is now called] the Kentucky Transitional Assistance Program, the block grant program funded under 42 USC 601 et seq. KRS 205.2003 [205.200(2)] requires that a work program for recipients of Kentucky Transitional Assistance Program [the conditions of eligibility to receive money grants from the Kentucky Transitional Assistance Program] be prescribed by administrative regulations [in conformity with 42 USC 601 et seq. and federal regulations]. This administrative regulation sets forth the technical requirements of the Kentucky Works Program participants as they relate to eligibility for receiving assistance from the Kentucky Transitional Assistance Program.

Section 1. Definitions. (1) "Assessment" means the ongoing evaluation of an individual's strengths and needs relative to achieving self-sufficiency.

(2) "Cabinet" means the Cabinet for Families and Children.

(3) "Concerns" means a hardship the individual shall overcome to become employed and self-sufficient.

(4) "Conciliation" means a process in which participation problems in the Kentucky Works Program can be resolved.

(5) "Kentucky Transitional Assistance Program (K-TAP)", Kentucky's Temporary Assistance for Needy Families (TANF) program, means a money payment program for children pursuant to 904 KAR 2:006, Section 1.

(6) "Kentucky Works" means a program which assists recipients of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance.

(7) "Vocational education" means a training program which prepares the individual for employment.

(8) "Wage supplementation" means a component in which employers hire participants and receive reimbursement from the cabinet for a portion of wages paid to the participant.

Section 2. Program Participation. (1) All adult and teenage parent Kentucky Transitional Assistance Program recipients shall be required to participate in the Kentucky Works Program unless the recipient meets the exception criteria in Section 3 of this administrative regulation;

(2) All adult Kentucky Transitional Assistance Program recipients who do not meet the exception criteria in Section 3 of this administrative regulation shall be required to participate in the Kentucky Works Program as follows:

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(a) [For] A one (1) parent household [~~a minimum of twenty (20) hours per week~~] shall be required to participate in a specific activity [activities] listed in paragraph (c) of this subsection no less than the number of hours per week required in the activity, as determined by the cabinet. The activity shall be required to have at least a minimum of:

1. Through September 30, 1999, twenty-five (25) hours per week; five (5) hours per week which may be satisfied through education activities defined in paragraph (c)7, 8, and 9 of this subsection or in literacy or adult education.

2. On or after October 1, 1999, a minimum of thirty (30) hours per week; ten (10) hours per week which may be satisfied through education activities defined in paragraph (c)7, 8, and 9 of this subsection or in literacy or adult education.

(b) [For] A two (2) parent household shall participate in a specific activity no less than the number of hours per week required in the activity, as determined by the cabinet. The activity shall be required to have at least a minimum of:

1. ~~[A minimum of]~~ Thirty-five (35) hours per week ~~[shall be required]~~ for one (1) parent with at least thirty (30) hours of the required thirty-five (35) hours per week in specific activities listed in paragraph (c) of this subsection; and

2. ~~[A minimum of]~~ Twenty (20) hours per week ~~[shall be required]~~ for one (1) parent in a two (2) parent household with all twenty (20) hours per week in specific activities listed in paragraph (c)1, 2, 3, 4, and 6 of this subsection if:

a. The family receives federally-funded child care assistance; and
b. An adult in the family is not disabled pursuant to 904 KAR 2:006; or

c. An adult is not needed to care for a child in the home with a severe disability pursuant to 904 KAR 2:006.

3. If the family does not receive federally-funded child care assistance, a minimum of thirty-five (35) hours per week shall be required for both parents combined.

4. A two (2) parent household eligible for K-TAP based on the deprivation of incapacity, pursuant to 904 KAR 2:006, shall meet the number of hours of participation in a work activity listed in paragraph (a) of this subsection.

(c) Specific activities to be in compliance with program participation requirements in Kentucky shall include:

1. Unsubsidized employment;
2. Subsidized employment;
3. Work experience training;
4. On-the-job training;
5. Job search and job readiness assistance;
6. Community service;
7. Vocational education not to exceed twelve (12) months and after that time coupled with work or work activities for the amount of hours per week specified in paragraphs (a) and (b) of this subsection;

8. Full-time enrollment progressing satisfactorily, as defined by the school, in post secondary education not to exceed twenty-four (24) [twelve (12)] months and after that time coupled with work or work activities for the amount of hours per week specified in paragraphs (a) and (b) of this subsection;

9. Satisfactory attendance at secondary school or equivalent in the case of a recipient who has not completed secondary school or equivalent coupled with work or work activities in the amount of hours per week specified in paragraphs (a) and (b) of this subsection;

10. Provision of child care services to an individual participating in community service;

11. Based on the findings of the assessment, the agency or cabinet designee and the participant may determine placement in a work preparation activity which includes:

- a. Domestic violence counseling;
- b. Life skills training;
- c. A substance abuse program;
- d. Mental health counseling;
- e. Vocational rehabilitation;
- f. Literacy; and
- g. Adult education;

12. ~~[h:]~~ Wage supplementation, which shall be available in limited areas and shall expand into additional areas until statewide implementation is complete; ~~[and]~~

13. ~~[i:]~~ Participation in work programs approved by the cabinet; ~~and~~

14. Participation in other activities approved by the cabinet.

Section 3. Exceptions to Program Participation. (1) A Kentucky Transitional Assistance Program recipient who is a [single] head of household, who has not obtained a high school diploma or a graduate equivalency diploma and has not attained twenty (20) years of age shall be deemed to be engaged in work for any month in a fiscal year if the recipient:

(a) Maintains satisfactory attendance at a secondary school or the equivalent during the month; or

(b) Participates in education that is directly related to employment for at least twenty (20) hours a week.

(2)(a) An adult Kentucky Transitional Assistance Program recipient shall not be required to comply with program participation requirements for up to twelve (12) months if the adult is an individual caring for a child who has not attained twelve (12) months of age;

(b) The twelve (12) months of exemption from work participation requirements shall be limited to a total of twelve (12) months in a lifetime for the adult and may be:

1. Consecutive; or
2. Cumulative.

(3) For a Kentucky Transitional Assistance Program recipient where compliance with program participation would make it difficult to escape domestic violence or unfairly penalize the individual who is or has been victimized by domestic violence or who is at risk of further domestic violence, as determined by the cabinet, compliance shall not be mandated.

(4) A Kentucky Transitional Assistance Program recipient shall be deemed to be engaged in work for any month if the recipient is:

(a) The only parent or caretaker relative in the family with a child who has not attained six (6) years in age; and

(b) Engaged in work for an average of at least twenty (20) hours per week during the month.

(5) An applicant of K-TAP shall be informed in writing of the availability of the exceptions to participation in Kentucky Works listed in Section 3 of this administrative regulation.

Section 4. Program Participation Requirements. (1) Assessment.

(a) The cabinet or another entity designated by the cabinet shall make an assessment of the individual's employability;

(b) Other agencies shall assist in the assessment process as needed;

(c) The assessment shall include:

1. Consideration of basic skills;
2. Occupational skills; and
3. Concerns and other relevant factors.

(2) The self-sufficiency plan. Based on the findings of the assessment, the agency or cabinet designee and participant shall jointly develop a self-sufficiency plan by completing the Transitional Assistance Agreement. This plan shall contain:

- (a) An employment goal for the participant;
- (b) Services to be provided by the agency (including child care);
- (c) Activities to be undertaken by the recipient to achieve the employment goal; and
- (d) Other needs of the family.

(3) An adult applicant or recipient of the K-TAP benefit group shall register for work except for a member who is:

- (a) Under age eighteen (18);
- (b) Age sixty (60) or over;
- (c) Age eighteen (18) or nineteen (19) years old in full-time school attendance as set forth in Section 1(10) ~~[(11)]~~ of 904 KAR 2:016;
- (d) Receiving benefits based on 100 percent disability;
- (e) An individual who has received benefits based on 100 percent disability within the past twelve (12) months but lost the benefits due to income or resources and not an improvement in the disability; or
- (f) Employed thirty (30) hours or more per week at minimum wage or more.

Section 5. Conciliation. (1) Conciliation shall be conducted:

- (a) At the request of a Kentucky Works participant;
- (b) At the request of a service provider; or

(c) When a situation is identified which could result in a penalty (as specified in Section 7 of this administrative regulation).

(2) The conciliation shall be conducted by the cabinet or contractor:

(a) During conciliation, the agency shall determine if additional services are needed to assist with Kentucky Works participation.

(b) During conciliation, participation shall be monitored for up to fifteen (15) days following the issuance of form KW-204, "Conciliation Contract".

(c) The fifteen (15) day period may be extended for an additional fifteen (15) days, if necessary.

(3) At the conclusion of the conciliation period, the participant shall be notified in writing of the results of the conciliation.

Section 6. Excused from Penalties. (1) A (K-TAP) recipient shall be excused from penalties for failure to comply with the Kentucky Works Program, as specified in Section 7 of this administrative regulation, if one (1) of the following good cause criteria is met:

(a) The individual is a single custodial parent caring for a child under age six (6) and child care is unavailable, as determined by the cabinet;

(b) Dependent care is not available for an [any] incapacitated individual living in the same household as a dependent child;

(c) Child care is terminated through no fault of the applicant or recipient;

(d) Child care does not meet the needs of the child, for example, a child with a disability;

(e) The individual is unable to engage in employment or training for mental or physical reasons as verified by the cabinet [~~Deprivation based on incapacity is determined according to 904 KAR 2:006, Section 8;~~];

(f) [(d)] Illness of another household member requiring the presence of the participant as documented by medical evidence or by reliable information from other sources as verified by the cabinet;

(g) [(e)] The participant is temporarily incarcerated or institutionalized for thirty (30) days or less;

(h) [(f)] The agency determines there is discrimination by an employer and a formal complaint has been filed based on:

1. Age;
2. Race;
3. Sex;
4. Color;
5. Disability;
6. Religious beliefs;
7. National origin; or
8. Political beliefs;

(i) [(g)] Work demands or conditions render continued employment unreasonable, such as:

1. Consistently not being paid on schedule; or
2. The presence of a risk to the individual's health or safety;

(j) [(h)] Wage rates are decreased subsequent to acceptance of employment;

(k) [(i)] The participant accepts a better job which, because of circumstances beyond the control of the recipient, does not materialize.

(l) The work activity site is so far removed from the home that commuting time would exceed three (3) hours per day.

(2) [A referral to the Department of Vocational Rehabilitation shall be required for a K-TAP adult who is determined unable to engage in employment or training for mental or physical reasons;

(3) The duration of good cause criteria may vary according to individual circumstances.

Section 7. Penalties. (1) When a Kentucky Transitional Assistance Program recipient fails to comply with the requirements of the Kentucky Works Program, he shall be subject to Kentucky Works and Kentucky Transitional Assistance Program penalties. Failure to comply shall be found when the participant:

(a) Fails without good cause, pursuant to Section 6 of this administrative regulation, to participate in required activities, including:

1. An assessment interview;
2. An assessment; or
3. Self-sufficiency plan development including completion of the

Transitional Assessment Agreement, KW-202;

(b) Fails without good cause, pursuant to Section 6 of this administrative regulation, to participate in the program activities as defined in the Transitional Assessment Agreement, KW-202;

(c) Refuses without good cause, pursuant to Section 6 of this administrative regulation, to accept employment;

(d) Terminates employment or reduces earnings without good cause, pursuant to Section 6 of this administrative regulation; or

(e) Unless an exception in Section 4(3) of this administrative regulation applies, fails to register for work.

(2)(a) Except for requirements listed in paragraph (b) of this subsection, a K-TAP recipient who has failed to comply with Kentucky Works requirements without good cause, pursuant to Section 6 of this administrative regulation, or register for work unless an exception in Section 4(3) of this administrative regulation applies, shall be penalized by reducing the amount of the assistance otherwise payable to the benefit group on a pro rata basis; or

(b) Assistance to the benefit group shall be discontinued if the K-TAP recipient, fails, without good cause pursuant to Section 6 of this administrative regulation, to:

1. Keep appointment for an assessment interview; or

2. Complete an assessment, pursuant to Section 4 of this administrative regulation.

(c) The penalty in paragraph (a) or (b) of this subsection shall continue to be applied until the participant complies with program requirements.

(d) The penalty in paragraph (a) or (b) of this subsection shall not be applied until after conciliation procedures are conducted pursuant to Section 5 of this administrative regulation.

Section 8. Hearings and Appeals. Applicants or recipients of benefits under programs described herein who are dissatisfied with any action or inaction on the part of the cabinet shall have the right to a hearing under 904 KAR 2:055.

Section 9. Work Experience Program Training Site Agreement. (1) Costs incurred by the training site agency because of participation in WEP shall not be reimbursed.

(2) A WEP participant shall not be involved in partisan politics.

(3) A WEP participant shall not be removed from training without prior notice to the Department for Community-Based Services [Social Insurance].

(4) A WEP participant shall not infringe upon the promotional opportunities of a currently employed individual.

(5) An individual shall not be subjected to discrimination, or denied training or employment or benefits, in the administration of, or in connection with, the training program because of:

- (a) Race;
 - (b) Color;
 - (c) Religion;
 - (d) Sex;
 - (e) National origin;
 - (f) Age;
 - (g) Disability; or
 - (h) Political belief or affiliation;
- (6) A training site agency shall:

(a) Complete Department for Community-Based Services [Social Insurance] questionnaires relating to the operation of the training site agreement;

(b) Not displace a currently employed worker by a WEP participant, including a partial displacement such as a reduction of the:

1. Hours of nonovertime work;
2. Wages; or
3. Employment benefits;

(c) Comply with the Americans with Disabilities Act;

(d) Shall report a personnel problem to the departmental representative designated by department;

(e) Shall maintain accurate time and attendance records for each WEP participant;

(f) Verify time and attendance records for each WEP participant on Form PA-33, "Certification of Education or Training, Child Care and Transportation" that will be submitted by a WEP participant;

(g) Shall grant access for the Department for Community-Based Services [Social Insurance] to the training site during working hours to

counsel participants and to monitor the site;

(h) Shall immediately report an injury to the designated representative;

(i) Shall conduct investigations and submit reports upon the request of the Department for Community-Based Services [~~Social Insurance~~];

(j) Not encourage or require a WEP participant to take part in partisan political activity, or involve a WEP participant in partisan political activity;

(k) Except as authorized by law, or in writing by a WEP participant, shall maintain the confidentiality of information, in any form, provided by or about a WEP participant who seeks or receives services under the Training Site Agreement;

(l) Hold the cabinet harmless from losses, claims, expenses, actions, causes of action, costs, damages, and obligations arising from a negligent act or omission of the training site agency, its agents, employees, licensees, invitees, or WEP participants that results in injury to a person, or damages or losses relative to a person, corporation, partnership, or other entity;

(m) Provide:

1. Sufficient training to ensure development of appropriate skills;

2. New tasks after mastery of each skill; and

3. Adequate participation instruction and supervision at all times.

(7) A training site agency shall:

(a) Provide participants a safe training place;

(b) Assure that if participants are engaged in activities that are not covered under the Occupational Safety and Health Act of 1970, as amended, they shall not be required or permitted to be trained, or receive services, in buildings, or surroundings, or under training conditions that are unsanitary, hazardous, or dangerous to the health and safety of participants; and

(c) Provide adequate material to complete each training activity in a safe environment;

(8) A WEP participant shall have the right to request a public hearing relating to a grievance or complaint.

(9) A training site agency shall sign a "WEP Training Site Agreement" with the cabinet containing a statement of:

(a) Each of the conditions established by subsections (1) through (8) of this section; and

(b) The period covered by the agreement, including the number of hours of participation required each week.

Section 10. Incorporation [~~Material Incorporated~~] by Reference. (1) The following material is incorporated by reference: [Forms necessary for participation in the Kentucky Works Program are being incorporated. These forms include:]

(a) PA-33, "Verification [~~Certification~~] of Education or Training[; ~~Child Care~~] and Transportation edition 1/98 [(4/97)]";

(b) PA-33D, "Child's Certification of School Enrollment/Attendance, edition 8/97";

(c) PA-218A, "New Chance Referral, edition 4/97";

(d) PA-219, "Kentucky Works Program Fact Sheet, edition 11/98 [5/97]";

(e) KW-105, "Kentucky Works Referral Form (Participant), edition 6/97 [4/97]";

(f) KW-200, "Kentucky Works Assessment Form, edition 5/97 [4/97]";

(g) KW-202, "K-TAP Transitional Assistance Agreement, edition 4/97";

(h) KW-204, "Conciliation Contact, edition 3/98 [5/97]";

(i) KW-205, "Conciliation Results, edition 3/98 [5/97]";

(j) KW-211, "Noncompliance Contact, edition 5/97";

(k) KW-230, "Wage Supplementation Program Participant Agreement, edition 4/99";

(l) KW-240, "Work Experience Training Program Participant Agreement, edition 1/98";

(m) [(h)] KW-244, "WEP Training [Work] Site Agreement Amendment, edition 1/98";

[(m)] KW-241 "WEP Work Site Agreement, edition 2/98";

(n) KW-245 "Notice of WEP Discontinuance, edition 1/98";

(o) KW-246 "WEP Referral Form, edition 1/98";

(p) KWET-241, "WEP Training Site Agreement, edition 9/98."

(2) This material [incorporated by reference] may be inspected,

[and] copied, or obtained at the Department for Community-Based Services [~~Social Insurance~~], 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, [Office hours are] 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: April 7, 1999

FILED WITH LRC: April 8, 1999 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley

(1) Type and number of entities affected: The affected entities are families who apply for or receive benefits under the Temporary Assistance for Needy Families (TANF) block grant program called Kentucky Transitional Assistance Program (K-TAP). In Kentucky the TANF block grant program to implement the work requirements is called Kentucky Works. As of January 1999, approximately 43,648 families in Kentucky (monthly average) receive K-TAP, which includes 29,581 adults. Adults receiving K-TAP are required to participate in the Kentucky Works Program unless the recipient meets exemption criteria delineated in the administrative regulation. The number of hours an adult is required to participate in activities increases from a minimum of 20 hours per week to 25 hours per week. The minimum number of hours per week for an individual who is an only parent or caretaker relative in the family with a child who has not attained 6 years in age will remain at 20 hours per week.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: A request for a hearing was received as a result of the publication of the Notice of Intent for February 22, 1999, but was withdrawn; however, written comments were received by close of business on February 22, 1999. No written comments were received regarding cost of living and employment in the geographical area.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: A request for a hearing was received as a result of the publication of the Notice of Intent for February 22, 1999, but was withdrawn; however, written comments were received by close of business on February 22, 1999. No written comments were received regarding cost of doing business in the geographical area.

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

1. First year following implementation: The individuals who are applicants or recipients of K-TAP, who are required to comply with Kentucky Works provisions will have no additional compliance, reporting or paperwork requirements due to the amendments to this emergency regulation. K-TAP recipients participating in work activities for 20 hours per week will be required to increase minimum participation in work activities by an additional 5 hours per week for FY 1999 and 10 hours per week for FY 2000. This increase should create minimum impact to the recipient. In response to a public comment as a result of the public hearing held on October 30, 1998, we added clarification that the required hours per week to be in Kentucky Works may be satisfied through 5 hours per week of education activities. As a result of written comments received as a result of the public hearing scheduled on February 22, 1999, we are adding a good cause reason for not participating in an activity for someone who has to travel a total of 3 hours a day and extending post-secondary education component from 12 months to 24 month. These 2 changes will not create any additional compliance, reporting or paperwork requirements for the K-TAP recipient.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to the agency:

1. First year: The breakdown of costs and savings to the agency for the first year are listed below: Beginning FY 1999, K-TAP recipients must participate in Kentucky Works activities for a minimum of

25 hours per week instead of 20 hours per week. We project minimal additional costs to the agency for recipients to meet this 5 hour per week increase in participation, 10 hour increase for FY 2000. This minimal cost is for sending notices to recipients notifying them of the 25 hours per week instead of 20 hours per week minimum participation in Kentucky Works. Any additional cost for notices is budgeted for both years of the biennium. However, if participation rates are not met, a penalty resulting in a minimum of a 5 percent decrease in the TANF block grant (increasing by an additional 2 percent each year up to a maximum loss of 21 percent) and the requirement that state funds be utilized to replace the percentage loss due to the penalty. Total impact for 5 percent penalty is \$18.0 million - maximum of 21 percent penalty is \$76.0 million. A possible penalty for not meeting this increase in hours is not budgeted. Adding a good cause reason for not participating in an activity for someone who has to travel a total of 3 hours a day will be no fiscal impact to the agency. Changing the post secondary education component from 12 months to 24 months before 20 additional hours in work or another activity is required will create additional fiscal impact to the agency. This impact of additional benefits will cost the agency \$3,700 for the remainder of FY 99 and \$44,000 for FY 2000.

2. Continuing costs or savings: The breakdown of costs and savings to the agency for the second year and continuing are listed below: See impact in number 1.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State funds would have to be used to cover a penalty. However, it is the intent of the Cabinet for Families and Children to implement the increase in participation and not incur a penalty.

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

(a) Geographical area in which administrative regulation will be implemented: A request for a hearing was received as a result of the publication of the Notice of Intent for February 22, 1999, but was withdrawn; however, written comments were received by close of business on February 22, 1999. No written comments were received regarding the economic impact in the geographical area.

(b) Kentucky: A request for a hearing was received as a result of the publication of the Notice of Intent for February 22, 1999, but was withdrawn; however, written comments were received by close of business on February 22, 1999. No written comments were received regarding the economic impact in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the state does not want to incur a penalty; therefore, the increased hours in required participation will be met.

(8) Assessment of expected benefits:

(a) Identify effects on public welfare and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is needed to comply with the minimum number of hours per week to participate in work activities requirements found in 42 USC 607(c). A parent or caretaker relative receiving assistance, is required to work or participate in approved work activities a minimum of 25 hours per week for FY 1999 and 30 hours per week for FY 2000.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public welfare would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Title IV-A Block grant funding (K-TAP) for public assistance benefits (including supportive services) received by needy Kentuckians may be jeopardized if Kentucky does not meet the mandates delineated in our Title IV-A state plan as required by 42 USC 601 et seq. If this increase in minimum participation in work activities is not implemented, participation rates will not be met resulting in penalties and loss of federal funds. If public assistance benefits received by needy Kentuckians are jeopardized, these individuals would lose a source of support for their family including assistance for supportive serv-

ices which enables the parent to remain in the work activity. However, it is the intent of the Cabinet for Families and Children to implement the increase in participation and not incur a penalty.

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: A request for a hearing was received as a result of the publication of the Notice of Intent for February 22, 1999, but was withdrawn; however, written comments were received by close of business on February 22, 1999. A Statement of Consideration was completed in response to written comments received.

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 607(c)

2. State compliance standards. KRS 205.2003

3. Minimum or uniform standards contained in the federal mandate. The minimum number of hours that a recipient must participate in work activities is set in 42 USC 607(c)

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

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Financial Management and Analysis (Amended After Hearing)

907 KAR 1:780. Converted dual-licensed hospital-based nursing facility beds.

RELATES TO: KRS 216B.020(4), (5)

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 205.520(3), 216B.075

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services has the responsibility for administering the Kentucky Medicaid Program in an efficient, cost-effective manner, consonant with the funds that are available, and consistent with the objectives of the Program. One (1) of these objectives is for recipients to have reasonable access to health care and services under the Medicaid Program, taking into account such factors as geographic location, travel time, choice of providers, and utilization rates. This administrative regulation establishes the process and criteria relating to Medicaid participation for dual-licensed acute care hospital beds that were converted to nursing facility beds pursuant to KRS 216B.020(4), and supplements applicable provisions for provider enrollment in Section 2 of 907 KAR 1:672 and the administrative hearing process in 907 KAR 1:671.

Section 1. Definitions. (1) "Administrative process" is defined in 907 KAR 1:671, Section 1(2).

(2) "Applicant" is defined in 907 KAR 1:672, Section 1(1).

(3) "Applicant's geographic area" means the county in which the applicant's converted dual-licensed hospital-based nursing facility beds are located and contiguous Kentucky counties.

(4) "Application" means a request for Medicaid certification for beds that were converted to hospital-based nursing facility beds pursuant to KRS 216B.020(4).

(5) "Cabinet" means the Cabinet for Health Services.

(6) "Certificate of need" is defined in KRS 126B.015(7).

(7) "Converted" means a bed that was previously a dual-licensed acute care hospital bed that pursuant to KRS

216B.020(4) and (5), changed dual-licensed acute care beds to a hospital-based nursing facility bed and is not presently participating in the Medicaid Program. [the process by which a dual-licensed acute care hospital bed was changed to a hospital-based nursing facility bed pursuant to KRS 216B.020(4)-]

- (8) "Days" means calendar days, unless otherwise designated.
- (9) "Department" means the Department for Medicaid Services.
- (10) "Provider" is defined in KRS 205.8451(7).
- (11) "State Health Plan" is defined in KRS 216B.015(18).

Section 2. Enrollment Process for Converted Dual-Licensed Hospital-Based Nursing Facility Beds Participation in Medicaid. (1) An application for converted dual-licensed hospital-based nursing facility **beds which are not presently participating in the Medicaid Program, but requesting participation,** [bed-Medicaid-participation] shall be submitted to the Commissioner of the Department for Medicaid Services. The application shall be in writing in the form, content and manner required by the department in accordance with this administrative regulation and 907 KAR 1:672. The application shall contain the following, with pertinent information and supporting documentation:

(a) The total number, each room number and bed designation of:

- 1. Dual-licensed acute care beds that were converted to hospital-based nursing facility beds and licensed pursuant to KRS 216B.020(4);
- 2. Converted beds already participating in Medicaid;
- 3. Converted hospital-based nursing facility beds applying for Medicaid certification; and
- 4. Licensed hospital-based nursing facility beds.

(b) Data that demonstrates a need for additional **not presently participating** Medicaid certified beds in the applicant's geographic area in accordance with the factors listed in Section 3 of this administrative regulation;

(c) The requested date for Medicaid certification of the converted beds; and

(d) Information in the application shall be current, presented clearly and precisely.

(2) The department shall:

- (a) Review the application for completeness; and
- (b) Review the notification from the Division of Licensing and Regulation of the Office of Inspector General recommending Medicaid certification for the converted beds.

(3) Upon receipt of notification from the Division of Licensing and Regulation, along with a complete accurate application, and requested documentation, the department shall determine:

- (a) The number of licensed hospital-based nursing facility beds the applicant has available for certification; and
- (b) Whether the application establishes a need for additional Medicaid certified beds in the applicant's geographic area in accordance with Section 3 of this administrative regulation.

(4) The department shall make a decision regarding the application within thirty (30) days of the receipt of information specified in subsection (3) of this section. The department shall:

- (a) Grant, in whole or in part, the requested Medicaid certification; or
- (b) Deny the request.

(5) The department shall notify the applicant, in writing, of the decision, and the basis for denial.

(6) If an applicant wishes to appeal an adverse determination, the appeal shall be in accordance with Sections 4 and 5 of this administrative regulation.

(7) If an application for Medicaid certification of converted beds is fully or partially granted and the applicant is not currently a Medicaid certified nursing facility provider, the applicant shall, except as established in subsection (8) of this section:

(a) Follow the enrollment procedures delineated in 907 KAR 1:672; and

(b) Include a copy of the department's decision granting certification in its enrollment packet.

(8) If the applicant is currently a Medicaid certified nursing facility provider:

- (a) All converted beds that may be certified by the department

shall be included under the existing provider number; and

(b) The provider shall comply with licensing requirements established in 902 KAR 20:300 and 902 KAR 20:310.

(9) Subsection (4) of this section shall apply to requests for new participation in the Medicaid Program, not to beds previously approved by the department.

Section 3. Enrollment Criteria for Converted Dual-Licensed Hospital-Based Nursing Facility Beds **Requesting** Participation in Medicaid. (1) Based on data submitted in the application, relevant factors in the applicant's geographic area shall be considered to assess the need for Medicaid certification of converted beds and shall include:

(a) The total number of free-standing and hospital-based nursing facility beds.

(b) The total number of the following:

- 1. Medicaid certified nursing facility beds; and
- 2. Medicaid certified hospital-based nursing facility beds;

(c) Survey data reported to the cabinet by providers for the two (2) calendar years preceding the date of receipt of the application, and data collected by the cabinet in accordance with 902 KAR 20:008 for licensed nursing facility beds in the applicant's geographic area relating to:

1. The occupancy percentage for each of the two (2) preceding calendar years; and

2. The number of admissions, discharges or deaths;

(d) A comparison of the Medicaid reimbursement rates of free-standing and hospital-based nursing facilities as of a July 1 date preceding the date of the application;

(e) The current State Health Plan "nursing facility bed need calculations by county and state" maintained by the Cabinet for Health Services, Office of the Certificate of Need; and

(f) Any other documentation included in the application that demonstrates the need for Medicaid certification of any converted beds.

(2) The department may consider the following when making a determination of need:

(a) The most current Medicaid nursing facility financial data; and

(b) Other information, including relevant information that the department may have requested from:

- 1. The applicant; or
- 2. Other providers in the applicant's geographic area.

Section 4. Resolution of Applicant Disputes Prior to an Administrative Hearing. (1) If an applicant disagrees with the department's determination regarding Medicaid certification, the applicant may:

(a) Request a resolution meeting; or

(b) Submit additional information for consideration in lieu of such request.

(2) A written request for a resolution meeting shall be received by the Director of the Department's Division of Long-term Care within thirty (30) calendar days of the date of the department's notice of decision. Such request shall:

(a) Identify the disputed issue or issues;

(b) State the basis of the challenge to the department's decision;

(c) Provide documentation supporting the applicant's position; and

(d) State the name, address, and telephone number of any individual expected to attend the resolution meeting on the applicant's behalf.

(3) The department shall, within thirty (30) calendar days of receipt of a request for resolution meeting, send written notice to the applicant of the date, time and place of the meeting.

(4) The resolution meeting shall be conducted by the department in an informal manner. The applicant and the department may present any relevant evidence or testimony at the meeting in support of their respective positions.

(5) In lieu of requesting a resolution meeting, an applicant may submit additional information it wishes the department to consider.

(a) The additional information shall be received by the department within thirty (30) days of notice of the department's decision;

(b) The submission of additional documentation shall not constitute a request for a resolution meeting; and

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(c) It shall not extend the thirty (30) day time period for requesting a resolution meeting.

(6) The department may rescind, modify or take no action with regard to its initial adverse decision.

(a) The department shall provide written notice to the provider of the department's decision within thirty (30) calendar days from:

1. The date of the resolution meeting; or

2. The date additional information was received for consideration.

(b) The notice shall state the decision and the facts on which it is based, including references to applicable statutes and administrative regulations.

(7) The department may extend any of the time frames specified in this section, and upon written notice to the applicant, if:

(a) Such extension is determined to be necessary for the efficient administration of the resolution meeting process; or

(b) To prevent a miscarriage of justice with regard to the provider.

Section 5. Administrative Hearing Process. An applicant may appeal an adverse decision rendered by the department. Such appeals shall be in accordance with the provisions in 907 KAR 1:671, Section 9(1), (3), and (4) through (14).

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: April 8, 1999

FILED WITH LRC: April 8, 1999 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: 35 hospital-based nursing facilities, 644 hospital-based nursing facility licensed beds, 174 Medicaid recipients.

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

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

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

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

1. First year following implementation: Standardized Medicaid enrollment process will be required.

2. Second and subsequent years: Standardized Medicaid enrollment process will be required.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$5,458,557.50 (Cost)

2. Continuing costs or savings: \$5,458,557.50 (Cost)

3. Additional factors increasing or decreasing costs: All previously participating beds have been grandfathered in, and, therefore, are already provided for in the budget. Also, any new participating beds will be accepted up to the budget capacity established in 907 KAR 1:025.

(b) Reporting and paperwork requirements: Enrollment staff review time will increase.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds. *Federal matching funds of 70.49% equaling \$3,847,737.18 and state matching funds of 29.51% equaling \$1,610,820.32 will be expended. State revenues for dual-licensed hospital based nursing facility beds will be funded as follows:

1. All previously participating beds have been grandfathered in, and, therefore, are already provided for in the budget.

2. Any new participating beds will be accepted up to the budget capacity established in 907 KAR 1:025.

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

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

(b) Kentucky: Providers will have to follow standardized licensing and enrollment procedures.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Acute care hospitals will be able to provide both hospital and nursing facility services for Medicaid eligible recipients

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

(c) If detrimental effect would result, explain detrimental effect: The availability of nursing facility services in acute care hospitals would be hindered.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. None

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

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

Revenues (+/-): None

Expenditures (+/-): None
Other Explanation: None

CABINET FOR HEALTH SERVICES
Department for Mental Health and
Mental Retardation Services
Division of Substance Abuse
(Amended After Hearing)

908 KAR 1:310. Certification standards and administrative procedures for driving under the influence programs. [Administrative procedures for DUI facilities and programs.]

RELATES TO: KRS Chapters 189A, 216B, 222

STATUTORY AUTHORITY: KRS 189A.040(6), 194A.030, 194A.050 [194.030(9)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 189A requires the Cabinet for Health Services [Human Resources] to promulgate administrative regulations to prescribe standards for the licensing and operation of the alcohol and other drug education and treatment facilities and programs that provide [-, for offenders receiving] assessment, education, and [or] treatment services to offenders convicted of driving under the influence pursuant to KRS 189A.010. KRS 194A.030 places the Department for Mental Health and Mental Retardation Services and its programs under the Cabinet for Health Services. This administrative regulation establishes certification requirements and minimum standards, for an individual or other entity operating a DUI program. [under the driving while impaired law.]

Section 1. Definitions. (1) "Accredited college or university" means an institution listed in the most recent College Handbook published by College Board Publications, P.O. Box 886, New York, New York 10023-0886.

(2) "Affidavit of indigency" means a sworn statement issued by a court to certify that a defendant has limited income and resources and does not have the ability to pay for the services delivered.

(3) "Alcohol and other drug-free workplace" means a program's policy to prohibit the unlawful manufacture, distribution, possession or use of a controlled substance and to establish the disciplinary action to be taken if the policy is violated.

(4) "Assessment" means a procedure administered to an individual convicted of DUI that includes the administration of a computerized assessment instrument, a clinical interview, a determination by the assessor of a client's needs, a discussion of available options and referral to services that provide an appropriate level of care in relation to the client's needs as determined by the assessment.

(5) "Cabinet" means the Office of Inspector General, Division of Licensing and Regulation, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

(6) "Case coordination (which was formerly case management)" means the monitoring of a client's progress, including consultation with other services providers and the court to ensure the coordination of a client's services from assessment to completion.

(7) "Case review" means the process in which a clinical services supervisor reviews the client records of a clinician to ensure that appropriate treatment decisions are made.

(8) "Certification" means the process by which the division recognizes and authorizes a program, assessor, and instructor to provide services to a client convicted of DUI.

(9) "Certified alcohol and drug counselor" is defined in KRS 309.080.

(10) "Certified assessor" means an individual who has been trained and approved by the division to evaluate the needs of a client and to recommend appropriate services by conducting assessments in a DUI program.

(11) "Certified instructor" means an individual who has been trained and approved by the division to provide education services in a DUI program.

(12) "Certified program" means a public or private entity approved by the division to deliver assessment, education and treatment services to a client convicted of DUI.

(13) "Client" means an individual who receives services in a DUI

program.

(14) "Clinical services supervisor" means an individual responsible for monitoring and directing [assessment and] treatment services and providing consultation and instruction to clinical staff [that deliver assessment and treatment services].

(15) "Conflict of interest" means a private relationship exists between a client and a program, that will result in a conflict between the program's interests and the interests of the client, and a situation will be created where a program's personal or financial interest conflicts with professional responsibility.

(16) "Court" means the court in which a client is convicted of DUI.

(17) "Courtney disposition system" means a statewide database maintained by the Kentucky Administrative Office of the Courts, that contains criminal conviction data from both state and local law enforcement agencies in Kentucky.

(18) "Detoxification treatment" means a twenty-four (24) hour medical or nonmedical program providing supervised management of physical and psychological withdrawal symptoms from a substance to which an individual has been addicted or abusing and an assessment of the individual's need for further care or referral to appropriate resources.

(19) "Division" means the Division of Substance Abuse, Department for Mental Health and Mental Retardation Services, Cabinet for Health Services, 100 Fair Oaks Lane, 4E-D, Frankfort, Kentucky 40621-0001.

(20) "DUI" is defined in KRS Chapter 189A.

(21) "DUI services" means assessment, education, or treatment services provided to a client convicted pursuant to KRS 189A.010.

(22) "Education" means a curriculum approved by the division that provides information about the risks of alcohol and other drugs.

(23) "Education agreement" means a written plan outlining what a client referred for education must complete to satisfy the program's requirements.

(24) "Enrollment" means the act of registering at a certified DUI program and receiving an assessment.

(25) "Facility" means the physical area including the grounds and building in which a program delivers services.

(26) "Fee agreement" means a written statement of charges to a client for services delivered by a program that specifies the arrangements for payment of the fees.

(27) "First offender" is defined in KRS 189A.010.

(28) "Halfway house" means a therapeutic group setting in which counseling is not provided by staff and in which a client resides twenty-four (24) hours a day, and where the client makes a social and vocational adjustment prior to returning to family or independent living in the community.

(29) "Immediate danger" means a condition in a program that could or has caused death or serious physical injury.

(30) "Indigent" is defined in KRS 31.100(3).

(31) "Inpatient treatment" means a hospital-based residential service provided postwithdrawal, to an individual with a primary or secondary diagnosis of alcohol or other drug abuse or dependency, that is designed to reduce or eliminate alcohol or other drug abuse behavior and dependency.

(32) "Intensive outpatient treatment" means a structured intensive substance abuse rehabilitation program provided for an individual and his family experiencing a problem related to alcohol or other drug abuse or dependency.

(33) "Location code" means a six (6) digit number issued by the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration to each of a program's facilities.

(34) "Means test" means an objective method used by a program to determine a client's income and resources to evaluate his ability to pay for services received.

(35) "Memorandum of understanding" means a written agreement between two (2) programs that outlines the duties and responsibilities of a program regarding a client referral that remains in effect until one (1) of the programs terminates the agreement in writing.

(36) "Multiple offender" means a second, third or subsequent offender as defined in KRS 189A.010.

(36) "Off the grounds" means a facility is separated from another facility by a public road.

(37) "Outpatient treatment" means individual and group therapeutic activities provided in a nonresidential setting on a scheduled and unscheduled basis where a client is assisted in recovering from alcohol and other drug abuse.

(38) "Plan of correction" means a program's written plan including the planned correction and a date when a correction will be made that is submitted to the division by a program if deficiencies are cited by the division in a program review.

(39) "Program administrator" means an individual or the designee of the individual in charge of the operation of a program who is responsible for the services provided in a program and who has responsibility for determining if a client satisfactorily completes the required services.

(40) "Program code" means an alphanumeric identifier that is issued to a program by the division at the time a program is certified.

(41) "Progress note" means a written entry in a client's record to document client contacts, the delivery of services, or how well the goals of a client's treatment plan are being addressed.

(43) "Referral plan" means the identification in writing of a client's needs that cannot be met by a program and the program and community resources to which a client is referred.

(42) "Regional program manager" means an individual responsible for the management of a program's county offices when a program operating statewide has multiple county locations.

(43) "Residential treatment" means a residential service provided postwithdrawal to an individual with a primary or secondary diagnosis of alcohol or other drug abuse or dependency, that is designed to reduce or eliminate alcohol or other drug abuse dependency.

(44) "Residential transitional treatment" means a residential program that provides an organized therapeutic environment in which an individual may receive vocational rehabilitation, outpatient counseling, case management, and other support services including assistance seeking employment.

(45) "Revocation" means withdrawal by the division of a program's or an individual's right to deliver services to a client convicted of DUI.

(46) "Self-help group" means activities provided in a self-directed peer group setting for a person recovering from alcohol and other drug abuse or the provision of support services that address the effects of another person's alcohol and other drug abuse and the emphasis on a positive direction in achieving and maintaining an alcohol and drug-free lifestyle or in learning to cope with a problem related to another person's alcohol and other drug abuse.

(47) "Sliding fee scale" means a program's formula for providing a service to a client at a rate lower than the program's maximum published fee.

(48) "Twenty (20) hour education" means an education curriculum for first offenders assessed as low-risk, that do not have an alcohol or other drug problem requiring treatment, or as a supplement to treatment for a first or multiple offender.

(49) "Treatment" means services delivered in an [a licensed] outpatient, intensive outpatient, inpatient, residential, residential transitional, detoxification or halfway house program licensed to deliver alcohol and other drug treatment services.

(50) "Treatment plan" means the written product of the process by which a client and a clinician identify and rank a client's problems needing resolution, establish agreed upon immediate and long-term specific and measurable goals and decide on a treatment process and the resources to be utilized.

(51) "Uniform citation" is defined in KRS 431.450. ["Cabinet" means the Cabinet for Human Resources, Office of the Inspector General, Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621.

(2) "Division" means the Cabinet for Human Resources, Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, Fair Oaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601.

(3) "DUI" means driving while under the influence of alcohol, drugs or intoxicating substances.

(4) "Program" means any public, private or government entity

eligible to deliver DUI assessment, education and treatment services.

(5) "Certification" means the process by which the Division of Substance Abuse recognizes and authorizes any program, assessor or instructor to provide DUI services.

(6) "Services" means the level of care appropriate for a client based on an evaluation of the client's needs.

(7) "Assessment" means the procedure used to obtain information about a client's use of alcohol and other drugs and to determine the problems and needs of a client in order to recommend appropriate services.

(8) "Education" means a course which delivers factual information about alcohol and other drugs to increase awareness, knowledge, and change a client's attitude and behavior in relation to substance abuse.

(9) "Treatment" means outpatient, intensive outpatient, inpatient, residential, or detoxification services provided to clients in need of substance abuse services.

(10) "Program administrator" means the person responsible for the services provided in a program and who has responsibility for determining if a client satisfactorily completes all required services.

(11) "Certified assessor" means a person who has been trained and approved by the division to evaluate the needs of clients and to recommend appropriate services.

(12) "Certified instructor" means a person who has been trained and approved by the division to provide education services in a DUI program.

(13) "Approved curriculum" means:

(a) "Talking about alcohol driving unimpaired nine (9) hour";

(b) "Talking about alcohol driving unimpaired twenty (20) hour";

(c) "Kentucky alcohol and other drug education program nine (9) hour"; and

(d) "Kentucky alcohol and other drug education program twenty (20) hour."

(14) "Computerized screening instrument" means the Kentucky driver risk inventory (DRI).

(15) "Case management" means an administrative function to insure coordination of client services and continuity of care.

(16) "Court" means the court where a client is convicted of DUI.

(17) "Client" means any individual receiving services in a DUI program.

(18) "First offender" means a person convicted of DUI for the first time within a five (5) year period.

(19) "Multiple offender" means a person convicted of a second or subsequent DUI within a five (5) year period.

(20) "Satisfactorily completed" means a client has fulfilled all requirements of the program and has received maximum benefits from the services received.

(21) "DUI services" means assessment, education, or treatment services provided by an eligible DUI program.

(22) "Facility" means the physical area, including the grounds and buildings where program functions take place.]

Section 2. Licensing Requirements. (1) It shall be unlawful for an individual or other entity [desiring] to provide DUI assessment, education or treatment services unless it is in a certified program:

(a) Licensed by [as an assessment facility and program, education facility and program, or treatment facility and program shall first obtain a license from] the cabinet in accordance with 908 KAR 1:370;

(b) [the drug abuse treatment and education center (DATE center) regulations, 908 KAR 1:150 through 908 KAR 1:260; and the non-medical alcohol treatment and education center (NATE center) administrative regulations, 908 KAR 1:010 through 908 KAR 1:140;

(2) Programs] Conducted in a [facility established and maintained by a] licensed federal hospital [shall be exempt from state licensing requirements, as such facilities are created] subject to federal licensure and regulatory requirements pursuant to [; in accordance with] 38 USC 301, 38 USC 1720A, 38 USC 7333, and 38 USC 7334; or

(c) [(3) Programs] Conducted on the grounds of [in a facility established and maintained by] a hospital licensed by the cabinet pursuant to 902 KAR 20:160 or 902 KAR 20:180 [shall be exempt from obtaining a DATE or NATE center license in accordance with 908 KAR 1:160, Section 1(1)(c)].

(2) A hospital licensed by the cabinet pursuant to 902 KAR 20:160 or 902 KAR 20:180 that operates a DUI program in a facility off the

grounds of the hospital shall have the separate facility where a DUI program is located licensed by the cabinet in accordance with subsection (1) of this section.

(3) A DUI program established, conducted, and maintained in a jail, prison, or correctional facility shall be licensed by the cabinet in accordance with subsection (1) of this section. ~~[(4) The cabinet shall notify the division in writing when an individual or entity:~~

~~(a) is granted a license as a DATE or NATE center;~~

~~(b) Has stated in its application that it desires to provide DUI services; and~~

~~(c) If its license has been renewed, suspended or revoked.]~~

Section 3. Program Certification Requirements. (1) General requirements.

(a) A licensed entity desiring to provide DUI assessment or education services shall be certified by the division as a DUI program before providing a service at any location.

(b) A certified DUI program may deliver assessment, education or treatment services statewide if the program is licensed in accordance with Section 2 of this administrative regulation [it is licensed by the cabinet] and is certified by the division at each service location.

(c) A program may be certified to provide only assessment or only education services or both assessment and education services at a location.

(d) The division shall not certify a program desiring to provide only education at all locations.

(e) A treatment facility licensed by the cabinet pursuant to 902 KAR 20:160 or 902 KAR 20:180, an out-of-state treatment facility licensed by the state where the facility is located, and a federally licensed hospital may provide treatment services to a client referred by a certified DUI program without receiving DUI program certification from the division.

(f) The division shall notify a program, in writing, if certification is issued, renewed or revoked.

(g) The division shall notify the Transportation Cabinet, in writing, if an action is taken to revoke a DUI program's certification and if an action by the division is appealed by a program.

(h) If more than one (1) certified DUI program is operated at the same location each program shall maintain a separate identity by:

1. Posting a sign conspicuously in a public area showing the name of the program;

2. Posting each program's license conspicuously in a public area;

3. Using a separate logo or letterhead on written materials;

4. Maintaining client records separately; and

5. Delivering services separately.

(i) A certified DUI program shall:

1. Deliver education and treatment services in a facility that provides at least seven (7) square feet of individual space for a client while he is receiving a service;

2. Maintain an alcohol and other drug-free work place;

3. Obtain a criminal background check from the Administrative Office of the Court's Courtnet Disposition System for the administrator, and all clinical and certified staff, that begin working in the program after the effective date of this administrative regulation;

4. Ensure that an owner, program administrator, and all clinical and certified staff that begin working in a program after the effective date of this administrative regulation have not been released from incarceration or probation or parole for the conviction of a violent crime, hate crime, or sex crime within two (2) years from his date of employment with the program; and

5. Maintain professional malpractice insurance to cover all clinical and certified staff in the minimum amount of \$100,000 per occurrence.

(2) Staffing requirements.

(a) General requirements.

1. A program shall have staff certified by the division in accordance with Section 4 of this administrative regulation to deliver assessment and education services.

2. Certified, clinical and administrative staff shall not currently be employed as:

a. A law enforcement officer;

b. A correctional officer, other than in a certified DUI program that is located in a jail, prison or correctional facility;

c. A probation and parole officer;

d. An attorney;

e. An employee of the Administrative Office of the Courts;

f. An employee of the division; or

g. A judge.

(b) Program administrator.

1. A program administrator shall be responsible for the services delivered in a program and knowledgeable of:

a. The standards in this administrative regulation, KRS 189A.040 and 189A.045;

b. In a federally assisted program, the requirements for confidentiality pursuant to 908 KAR 1:320; and

c. In a nonfederally assisted program, the requirements for confidentiality pursuant to KRS 222.271(1).

2. A program administrator shall ensure:

a. A program implements and complies with all applicable regulations and statutes;

b. Staff having primary responsibility for delivering DUI services, including regional program managers, comply with:

(i) The standards in this administrative regulation, KRS 189A.040 and 189A.045;

(ii) In a federally assisted program, the requirements for confidentiality pursuant to 908 KAR 1:320; and

(iii) In a nonfederally assisted program, the requirements for confidentiality pursuant to KRS 222.271(1);

c. An individual involved in the operation of the program or in the delivery of client services engages in ethical practices and abides by the code of ethics contained on the application for DUI program certification;

d. A program does not accept a client if a conflict of interest exists between the program and the client;

e. Staff providing assessment and education services are certified by the division and that they complete training required by the division; and

f. ~~[Staff providing assessment, education, and treatment services are supervised in accordance with the requirements in subsection (3) of this section; and~~

g. Attendance by a client is documented in a client's record.

3. A program administrator shall:

a. ~~[Maintain documentation of annual in-service training that the division requires of staff delivering DUI services;~~

b. Investigate a complaint received from the division and shall, upon request, provide the division with records pertaining to a complaint; and

b. **Personally attend or have a representative of his program** ~~[c.]~~ attend at least one (1) statewide DUI meeting annually. The division conducts statewide DUI meetings on a semiannual basis.

(c) Clinical services supervisor.

1. There shall be **clinical supervision provided at all locations** by a clinical services supervisor who ~~[for each program location that]~~ meets one (1) of the following requirements:

a. A certified alcohol and drug counselor certified pursuant to KRS 309.080 to 309.089, with at least two (2) years full-time clinical work experience postcertification, and an academic degree if required for certification, from an accredited college or university;

b. A certified or licensed professional, with at least two (2) years postdegree work experience in the alcohol and other drug treatment field, who has completed eighty (80) hours of training in alcohol and other drug abuse counseling, within four (4) years immediately prior to assuming responsibility as a clinical services supervisor in a DUI program, and is one (1) of the following:

(i) Physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;

(ii) Psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

(iii) Licensed psychologist licensed to practice psychology by the

Kentucky Board of Examiners of Psychology pursuant to KRS 319.050;

(iv) Certified psychologist with autonomous functioning, certified to function without supervision, in an area specified by the Kentucky Board of Examiners of Psychology, pursuant to KRS 319.056;

(v) Psychological associate certified by the Kentucky Board of Examiners of Psychology to provide a service under the supervision of a licensed psychologist pursuant to KRS 319.064;

(vi) Licensed clinical social worker licensed for the independent practice of clinical social work by the Kentucky Board of Examiners of Social Work pursuant to KRS 335.100;

(vii) Certified social worker certified by the Kentucky Board of Examiners of Social Work to provide a service under the supervision of a certified social worker licensed for the independent practice of clinical social work pursuant to KRS 335.080;

(viii) Registered nurse licensed by the Kentucky Board of Nursing pursuant to KRS Chapter 314 with a masters degree in psychiatric nursing from an accredited college or university;

(ix) Advanced registered nurse practitioner licensed by the Kentucky Board of Nursing pursuant to KRS 314.042;

(x) Licensed marriage and family therapist licensed by the Kentucky Board of Licensure of Marriage and Family Therapists pursuant to KRS Chapter 335;

(xi) Certified professional counselor certified by the Kentucky Board of Certification for Professional Counselors pursuant to KRS Chapter 335; or

(xii) Certified art therapist certified by the Kentucky Board of Art Therapists pursuant to KRS 309.130.

2. A clinical services supervisor shall complete a division approved training in clinical supervision, within six (6) months of assuming responsibility as the clinical services supervisor in a DUI program, or within six (6) months of the effective date of this administrative regulation whichever is later, and shall complete twenty (20) hours of training in alcohol and other drug abuse treatment annually.

3. A clinical services supervisor shall assist a program administrator in the investigation of a complaint against a program if a complaint concerns an assessment, education, or a treatment service.

(3) [Supervision requirements:

(a) General requirements:

1. A clinical services supervisor shall supervise certified and clinical staff delivering assessment and treatment services:

2. A clinical services supervisor shall sign an agreement stating he will not supervise his spouse, live-in partner, child, stepchild, sibling, parent, stepparent, grandparent, grandchild, aunt, uncle, niece, nephew, or in-law:

3. A clinical services supervisor shall develop annually an individual written plan of supervision for an assessor and clinician he supervises that:

a. Reflects a staff member's strengths and weaknesses; and

b. States measurable objectives designed to assist a staff member to:

(i) Improve the quality of services delivered to a client; and

(ii) Develop skill and knowledge of the twelve (12) core functions of an alcohol and drug counselor established by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse, Inc. necessary for the level of services the staff member delivers:

4. The individual providing supervision shall document the supervision after each session and include an attendance record and the minutes of a group supervision session:

(b) Supervision of assessors: A clinical services supervisor shall provide a certified assessor who meets the requirements in Section 4 (2)(a)3 of this administrative regulation with at least four (4) hours of face-to-face individual or group supervision monthly that includes:

1. Observation of a clinical interview;

2. Review and cosigning of assessments;

3. Review of progress notes;

4. Training in assessment, progress note documentation, and case coordination;

5. Bimonthly review of a record for a client completing education or treatment at another program for which the assessor is responsible for providing case coordination; and

6. Verification that the assessor is in compliance with the stan-

dards established in this administrative regulation, KRS 189A.040, 189A.045 and with his professional continuing education requirements:

(c) Supervision of instructors:

1. A program administrator shall ensure that a certified instructor receives supervision in accordance with a plan of supervision developed by the program:

2. A program's plan of supervision shall include:

a. The designation of an individual familiar with a curriculum who will be responsible for providing supervision;

b. The method and content of supervision to include at least the observation of an instructor delivering a curriculum;

c. The length and frequency of a supervisory session;

d. A system for providing feedback, consultation and training if needed; and

e. Verification that an instructor is in compliance with the standards in this administrative regulation, KRS 189A.040, 189A.045 and with his professional continuing education requirements:

(d) Supervision of clinicians:

1. A clinical services supervisor shall provide at least four (4) hours of face-to-face individual or group supervision monthly to a clinician meeting the requirements for an assessor in Section 4(2)(a)3 of this administrative regulation who provides treatment to a client convicted of DUI:

2. The supervision shall include:

a. Review of a plan of supervision;

b. Treatment plan review and cosigning of treatment plans;

c. Observation of an individual or group treatment session at least semiannually;

d. Review of records and progress note documentation;

e. Case consultation; and

f. Verification that a clinician complies with the standards in this administrative regulation, KRS 189A.040, 189A.045 and with his professional continuing education requirements:

(4) Application for program certification.

(a) An individual or other entity seeking DUI program certification shall:

1. Submit a written application to the division;

2. Submit a program survey form and all documentation required by the division for each location where the applicant desires to provide DUI assessment, [or] education or treatment services;

3. Sign a statement of ethical practice contained on the application for DUI program certification; and

4. Sign a statement contained on the application for DUI program certification agreeing to comply with:

a. The standards in this administrative regulation, KRS 189A.040 and 189A.045;

b. In a federally-assisted program, the requirements for confidentiality pursuant to 908 KAR 1:320; and

c. In a nonfederally assisted program, the requirements for confidentiality pursuant to KRS 222.271(1).

(b) A program survey form shall be completed for each location at the time of application for program certification and recertification and if a program opens a new location.

(c) A program survey form shall contain:

1. Type of services provided;

2. Maximum fee for a service;

3. Name of the curriculum delivered at a location;

4. Name and telephone number of the contact person for a location;

5. Hours of operation when an office is staffed;

6. Address of the office where the client files for a location are maintained and stored;

7. Name and title of each certified staff person providing assessment or education services at a location; and

8. Name of the clinical services supervisor for a location.

(d) The division shall review an application, verify the information and certify a program that meets the following requirements for certification:

1. Submits an application for program certification to the division;

2. Is a licensed entity in accordance with Section 2 of this ad-

ministrative regulation; and

3. Has staff certified by the division to deliver the required services.

(e) The division shall assign a program code and issue a letter and certificate of certification if a program is certified. The program code shall be used for verification of program certification on correspondence to the court, the Transportation Cabinet, and the division.

(f) Each program location shall have an additional location code issued by the division that shall be used in conjunction with a program code and will identify a program and the exact location where a service is delivered.

(g) Program certification shall be issued by the division for a period of two (2) years, and is renewable unless previously revoked.

(h) Program certification shall not be transferred and applies only to the individual or other entity named in the application for DUI program certification approved by the division.

(i) If there is a change of ownership the new owner shall apply for program certification in accordance with the requirements in this subsection.

(4) [(5)] Application for program recertification.

(a) A program administrator shall request program recertification on an application for DUI program recertification at least thirty (30) calendar days prior to the expiration of his program's certification.

(b) If program certification expires, a program administrator may submit an application for DUI program recertification. The program shall be considered a new applicant if an application for program recertification is not made within sixty (60) calendar days of the expiration date.

(c) If program certification lapses for sixty (60) calendar days or more the division shall notify a program administrator, in writing, that the program is not eligible to deliver DUI services and the program shall:

1. Notify active clients in writing;

2. Refer a client and transfer case-coordination responsibility of a client's case to a program of his choice; and

3. Submit to the division a list of active clients with a copy of each client's referral form stating the name of the program to which a client is referred.

(d) A program administrator shall meet the requirements in subsection (2)(b)3b [e] of this section before a program is recertified.

(5) [(6)] Denial of program certification and recertification. The division may deny a program's application for certification or recertification if:

(a) A program fails to meet certification requirements;

(b) Program certification has been denied or revoked by the division within the last three (3) years;

(c) The owner, program administrator, clinical services supervisor, or other principal had his assessor or instructor certification revoked by the division within the last three (3) years; or

(d) The division is in the administrative hearing process to revoke the assessor, or the instructor certification of an owner, program administrator, or clinical services supervisor.

(6) [(7)] Program changes.

(a) A program administrator shall notify the division and the cabinet, in writing, if there is a change in ownership, program name, or program location.

(b) ~~A program administrator shall notify the division, in writing, if an individual certified by the division as an assessor or instructor begins employment with a program or terminates employment with a program.~~

~~(c) A program administrator shall notify the division, in writing, on a report of change form [that is incorporated by reference in this administrative regulation:] if there is a change at a location in:~~

~~1. Services delivered;~~

~~2. Maximum fee charged for a service;~~

~~3. Hours of operation when an office is staffed;~~

~~4. Location of client records;~~

~~5. Scheduling telephone number;~~

~~6. Contact person;~~

~~7. Clinical services supervisor; and~~

~~8. Other program information printed in the DUI directory.~~

(7) [(8)] Records.

(a) General requirements.

1. A program shall designate on a program survey form, at the time of application for program certification, where the client records for each location and the administrative records for the program will be maintained and stored.

2. A program administrator shall notify the division, in writing, on a report of change form, if a program changes the location where client and administrative records are maintained and stored.

3. A program administrator shall ensure that written and electronic client and administrative records are:

a. Stored in a locked cabinet or computer only accessible to authorized staff;

b. Kept confidential in a federally assisted program pursuant to 908 KAR 1:320 and in a nonfederally assisted program pursuant to KRS 222.271(1);

c. Retained for at least five (5) years from the last date of service or action taken; and

d. If destroyed after a five (5) year period of retention, a record is burned, shredded or deleted electronically and is unrecoverable.

4. A program shall maintain a record of fees paid by a client.

(b) Administrative records. A program shall maintain administrative records that include:

1. Policy and procedure manual;

2. Copies of curricula, handouts, and videos;

3. Hours of operation for each location;

4. Fee schedule and means test for determining indigency;

5. ~~[Record of indigent services delivered;~~

6.] Cabinet report from most recent licensure inspection;

6. ~~7.] Memoranda of understanding;~~

7. ~~8.] Copies of the division's certification letters for assessors and instructors on staff;~~

9. ~~9.] Clinical supervision reports;]~~

8. ~~10.] Complaint file; and~~

9. ~~11.] Assessment, education, and treatment rosters or sign in sheets; and~~

12. ~~Documentation of all training and continuing education completed by staff.]~~

(c) Client records.

1. A program may release a client's record or disclose confidential information about the client with the client's written permission through a signed authorization for release of information.

2. A program shall release a client's record, with the client's written authorization for release of information, if ~~[the court orders a record released;]~~ the division requests release of a record, or a client is referred to another program for education or treatment services.

3. If a program is unable to obtain a client's written authorization for release of information a program may release a client's record upon receipt of a court order.

4. A program shall open a separate written or electronic record for a client at the time of assessment, or upon enrollment in education or admission to treatment if a client is referred to another program after receiving an assessment.

5. ~~4.]~~ Client records shall include the following forms signed by a client:

a. Client rights statement;

b. Client notice of confidentiality and confidentiality agreement;

c. Fee agreement; and

d. Authorization for release or disclosure of information.

6. ~~5.]~~ If a client receives an assessment his record shall include the items established in subparagraph 5 [4] of this paragraph and:

a. An AOC 494 form ~~that is incorporated by reference in this administrative regulation~~ or a court order;

b. Uniform citation;

c. Kentucky DUI Assessment Instrument printout;

d. Clinical interview and interview notes;

e. Freedom of choice statement;

f. Confirmation and acceptance of assessment statement;

g. Referral agreement if applicable;

h. Certificate of enrollment;

i. Case coordination contacts; and

j. Certificate of completion or notice of noncompliance;

7. ~~6.]~~ If a client receives education his record shall include the items established in subparagraph 5 [4] of this paragraph and:

- a. An education agreement signed by a client; and
- b. A record of attendance.

8. [7:] If a client receives treatment his record shall include the items established in subparagraph 5 [4] of this paragraph and:

- a. A treatment plan signed by a client and a clinician and treatment plan reviews signed by [a client and] a clinician;
- b. Progress notes signed and dated by a clinician, recorded after each client contact documenting [and if] the type of contact or [is the delivery of a professional service, include the] service provided, [an observation of the client's response to the service,] and the client's participation [progress toward meeting the goals and objectives of his treatment plan]; and
- c. A discharge summary documenting completion or noncompliance signed and dated by a clinician.

(8) [(9)] Fees.

(a) The fee for assessment, education, and treatment shall be established by a program and paid by a client pursuant to KRS 189A.040.

(b) The fee schedule published in the DUI directory, shall be posted in a public area of each facility visible to a client.

(c) The fee a client is charged shall not exceed a program's maximum published fee.

(d) A program shall explain fee and program requirements for the payment of a fee to a client at the time of his assessment or upon enrollment in education or admission to treatment if a client is referred to another program after receiving an assessment.

(e) A program shall not charge a client a fee unless the client has signed a fee agreement.

(f) A program's sliding fee scale shall be based on a means test and applied objectively to a client to determine a client's ability to pay.

(g) If a client states he is indigent a program shall refer him to the court to have an affidavit of indigency executed by the court, and a program shall accept a client determined indigent by the court, and deliver services free of charge or for the amount specified by the court.

[(h) A DUI program shall maintain a written record showing the number of indigent clients served and this information shall be made available to the division upon request.]

(9) [(10)] DUI directory.

(a) The division shall publish annually on July 1, of each year, a directory of all certified DUI programs and may issue additions, revisions, and corrections quarterly on October 1, January 1, and April 1, of each year as changes occur.

(b) The directory shall include DUI programs certified to provide DUI assessments and shall be distributed to:

- 1. District court judges;
- 2. Circuit clerks;
- 3. Certified DUI programs; and
- 4. The public upon request.

(c) The directory shall have a county section that includes:

- 1. The location of each program having an assessment center in a county;
- 2. The services provided at each program location;
- 3. The maximum fee for a service; and
- 4. Specific terms and conditions related to DUI services that are required by a program.

(d) A program administrator shall report changes for the directory to the division, on a report of change form, at least thirty (30) calendar days prior to the publication dates in paragraph (a) of this subsection. If the division does not receive a report of change form by the deadline date the division may hold a change until the next scheduled publication of the directory. [Program certification requirements:

- (a) A licensed individual or entity, desiring to provide DUI assessment or education services shall be certified by the division.
- (b) A properly licensed treatment facility may provide DUI treatment services without receiving program certification from the division.
- (c) A certified program may operate statewide if it is properly licensed and certified in all service locations.
- (d) All service locations shall be subject to the same qualifications as the central office location.
- (e) A program may be certified to provide assessment, or education services or assessment and education services.

tion services or assessment and education services:

(f) A program shall have at least one (1) individual on staff who has been certified by the division, to be a certified program:

(g) Program administrator:

1. The program administrator shall be knowledgeable of the requirements for operating a DUI program and is responsible for the services delivered by the program:

2. The program administrator shall be responsible for insuring that all staff having primary responsibility for the delivery of DUI services, are knowledgeable of the DUI law and administrative regulation:

(2) Application for program certification; program survey form; and clinical services supervisor qualifications:

(a) Individuals or entities seeking program certification shall:

- 1. Submit a written application to the division;
- 2. Sign a statement of ethical practice contained on the application for DUI program certification;
- 3. Agree to abide by the provisions of this administrative regulation; and
- 4. Submit a program survey form for each location where the applicant desires to provide DUI assessment or education service;

(b) A program survey form shall be completed at the time of the initial application for program certification and whenever a program opens a new clinic location. The program survey form shall contain the:

- 1. Types of services provided;
- 2. Fees charged for those services;
- 3. Names and titles for all certified staff which provide assessment or education services at that location; and
- 4. Name of the clinical services supervisor which shall be at that location;

(c) There shall be a clinical services supervisor for each program location who holds:

- 1. A masters degree or greater in psychiatry, psychology, social work;
- 2. A nursing degree with a specialty in psychiatric or mental health nursing or other mental health program; or
- 3. A certified chemical dependency counselor (CCDC);
- 4. In addition to the education requirement in subparagraphs 1 through 3 of this paragraph, the clinical services supervisor shall have eighty (80) clock hours of training in chemical dependency treatment within a maximum of four (4) years prior to employment with the program; and shall maintain twenty (20) clock hours of continuing education in chemical dependency treatment annually.

(d) The division shall issue a three (3) digit code when a program is certified:

(e) The name and location of each certified program shall be included on any published list of certified programs:

(3) Program certification directory:

(a) The division shall publish an annual certification directory on July 1 of each year, listing:

- 1. Programs certified to provide assessment services;
- 2. Fees charged; and
- 3. Program service location addresses.

(b) The division shall provide the directory to:

- 1. District court judges;
- 2. Circuit court clerks;
- 3. Certified programs; and
- 4. The public upon request.

(c) The division may issue additions, revisions and corrections to the directory on October 1, January 1, and April 1 each year.

1. Programs shall report additions, revisions and corrections on a division "Report of Change Form".

2. "Report of Change Forms" shall be submitted at least thirty (30) days prior to the publication dates in this paragraph:

(4) The application for DUI program certification, the program survey form, and the report of change form are hereby incorporated by reference. Copies of the application for DUI program certification, the program survey form, and the report of change form may be inspected or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, Fair Oaks Lane, Lexington Square, 4th Floor, Frankfort, Kentucky 40601 between the hours of 8 a.m. through 4:30 p.m., eastern time, Monday through Friday.

(5) Expiration and renewal of program certification. The program certification shall remain in effect for a period of two (2) years and is renewable for a like period, unless earlier suspended or revoked. The program shall request recertification, in writing, thirty (30) days prior to the expiration of certification. If certification has lapsed for more than sixty (60) days, programs shall submit a new application and shall be considered as a new applicant. The division shall notify the program, in writing, when certification is issued, renewed, suspended or revoked.

(6) Program certification not to be transferred. The program certification shall apply only to the program so certified and is not transferable. The program shall be responsible for notifying the division, in writing, when there is a change in ownership or control, a change in location, a change in the types of services provided, or a change in fees charged for such services. If there is a change of ownership, a new application for certification shall be made to the division in the same manner as if the owner were applying for a new program.

(7) Program certification referrals. A program shall accept referrals from other programs or from the courts:

(a) A program may refuse a client referral because of:

1. Inadequate staff;
2. Lack of an appropriate service; or
3. Because of a client waiting list.

(b) With a client's written authorization for release of information copies of the DUI assessment and other client records pertinent to the client's treatment shall be released by the referring agency.

(c) The assessment results and any interview notes or other information pertaining to the assessment shall be confidential and shall remain in the client's file.

(d) A program making or receiving client referrals shall execute a written memorandum of understanding (MOU) with all other programs involved in the referrals:

1. The MOU shall fully outline the duties, responsibilities and terms of agreement to all referring programs;
2. The terms of agreement in the MOU shall remain in effect until one (1) of the programs terminates the agreement.

(8) Inspections by the division. The division shall conduct at least one (1) inspection of the program's facility annually to determine whether the program is in compliance with the applicable certification standards:

(a) The division may conduct more than one (1) inspection annually:

(b) Inspections may be made at any of the program's locations and may be unannounced.

(c) The division shall notify the program, in writing, within sixty (60) days of the result of the inspection:

(d) The division shall provide a copy of the results of its inspection to the program within sixty (60) days:

(e) The division may inspect the offices, files, client records and other materials of any certified program to ensure compliance with this administrative regulation:

1. The program shall:

- a. Cooperate with representatives of the division; and
- b. Provide all records and materials requested.

2. The program shall allow division representative to attend and observe any assessment or education session conducted by the program during the course of its inspection.

(9) Client and program records. Client records shall contain all information pertinent to the provision of program services:

(a) Program records shall be confidential:

(b) Program records shall not be released, unless:

1. The client consents in writing;
2. The court orders the records released; or

3. The division requests release of the records as a part of the compliance review.

(c) Client and program records shall be maintained for a minimum of five (5) years after which the records may be destroyed:

(d) Records may be destroyed by burning or shredding after the five (5) year record retention period in paragraph (c) of this subsection.

(10) Revocation or suspension of program certification. The division shall suspend or revoke the certification of any program that is not in compliance with the applicable certification standards. The division shall notify the program, in writing, of any pending certification

action, and shall provide written reports citing observed deficiencies as they relate to the certification standards. The program shall submit an acceptable plan of correction for cited deficiencies to the division within ten (10) working days from the date the program receives the inspection report. The revocation or suspension of program certification shall be effective on the date stated in the notice sent to the program by the division. Programs shall have the right to appeal any suspension or revocation of their program certification. Hearing procedures involving certification shall be conducted in accordance with this administrative regulation.]

Section 4. Assessor and Instructor Certification Requirements [of Individual DUI Assessors, Instructors and Education Service Providers]. (1) General requirements.

(a) An individual desiring to provide assessment or education services shall apply for certification to the division, meet the requirements for certification in this section, complete training required by the division and be certified by the division.

(b) Certification for an assessor and an instructor shall be for a period of five (5) years from the date of an individual's initial certification as an assessor or instructor, may be renewed for a like period, and shall expire on the fifth anniversary date unless previously revoked.

(c) Only an individual holding valid certification from the division shall provide DUI assessment or education services and an individual certified by the division shall not provide DUI assessment or education services except in a program that is certified by the division.

(2) Credentials for assessors and instructors.

(a) Assessors. An individual desiring certification as an assessor shall complete twenty (20) hours of training in alcohol and other drug abuse counseling annually and meet one (1) of the following requirements:

1. A certified alcohol and drug counselor certified pursuant to KRS 309.080 to 309.089, and an academic degree if required for certification, from an accredited college or university; or

2. A certified or licensed professional, who [that] has completed eighty (80) hours of training in alcohol and other drug abuse counseling, within four (4) years immediately prior to the date of application for DUI assessor certification [assuming responsibility as an assessor in a DUI program] and is one (1) of the following:

a. Physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;

b. Psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

c. Licensed psychologist licensed to practice psychology by the Kentucky Board of Examiners of Psychology pursuant to KRS 319.050;

d. Certified psychologist with autonomous functioning certified to function without supervision, in an area specified by the Kentucky Board of Examiners of Psychology pursuant to KRS 319.056;

e. Psychological associate certified by the Kentucky Board of Examiners of Psychology to provide a service under the supervision of a licensed psychologist pursuant to KRS 319.064;

f. Licensed clinical social worker licensed for the independent practice of clinical social work by the Kentucky Board of Examiners of Social Work pursuant to KRS 335.100;

g. Certified social worker certified by the Kentucky Board of Examiners of Social Work to provide a service under the supervision of a certified social worker licensed for independent practice of clinical social work pursuant to KRS 335.080;

h. Registered nurse licensed by the Kentucky Board of Nursing pursuant to KRS Chapter 314 with a masters degree in psychiatric nursing from an accredited college or university;

i. Registered nurse licensed by the Kentucky Board of Nursing pursuant to KRS Chapter 314, working under the supervision of an independent practitioner, and with one (1) of the following combinations of education and work experience:

(i) Bachelor of science in nursing from a four (4) year program from an accredited college or university and one (1) year clinical work experience in the substance abuse or mental health field;

(ii) Diploma graduate in nursing from a three (3) year program and two (2) years clinical work experience in the substance abuse or mental health field; or

(iii) Associate degree in nursing from a two (2) year program from an accredited college or university and three (3) years clinical work experience in the substance abuse or mental health field;

j. Advanced registered nurse practitioner licensed by the Kentucky Board of Nursing pursuant to KRS 314.042;

k. Licensed marriage and family therapist licensed by the Kentucky Board of Licensure of Marriage and Family Therapists pursuant to KRS Chapter 335;

l. Certified professional counselor certified by the Kentucky Board of Certification for Professional Counselors pursuant to KRS Chapter 335; or

m. Certified art therapist licensed by the Kentucky Board of Licensure of Art Therapists pursuant to KRS 309.130; or

~~3. An individual with a bachelors degree from an accredited college or university working under the supervision of a clinical services supervisor meeting the requirements in Section 3(2)(c)1 of this administrative regulation who is supervised in accordance with the requirements in Section 3(3)(b) of this administrative regulation].~~

(b) Instructors. An individual desiring certification as an instructor shall meet one (1) of the following requirements:

1. Bachelors degree or greater from an accredited college or university;

2. Associate degree in human services from an accredited college or university, with two (2) years full-time supervised work experience in direct client services in the substance abuse field;

3. High school diploma or a general education development equivalency certificate from a state board of education, with four (4) years full-time supervised work experience in direct client services in the substance abuse field;

4. An individual who meets the requirements for a certified assessor in paragraph (a) of this subsection; or

5. An individual who meets the requirements for a clinical services supervisor in Section 3(2)(c)1 of this administrative regulation.

(3) Assessor and instructor certification and recertification training.

(a) General training requirements.

1. Only training approved by the division shall suffice as acceptable training for DUI assessor or instructor certification or recertification.

2. An individual desiring certification or recertification as an assessor or instructor shall submit an application to the division no later than a deadline date indicated on a training announcement issued by the division.

3. An application for training shall be accompanied by a copy of the following:

a. Official transcripts;

b. Diplomas;

c. Certificates;

d. Documentation of certification or licensure; and

e. Documentation of work experience.

4. Assessor and instructor certification or recertification shall not be issued by the division until the fee for a training is paid in full.

5. If an individual making application for an assessor or instructor certification or recertification training fails to meet the requirements, the division shall deny the application and notify the applicant, in writing, of the reason for the denial.

6. The division shall notify a program and an individual, in writing, within thirty (30) calendar days after completion of an assessor or instructor training of the following:

a. That an individual has satisfactorily completed a training, has met the requirements for certification or recertification and has been certified or recertified; or

b. Of an observed deficiency, as it relates to assessor or instructor certification, a reason for withholding certification or recertification, and a required corrective plan of action.

(b) Training requirements for assessors. An individual desiring certification as an assessor, that has the necessary education and

work experience, shall successfully complete the following requirements:

1. Attend and participate in all sessions of an assessor certification training;

2. Obtain an overall score of eighty (80) percent or better on performance in each of the following areas:

a. A written posttest on general course content;

b. A written posttest on the Kentucky DUI Assessment Instrument; and

c. A demonstration of ability to make an appropriate client referral based on a written case study;

3. Receive the recommendation of a trainer and division representative; and

4. Sign and agree to comply with a statement of ethical practice on the application for assessor certification and agree to comply with the standards in this administrative regulation.

(c) Training requirements for instructors. An individual desiring certification as an instructor, that has the necessary education and work experience, shall successfully complete the following training requirements:

1. Attend and participate in all sessions of a division approved instructor certification training;

2. Complete training in one (1) or more of the curricula approved by the division;

3. Obtain a score of eighty (80) percent or better on a written posttest;

4. Demonstrate ability to make an oral presentation of assigned material;

5. Receive the recommendation of a trainer and division representative; and

6. Sign and agree to comply with a statement of ethical practice on the application for instructor certification and agree to comply with the standards in this administrative regulation.

(4) Assessor and instructor recertification.

(a) An individual desiring recertification as an assessor shall meet the requirements for a DUI assessor in subsection (2)(a) of this section, on the date of his application for assessor recertification or five (5) years from the effective date of this administrative regulation, whichever is later, submit to the division an application for recertification and other required forms at least sixty (60) calendar days prior to the date of expiration of his assessor certification, and complete a training authorized by the division prior to the expiration date of his currently held assessor certification.

(b) An individual desiring recertification as an instructor shall meet the requirements for a DUI instructor in subsection (2)(b) of this section, submit to the division an application for recertification and all other required forms at least sixty (60) calendar days prior to the date of expiration of his instructor certification, and complete a training authorized by the division prior to the expiration date of his currently held instructor certification.

(c) If an individual's assessor or instructor certification lapses for one (1) year or more the individual's application for assessor or instructor recertification shall be processed as a new application and the individual shall complete all additional training required by the division.

(d) If an individual does not meet the requirements for an assessor or instructor at the time of his application for recertification:

1. The division shall deny his application for recertification and notify the individual and the program, in writing, of the reason for denial; and

2. The individual's currently held certification shall expire pursuant to subsection (1)(b) of this section.

(5) Revocation of assessor and instructor certification.

(a) The division may revoke assessor and instructor certification if an individual:

1. Fails to comply with the standards in this administrative regulation;

2. Violates the standards of ethical practice contained in a statement on the application for assessor and instructor certification;

3. Is convicted while holding certification from the division of a violent crime, hate crime, or sex [sexual] crime; or

4. Falsifies information on an application for DUI certification.

(b) The revocation of an individual's assessor or instructor certi-

fication shall be for a period of three (3) years and shall be effective on the date stated in a notice sent to an individual assessor or instructor by the division. [Individual certification: All individuals desiring to provide assessment or education services shall meet the requirements for certification and receive certification from the division:

(a) A program shall employ individuals who hold valid certification from the division to provide DUI assessment and DUI education services:

(b) It shall be the duty and responsibility of the program to insure that any individual in their employ providing DUI assessment services or DUI education services complete all training required by the division. Only training approved by the division shall suffice as proper training for DUI assessment and DUI education services:

(c) Application for DUI assessor or instructor:

1. An individual shall make application for DUI assessor or DUI instructor certification by submitting an application for DUI assessor or DUI instructor training:

2. The application shall be accompanied by a copy of all required:

- a. Transcripts;
- b. Diploma;
- c. Certificate;
- d. Certifications; or
- e. Proof of work experience.

(d) An individual certified by the division shall not provide DUI assessment services or DUI education services except in a program that is certified by the division:

(e) An individual providing DUI assessment or DUI education services for a program shall be considered an agent of the program and the program shall share the responsibility for all acts performed by the individual within the scope of employment:

(f) If a certified DUI assessor or DUI instructor terminates association with a program, the program shall notify the division in writing:

(2) Notification concerning completion of training:

(a) The division shall notify the program and the individual, in writing, within thirty (30) days after completion of a DUI assessor or DUI instructor training session that the individual has satisfactorily completed the training, has met all of the requirements for certification, and has been certified:

(b) The division shall notify the program and the individual, in writing, of any observed deficiencies, as they relate to DUI assessor and DUI instructor certification, within thirty (30) days after completion of a training session:

(c) The division shall state the reasons for withholding DUI assessor or DUI instructor certification and shall notify the program and the individual of any required corrective plan of action:

(3) Minimum competency requirements for DUI assessor. An individual desiring certification as a DUI assessor shall demonstrate minimum competency in order to successfully complete the requirements for DUI assessor certification:

(a) An individual desiring certification as a DUI assessor shall have the following education or work experience:

1. Bachelor level degree in Human Services with certified chemical dependency counselor (CGDC) trainee status; working under clinical supervision where in weekly personal contact meetings, DUI assessments and treatment plans are reviewed and cosigned by a clinical services supervisor, as defined in subsection (2) of this section. Individuals holding CGDC trainee status have until their date of application for DUI assessor recertification to become a CGDC; or

2. Qualified mental health professional defined as:

- a. Psychiatrist – board certified or board eligible;
- b. Psychologist – licensed clinical psychologist, certified psychologist, or a psychological associate;
- c. Psychiatric nurse – or registered nurse with one (1) of the following combinations of education and experience:

(i) Master of science in nursing (MSN) with specialty in psychiatric or mental health nursing;

(ii) Bachelor of science in nursing (BSN) and a minimum of one (1) year of work experience in a mental health setting;

(iii) Three (3) year educational program diploma with two (2) years of work experience in a mental health setting;

(iv) Associate degree in nursing (ADN) with three (3) years of work experience in a mental health setting; or

d. Psychiatric social worker – MSW or MSSW; or

e. Professional equivalent as defined by the Division of Substance Abuse; or

3. Certified chemical dependency counselor (CGDC):

(b) An individual desiring certification as a DUI assessor shall successfully complete the following training requirements:

1. Attend and participate in all sessions of the assessor training;

2. Obtain an eighty (80) percent or above overall score on performance in the following areas:

a. A written pretest and posttest on general course content;

b. A written pretest and posttest on the computerized assessment instrument;

c. A demonstration of ability to conduct an assessment interview; and

d. A demonstration of ability to make a client referral based on a case study:

3. Receive the recommendation of the trainer(s) and the division's representative:

4. Sign a statement of ethical practice contained in the DUI assessor certification application packet and agree to abide by the standards stated in this administrative regulation:

(4) Minimum competency requirements for DUI instructor. An individual desiring certification as a DUI instructor shall demonstrate minimum competency in order to successfully complete the requirements for DUI instructor certification:

(a) An individual desiring certification as a DUI instructor shall have the following education or work experience:

1. Bachelors degree in a related field – social work, psychology, sociology, counseling, or education; or

2. Associate degree and two (2) years of work experience in the substance abuse field; or

3. High school diploma or a general education development (GED) equivalency certificate and four (4) years of work experience in the substance abuse field; or

4. Professional equivalent as defined by the Division of Substance Abuse:

(b) An individual desiring certification as a DUI instructor shall successfully complete DUI instructor training in one (1) of the curricula approved by the division. The individual shall attend and participate in all sessions of the training; take a pretest and obtain a score of eighty (80) out of a possible 100 points on a written posttest; demonstrate ability to make an oral presentation of assigned material; demonstrate group facilitation skills; receive the recommendation of the trainer(s) and the division's representative; and sign a statement of ethical practice contained in the DUI instructor certification application packet and agree to abide by the standards stated in this administrative regulation:

(5) Incorporation by reference of DUI assessor and instructor application packet. The application packet for DUI assessor and DUI instructor certification is hereby incorporated by reference. Copies of the application packet may be inspected or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, Fair Oaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601 between the hours of 8 a.m. through 4:30 p.m., eastern time, Monday through Friday:

(6) Certification renewal and duration for DUI assessor and instructor:

(a) Certification for DUI assessors and DUI instructors shall be for a period of five (5) years from the effective date of this administrative regulation or from the date of the individual's initial certification as a DUI assessor or DUI instructor, whichever is longer, is renewable for a like period, and shall expire on the anniversary date of certification, unless earlier suspended or revoked:

(b) It shall be the duty and responsibility of the individual, to submit to the division, a completed recertification application and all other required forms, at least sixty (60) days prior to the date of expiration of the DUI assessor or DUI instructor certification:

(c) 1. An individual shall have achieved the standards for clinical services supervisor as defined in Section 3(2)(c) of this administrative regulation at the time of application for recertification as a DUI assessor:

2. If an individual has not met the requirements of Section 3(2)(c) of this administrative regulation the individual's application for DUI assessor recertification shall be denied and any previous DUI asses-

sor certification shall expire. An individual desiring recertification as a DUI instructor shall attend, participate and demonstrate competency at a training seminar authorized by the division prior to application for DUI instructor recertification:

(d) If certification has lapsed for more than one (1) year, an individual's recertification application shall be processed as a new application, and the individual shall attend all additional training required by the division:

(e) An individual shall have the right to appeal any suspension or revocation of their DUI assessor or DUI instructor certification. Hearing procedures involving certification shall be conducted in accordance with this administrative regulation.]

Section 5. Certified Program, Assessor and Instructor Complaints and Program Monitoring. (1) Complaints.

(a) An individual may submit a complaint related [All complaints relating] to a certified program, a certified [DUI] assessor, or a certified [DUI] instructor, that is [are] not resolved by a [the] program through its [their agency] grievance procedure [procedures, shall be sent] to the division.

(b) A program shall be responsive and make an effort to resolve a client's complaint through its grievance procedure.

(c) A complaint shall be submitted to the division, in writing, on a complaint form or in a letter [and signed by the complainant].

(d) The division shall investigate a [the] complaint, notify the complainant and the program, in writing, of the results of an investigation and take any necessary action.

(e) The division shall notify a professional licensing or certification board, in writing, at the conclusion of an investigation of the results of the investigation if a complaint is related to a violation of a standard established by a professional board.

(2) Program reviews.

(a) The division shall conduct periodic program reviews to determine if a program is in compliance with the standards in this administrative regulation, KRS 189A.040 and 189A.045.

(b) A program review may consist of one (1) or more of the following:

1. An interview with either a program administrator or a clinical services supervisor;

2. Completion of a program review form;

3. A review of administrative records;

4. A review of client records;

5. Off site monitoring by division staff of completion records submitted by a program;

6. Observation of an assessment, education, or treatment service;

7. Client interviews;

8. The review of other materials necessary to determine compliance with this administrative regulation, KRS 189A.040 and 189A.045; and

9. Physical inspection of a program's facility.

(c) A program review may be made at any of a program's locations and may be unannounced.

(d) A program shall:

1. Allow a division representative access to a facility;

2. Provide a copy of records and materials requested; and

3. Allow a division representative to attend and observe an assessment, education class, or treatment session conducted by the program.

(e) The division shall issue a written report of findings and provide a copy of the results of its program review to a program within ninety (90) calendar days after completion of a program review.

(3) Plan of correction.

(a) The division shall require a program that is not in compliance with the standards in this administrative regulation, KRS 189A.040 or 189A.045 to submit an acceptable plan of correction to the division within thirty (30) calendar [ten (10) working] days from the date a program receives a report of findings from the division.

(b) If a plan of correction is acceptable, the division may conduct a follow-up program review to ensure the plan of correction has been implemented, and the program is in compliance with this administrative regulation, KRS 189A.040 and 189.045.

(c) If a plan of correction is not acceptable the division may

[shall] take action to revoke program certification.

(4) Voluntary closure.

(a) A program desiring to close voluntarily shall notify the division, in writing, voluntarily surrender its program certification and:

1. Stop accepting client referrals;

2. Notify active clients in writing;

3. Refer a client and transfer case coordination responsibility of a client's case to a program if his choice; and

4. Submit to the division a list of active clients and a copy of the following information for each client:

a. Name, address and telephone number;

b. Social Security number, date of birth and drivers license number;

c. DUI conviction number;

d. Date of assessment and referral information including level of care and agency to which a client is referred;

e. Number of sessions completed;

f. Date of last attendance; and

g. Reason for noncompliance if a client is noncompliant.

(b) A program that voluntarily withdraws its certification that complies with the requirements in paragraph (a) of this subsection may reapply for program certification at any time.

(c) The division may revoke the program certification of a program that voluntarily withdraws its certification if the program fails to comply with the requirements in paragraph (a) of this subsection and the revocation shall be in accordance with subsection (5)(c) of this section.

(d) If a program voluntarily withdraws its certification following an action by the division to revoke the program's certification revocation shall be in accordance with subsection (5)(c) of this section.

(5) Revocation of program certification.

(a) The division may revoke the certification of a program that is not in compliance with the standards in this administrative regulation, KRS 189A.040 or 189A.045.

(b) The division shall immediately revoke a program's certification if it determines there is an immediate danger to clients.

(c) The revocation of program certification shall be for a period of three (3) years and shall be effective on the date stated in a notice sent to a program by the division.

(d) If the division revokes program certification a program shall:

1. Stop providing DUI services;

2. Stop accepting client referrals

3. Notify active clients in writing;

4. Refer a client and transfer case coordination responsibility of a client's case to a program of his choice; and

5. Submit to the division a list of active clients and a copy of the following information for each client:

a. Name, address and telephone number;

b. Social Security number, date of birth and drivers license number;

c. DUI conviction number;

d. Date of assessment and referral information including level of care and the name of the program to which a client is referred;

e. Number of sessions completed;

f. Date of last attendance; and

g. Reason for noncompliance if a client is noncompliant.

Section 6. Assessment Requirements. (1) Assessment process.

(a) A program providing assessment services shall administer the Kentucky DUI Assessment Instrument to a client receiving a DUI assessment. A program may use supplemental assessments in addition to the Kentucky DUI Assessment Instrument. A program shall have no longer than six (6) months from the effective date of this administrative regulation to comply with the requirement that the Kentucky DUI Assessment Instrument shall be administered in every DUI assessment.

(b) The Kentucky DUI Assessment Instrument printout generated at a client's assessment, shall be signed and dated by an assessor and a client, contain comments by an assessor explaining the referral decision, and be placed in a client's file at least thirty (30) [within three (3)] calendar days after a client's assessment.

(c) An assessment shall be conducted at a program's certified location, except if a court orders an assessment of an individual that

is incarcerated, the assessment may be conducted in a jail or a prison.

(d) A DUI assessment shall include:

1. Administration of the Kentucky DUI Assessment Instrument;
2. A private face-to-face clinical interview, using either the assessor's own clinical interview or the structured interview provided in the Kentucky DUI Assessment Instrument, with the findings of either recorded on the check list provided in the Kentucky DUI Assessment Instrument;

3. Consideration of referral options and a client's resources that are documented in the Kentucky DUI Assessment Instrument;

4. A determination of the severity of a client's problem;

5. Referral to a program of the client's choice that offers a service at the level of care appropriate to the severity of the client's problem; and

6. The cosigning by a client and an assessor of the following forms:

a. Fee agreement;

b. Client rights statement;

c. Confidentiality statement;

d. Freedom of choice statement and a referral agreement;

e. Confirmation that a client received [and acceptance of] an assessment statement;

f. Authorization for release of information;

g. Certificate of enrollment; and

h. Kentucky DUI Assessment Instrument printout[; and

i. A referral agreement].

(e) A DUI assessment shall be conducted by an assessor holding valid certification from the division, except the screening instrument portion of the Kentucky DUI Assessment Instrument, may either be self-administered or administered by a noncertified individual.

(f) The screening instrument portion of the Kentucky DUI Assessment Instrument may be administered individually or in a group.

(g) A program shall maintain a roster of clients assessed that includes:

1. Client name, date of birth and Social Security or drivers license number;

2. Assessment date; and

3. Type of referral and referral program.

(2) Client referrals. A DUI program shall accept a client referral from another program or a court.

(a) Court referral of DUI offenders.

1. An individual convicted of DUI in Kentucky shall obtain an assessment at a certified program of his choice listed in a directory published by the division.

2. Before accepting a client for an assessment a program shall [not accept a client for an assessment without] first obtain [obtaining a copy of] an AOC 494 form or a court order from the court or document the client's file to show the reason one (1) of these forms could not be obtained.

3. A program shall not conduct an assessment for a client if the client has received an assessment for his conviction at another DUI program without first obtaining a court order from the court.

(b) Program referral of DUI offenders.

1. A program desiring to make or receive a client referral shall execute a written memorandum of understanding with in-state and out-of-state programs, with which it will make or receive referrals.

2. A memorandum of understanding shall include:

a. Name of both programs;

b. Date it is executed;

c. Duties and responsibilities of each program to include the requirements for case coordination contacts between the programs;

d. Purpose of the agreement;

e. Terms for termination of the agreement; and

f. Signatures of each program's program administrator.

3. A program may refuse a client referral because of:

a. Inadequate staff;

b. Lack of an appropriate service; [or]

c. A client waiting list; or

d. A program's previous unsuccessful attempt to treat a client.

4. A program shall not accept a client referral from another pro-

gram without first obtaining a copy of the client's assessment and other available records pertinent to the client's assessment, education, or treatment.

5. A program shall inform a client at the time of his assessment that if he fails to disclose outstanding DUI convictions, the services he receives may not meet the requirements for reinstatement of his driver's license.

6. A program shall refer a client to a program of the client's choice, at an appropriate level of care based on the client's assessment, and a program shall have a client sign a referral agreement stating he has been given freedom of choice in the selection of a program.

7. A program shall allow a client freedom of choice in the selection of a program where he will receive education or treatment services, but shall not allow him to select the level of care or type of service, that shall be based on the results of his assessment and the availability of services.

8. A program shall transfer a client's assessment results and the referral form generated by the Kentucky DUI Assessment Instrument to a program of the client's choice offering service at a level of care needed by the client.

(3) Case coordination requirements.

(a) General requirements.

1. A program that conducts a client's assessment shall be responsible for case coordination whether the client receives education or treatment services at the program that conducted his assessment or at another program.

2. Case coordination shall include:

a. Having regular contact with the program receiving a client referral to determine a client's compliance with the recommended education or treatment;

b. Documentation in an assessment record of actions and contacts related to follow up on a client;

c. Sending a certificate of enrollment to the court after a client is assessed pursuant to KRS 189A.045;

d. Providing information on a client's progress to the court upon request;

e. Notifying the circuit clerk of the court within three (3) working days after receiving notice that a client is noncompliant that a show-cause hearing must be scheduled;

f. Sending a completion report to the Transportation Cabinet and the court within three (3) working days from receipt of a notice that a client has satisfactorily completed the required services;

g. Providing a certificate of completion to a client if he satisfactorily completes the required services; and

h. Downloading on a computer diskette Kentucky DUI Assessment Instrument [completed client] records and completion and noncompliance reports and sending the diskette on a monthly basis to the division or its designee.

3. A program administrator shall notify the court within three (3) working days of the date specified in the client's fee agreement, if a client fails to pay for an assessment within the time stated in his fee agreement.

(b) Out-of-state clients and programs.

1. A program administrator shall notify the division and the state of conviction, in writing, on an interstate transfer form, if a certified DUI program enrolls [receives a referral from out-of-state for] a client that is satisfying a DUI conviction from another state.

2. A client that is not a Kentucky licensed driver convicted of DUI pursuant to KRS 189A.010(a)-(d) may receive assessment, education, and treatment services in an out-of-state program that is licensed to provide services at the level of care necessary to satisfy his DUI in Kentucky, and the division shall provide case coordination services for the client if he did not receive an assessment in Kentucky.

3. A Kentucky licensed driver convicted of DUI pursuant to KRS 189A.010(a)-(d), may receive assessment, education and treatment services in an out-of-state program that is licensed to provide services at the level of care necessary to satisfy his DUI in Kentucky only if he:

a. Establishes residency out of state;

b. Is working and living out of state;

c. Attends school out of state as a boarding student;

d. Is required by his insurance to receive services in a program out of state;

e. Is living out of state due to a family emergency; or

f. Is admitted to an out-of-state residential or inpatient treatment program.

(c) Clients with special needs.

1. If a client is identified as having a special need at the time of his assessment a program shall provide services either directly or through referral according to the following:

a. Questions and instructions shall be read orally to a client that is unable to read and responses shall be recorded for a client that is unable to write;

b. A qualified interpreter shall be provided for a deaf client [that because of deafness, hard of hearing or an inability to communicate in English uses sign language, assistive technology or an interpreter as his primary mode of communication];

c. Reasonable accommodations shall be made for a client who [that] is unable to communicate in English [developmentally disabled pursuant to the Americans with Disabilities Act, 42 USC 12101 et seq.]; and

d. A pregnant client shall be [receive alcohol and other drug abuse services within forty-eight (48) hours of an assessment and an assessor shall document in the client's file that the client is receiving or is] referred for prenatal care.

2. A program shall document in a client's record special needs services the client receives.

3. Responsibility for payment of a special-need service shall be according to the following:

a. A program shall be responsible for payment of interpreter services pursuant to KRS 30A.415; and

b. A client shall be responsible for payment of other services required because of a special need pursuant to KRS 189A.040.

4. A program shall comply with the rules of confidentiality pursuant to 908 KAR 1:320 if providing interpreter services to a client in a federally-assisted program and pursuant to KRS 222.271(1) in a nonfederally-assisted program.

(d) A client that receives treatment before an assessment. If a client receives treatment after being charged with DUI, without first receiving an assessment, a program shall:

1. Obtain a copy of a court order from the court and a copy of the client's uniform citation;

2. Give a client credit for documented treatment at an appropriate level of care based on a DUI assessment received by the client since his DUI arrest; and

3. Conduct an assessment and case coordination in accordance with subsections (1) and (3) of this section.

(e) A client with multiple DUI convictions. If a client presents for an assessment with multiple unresolved DUI convictions a program shall:

1. Obtain a copy of the client's uniform citation and an AOC 494 form or court order for each conviction;

2. Conduct one (1) assessment and case coordination in accordance with subsections (1) and (3) of this section;

3. Refer the client to treatment at a level of care appropriate to satisfy the client's clinical needs and all or his DUI convictions; and

4. Complete a separate completion report for each of the client's convictions.

(f) A client convicted of DUI while enrolled in a program. If a client receives a subsequent conviction for DUI while enrolled in an education or treatment program a program shall:

1. Obtain a copy of the client's uniform citation and an AOC 494 form or court order for the subsequent conviction;

2. Conduct another assessment and case coordination in accordance with subsections (1) and (3) of this section;

3. Refer the client to a level of care appropriate to satisfy the client's clinical needs and all of his DUI convictions;

4. Document the client's file to show that the client's admission to treatment began at the time he was reassessed; and

5. Complete a separate completion report for each of the client's convictions.

(g) Reenrollment of a client. If a client requests reenrollment after he stops attending education or treatment a program shall:

1. Reenroll the client and allow him to resume the education or treatment service at the point where he last attended if he has not been reported noncompliant to the court; or

2. Refer the client back to the court for a new court order and deliver services in accordance with the court order [before conducting a new assessment and starting the education or treatment service over] if he has been reported as noncompliant to the court.

(h) Early release of a [first or] second offender.

[1.] If the program responsible for a client's case coordination determines [that a first or second offender has satisfactorily completed education or treatment the program administrator shall send a written report to the court recommending that a client be released early, within three (3) working days of the date it is determined:

a. A first offender has completed the education or treatment, that was recommended based on the client's assessment, prior to expiration of the ninety (90) day period; and

b.] a second offender, who [that] has completed at least six (6) months of the treatment that was recommended based on the client's assessment, has completed a program prior to expiration of the one (1) year period, the administrator of the program shall send a written report notifying the court a second offender has completed the program.

[2. A program administrator shall obtain an order from the court before releasing a client early and ensure that a copy of the court order is included in a client's record.]

(i) A client under twenty-one (21) years of age. If a client is under twenty-one (21) years of age a program shall deliver services:

1. In accordance with the standards in this administrative regulation if the client is convicted of DUI pursuant to KRS 189A.010(1)(a)-(d); or

2. In accordance with a court order, not subject to the standards in this administrative regulation, if the client is convicted of zero tolerance pursuant to KRS 189A.010(1)(e).

[Section 6. Assessment Requirements. (1) Court Referral of DUI Offenders. The courts shall refer all convicted first and multiple DUI offenders for an assessment to a certified program, listed in a directory, provided to the courts by the division:

(a) The court clerk, shall on the day of conviction, send a copy of the uniform citation issued to the client at the time of arrest for DUI, attached to the Administrative Office of the Courts (AOC) Form 494, to the program which will conduct the client's assessment.

(b) AOC Form 494 is hereby incorporated by reference. Copies of the form may be inspected or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, Fair Oaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601 between the hours of 8 a.m. through 4:30 p.m., Eastern time, Monday through Friday:

(2) Computerized screening shall be used:

(a) A program providing DUI assessment services shall use only the computerized screening instrument approved by the division. The DUI assessment shall be conducted by an assessor holding valid certification from the division.

(b) The computerized screening instrument portion of the assessment may be administered individually or in groups.

(c) A program shall arrange for the oral reading of the assessment questions and instructions for clients who are unable to read the written instructions.

(d) The long form of the computerized screening instrument shall be administered in all cases except when administered to a group of more than ten (10), when administered to a reading disabled individual, or when administered to an individual being reassessed within thirty (30) days of their initial assessment. In such cases a program may administer the short form of the computerized screening instrument.

(e) A program shall maintain a roster of all clients assessed, in a format approved by the division; a copy of such roster shall be maintained in the program's central administrative files and made available to the division upon request.

(3) Assessment requirements:

(a) An assessment shall include:

1. The administration of the approved computerized screening instrument;

2. A private clinical interview between the certified DUI assessor and the client;

3. A discussion of referral options and client resources;

4. A determination of the severity of a client's problem; and

5. Referral to a program of the client's choice offering services at the level of care needed by the client.

(b) A program shall not conduct an assessment for a client, if the client has received an assessment for that conviction at another DUI program. A program shall refer a client back to the court, if a client previously received an assessment for that conviction, at another DUI program. A client shall pay all required fees for the assessment to the program.

(4) Assessment referrals:

(a) An assessor shall refer any client assessed as needing education or treatment services to any program eligible to provide substance abuse or chemical dependency education or treatment services.

(b) The assessor shall refer a client to receive the type of service appropriate to the client's needs at their own program or to any other eligible program of the client's choice.

(c) The client shall choose the program where the client desires to receive education or treatment services but the client shall not choose the level of care or type of service that the client is to receive.

(5) Clients with special needs:

(a) A program shall identify any client with special needs at the time of assessment in order to make an appropriate referral. Specifically, the computerized screening instrument shall contain a set of questions designed to identify whether or not a client is pregnant; and if so, the stage of pregnancy; at the time of assessment. This information shall be used to determine the type and level of treatment or education services needed by the client.

(b) The assessor shall consider the special needs of the client when making the referral.

(6) Requirements for client's case file:

(a) A program shall maintain a case file on each client assessed.

(b) The assessment results and any interview notes or other information pertaining to the assessment shall be maintained in the client's file.

(c) There shall be written documentation in each client's case file of all actions related to any referral to education or treatment services.

(d) Each client file shall contain the Cabinet for Human Resources (CHR) Pamphlet Mental Health Mental Retardation 052 form (PAM MHMR 052). This form shall be used as a referral notice to transfer a client's records to another program, as a completion notice to notify the court, the client, the Transportation Cabinet, Department of Vehicle Regulation, Division of Drivers Licensing, and the division when a client has satisfactorily completed any required services and as a notice of noncompliance to notify the court, the client, and the division when a client fails to satisfactorily complete any required services.

(e) 1. CHR Form PAM-MHMR 052 is hereby incorporated by reference.

2. Copies of the form may be inspected or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, Fair Oaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601 between the hours of 8 a.m. through 4:30 p.m. Eastern time, Monday through Friday.

(7) Case management requirements:

(a) A program providing assessment services, shall maintain case management responsibilities, for every client the program assesses, whether the client receives DUI education or treatment services at the program conducting the assessment, or at another eligible program.

(b) The case management process shall include:

1. The coordination of services provided to each client;

2. The responsibility of communicating with the court such information as the court requests on each client;

3. The responsibility of notifying the court, the client and the division when a client is noncompliant; and

4. The responsibility of notifying the Transportation Cabinet, Department of Vehicle Regulation, Division of Drivers Licensing, the court, the client and the division when a client has satisfactorily completed the required services.

(c) The program shall issue to each client, who has successfully completed the required services, a copy of their completion notice contained in CHR Form PAM-MHMR 052, as referred to in Section

3(7) of this administrative regulation.

(8) Discontinuing operations of a program. A Program discontinuing operations while still maintaining case management responsibility for a client, shall:

(a) Notify the client in writing;

(b) Refer the client and transfer case management responsibility of the client's case to the program of the client's choice; and

(c) Submit to the division in writing, a list of all clients for whom the program maintains case management responsibility, and a copy of each client's CHR PAM-MHMR 052 referral form with the name of the program receiving the client referral listed on the form.]

Section 7. Education Requirements. (1) Approved curricula. [Program curriculum requirements:]

(a) A DUI program desiring to provide [DUI] education services shall ensure:

1. At least one (1) of the following two (2) twenty (20) hour curricula [Use a curriculum] approved by the division is [are] delivered by the program:

a. "Kentucky Alcohol and Other Drugs Education Program (KAODEP) Twenty (20) Hour"; and

b. "Prime for Life Risk Reduction Program (PRL) Twenty (20) Hour" (a program shall have no longer than six (6) months from the effective date of this administrative regulation to comply with the requirement that at least one (1) of the two (2) new twenty (20) hour curricula is the only education delivered in a program); and

2. Instruction is [shall be] provided by an instructor holding valid DUI instructor certification from the division; and

3. A certified instructor delivers a curriculum in accordance with the curriculum delivery standards taught at a DUI instructor certification training conducted by the division or Prevention Research Institute, Inc.

(b) [Two (2) levels of DUI education services shall be provided:

1. A nine (9) hour basic education course; and

2. A twenty (20) hour early intervention education course shall be provided:

(c) Two (2) nine (9) hour curricula and two (2) twenty (20) hour curricula have been approved by the division:

(d) A DUI program may provide either [any] or both [all levels] of the twenty (20) hour curricula at a certified location [DUI education courses, and may use any or all of the approved curricula].

(2) Delivery standards.

(a) The twenty (20) hour curriculum shall:

1. Be for a first offender assessed as needing only education and may only be a supplement to treatment if delivered to a first or multiple offender assessed as needing treatment;

2. Consist of twenty (20) hours of instruction and group interaction that increases a client's awareness and knowledge about the risks of alcohol and other drug use and helps develop skills to change a client's attitude and behavior in relation to alcohol and other drug abuse; and

3. Be delivered [Not exceed two (2) hours daily and twice weekly, with at least three (3) calendar days between sessions;] in accordance with the curriculum delivery standards, taught at a training conducted by the division or Prevention Research Institute, Inc.

(b) A program may enroll first offenders and multiple offenders in the same session.

(c) A program administrator shall ensure:

1. There are no more than twenty-five (25) and no less than two (2) clients in a session;

2. A curriculum is delivered according to the delivery standards in this subsection;

3. Required manuals for a curriculum are distributed to and used by a client;

4. A client is given the manual for his personal use after completion of a curriculum;

5. Videos required in a curriculum are shown to a client; and

6. Supplemental videos and speakers that are not approved as part of a curriculum are not used in a DUI program.

(e) The maximum number of clients in a class shall be no more than twenty-five (25);

(f) An instruction session shall not exceed three (3) hours per day.

(g) The nine (9) hour DUI basic education course shall be for first offenders only and shall consist of a minimum of nine (9) hours of instruction and group interaction. Those first offenders assessed as low risk, not having an alcohol or substance abuse problem requiring treatment, shall be enrolled in a nine (9) hour education course.

(h) The twenty (20) hour DUI early intervention education course shall be for first offenders or multiple offenders and shall consist of a minimum of twenty (20) hours of instruction and group interaction. A program may enroll first offenders and multiple offenders in the same session.

(2) The approved curricula are hereby incorporated by reference. Copies of the curricula may be inspected or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, Fair Oaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601 between the hours of 8 a.m. through 4:30 p.m., Eastern time, Monday through Friday.

(3) Documentation and [Program] completion requirements for education sessions. [required.]

(a) A program shall maintain a sign-in sheet for an education session that includes:

1. Name of the curriculum;
2. Title and number of the session;
3. Date, time, location, and name of the instructor; and
4. Client name and signature.

(b) A program [client] shall require a client to:

1. Attend and participate in each session of a curriculum;
2. Attend sessions [complete all sessions of class instruction; in [the required] sequence beginning with chapter 1;
3. [- and shall] Comply with a program's rules of conduct; and
4. Pay required fees.

(c) [all standards of behavior required by the program to satisfactorily complete a DUI education service.

(b) If a client cannot attend a session [of class instruction], due to an emergency, a program may allow the client [may be permitted] to attend a [that] session out of sequence the next time the chapter is presented by a program and documentation of the emergency shall be maintained in a client's file.

(d) [of class instruction when the missed class session is repeated:

(c) If a client is receiving education at a program other than the program where he received his assessment, a [demonstrates a need for services at a different level of care, the] program administrator shall [refer the client to any eligible program for the required services, and] notify the individual responsible for a client's case coordination if a client:

1. Demonstrates a need for service at a different level of care;
2. Satisfactorily completes education; or
3. Is noncompliant.

(e) If a client is receiving education at the program where he received his assessment [program, which conducted the assessment of the action:

(d) the program administrator shall:

1. Determine if [make the determination as to whether] a client has satisfactorily completed the DUI education service; and
2. Report compliance and noncompliance in accordance with Section 6(3)(a)2 of this administrative regulation. [shall be responsible for notifying the program, which conducted the client's assessment, when a client has satisfactorily completed the required DUI education services, or when a client is noncompliant.]

(f) A program administrator shall ensure that a client's record contains documentation showing compliance with the requirements in this subsection. [(4) Fees. All required fees for an education service shall be paid to the program by the client and such fees shall cover the cost of all course materials:

(5) Nonresident clients and programs. A client not residing in the state may receive DUI education services in an out-of-state program that is licensed and eligible as determined by the division, based on the standards in this administrative regulation, to provide comparable services at the level of care determined necessary to meet the client's individual needs.]

Section 8. Treatment Requirements. (1) General requirements.

(a) A DUI program desiring to provide treatment services shall:

1. Comply with the licensing requirements in Section 2 of this administrative regulation; [Be licensed by the cabinet to provide the services offered;

2. Conform to the state licensure standards for treatment facilities;] and

2. [3.] Employ qualified staff that [members, who] have training and experience in dealing with the physical and psychological complications of alcohol and other drug abuse [dependence].

(b) A program shall ensure that the treatment a client receives is based on his assessment and a client may be referred to [provide] outpatient, intensive outpatient, inpatient, residential, residential transitional, halfway house or detoxification [chemical dependency or substance abuse] treatment services in a licensed treatment program in state or out of state pursuant to the requirements in this administrative regulation.

(c) A program shall deliver treatment services according to the following:

1. A client may receive individual or group treatment;

2. A treatment group may include first and multiple offenders in the same session;

3. The maximum number of clients in a treatment group shall not exceed fifteen (15) [twelve (12)];

4. A client may be referred to a self-help group to supplement but not to replace treatment services;

5. A client referred to outpatient treatment shall receive at least one (1) hour of individual or one and one-half (1 1/2) hours of group treatment each week;

6. A client referred to intensive outpatient treatment shall receive at least six (6) hours of [individual or group] treatment over a period of two (2) or more days weekly in a program licensed for intensive outpatient treatment; [that includes education regarding the dynamics of chemical dependency and codependency, individual counseling, group counseling, family education and structured recreational activities; and]

7. A client referred for inpatient or [8. Inpatient and] residential treatment shall receive this treatment in a program licensed for inpatient or residential treatment; and [include regular group and individual counseling and accessible supportive services including education, vocational rehabilitation, self-help groups, medical, laboratory or legal services.]

8. [7.] If a client receives treatment less often than the requirements in subparagraphs 5 and 6 of this paragraph, to meet his individual clinical needs, a clinical rationale shall be documented in the client's record. [- and]

[(c) The service a DUI client is assigned depends on the severity of symptoms, available support resources, and individual dynamics to be determined by the assessment. A client may be referred to outpatient, intensive outpatient, inpatient, residential, or detoxification services:

1. A program may provide outpatient or intensive outpatient treatment services to a client individually or in a group. A group may include first and multiple offenders in the same session. The maximum number of clients in a group shall be no more than fifteen (15):

a. A client shall receive a minimum of one (1) hour of individual outpatient treatment each week or a minimum of one and one-half (1 1/2) hours of group outpatient treatment each week. If a client receives outpatient treatment services less than one (1) time each week, to meet the individual clinical needs of the client, the program administrator shall maintain proper documentation in the client's case file to show cause:

b. A client may receive intensive outpatient treatment services, more often, and in longer sessions, each week to meet the individual clinical needs of the client:

2. A client may be referred to a self-help group to supplement but not to replace the outpatient or intensive outpatient treatment services:

(d) A client needing more restrictive services than paragraph (a)1a or b of this subsection shall be referred to detoxification, inpatient, residential or transitional living services.]

(2) [The] Treatment plan.

(a) A clinician or [program providing DUI] treatment planning team [services] shall be responsible for developing a treatment plan for a [each] client accepted for treatment services by the client's fourth session, or by the end of the client's second week, whichever is sooner.

(b) ~~A~~ [The] treatment plan shall:

1. Be developed with a client's participation and be individualized for the needs of ~~a~~ [each] client;

2. Include a written statement of a client's problem with alcohol and other drugs and any other problem that contributes to or is related to the client's use of alcohol and other drugs;

3. Include a written statement of ~~treatment~~ [mutually agreed upon] [treatment] goals and measurable objectives [together] with a [realistic] time schedule for achieving the goals ~~and a written statement of whether a client agrees with the treatment plan (them);~~

4. [3:] Be signed by the client and the clinician; and

5. [4:] Be reviewed by the clinician and the client at least once every 180 calendar days or if there is a change documented in the client's treatment plan. [-and

5. All changes recorded in the client's case file.]

(c) A client's progress toward meeting the goals stated in his treatment plan shall be documented in the client's record by a clinician at least weekly.

(d) If the twenty (20) hour education curriculum is delivered as a supplement to treatment to a first or multiple offender assessed as needing treatment it shall be included in a client's treatment plan.

(3) Completion requirements. [Attendance and other requirements.]

(a) To complete a treatment service a client shall:

1. Comply with all attendance requirements;

2. Achieve the goals stated in his treatment plan;

3. Comply with a program's rules of conduct; and

4. Pay required fees. [of the treatment plan to satisfactorily complete a required treatment service.]

(b) If a client is receiving treatment at a program other than the program where he received his assessment the program administrator of the treatment program shall notify the individual responsible for the client's case coordination if a client:

1. Demonstrates a need for service at a different level of care;

2. Satisfactorily completes treatment; or

3. Is noncompliant. [the program administrator shall refer the client to any eligible program for the required services, and notify the program which conducted the client's assessment of such action.]

(c) If a client is receiving treatment at the program where he received his assessment, a [The] program administrator shall be responsible for:

1. Final approval that [Determining] [Make the determination as to whether] a client has satisfactorily completed a [the] treatment service; and

2. Reporting compliance and noncompliance in accordance with Section 6(3)(a)2 of this administrative regulation. [Be responsible for notifying the program, which conducted the client's assessment, when a client has satisfactorily completed the required treatment services, or when a client is noncompliant.]

(d) A program administrator shall ensure that a client's record contains documentation showing compliance with the requirements in this subsection.

[(4) Fees. All required fees for treatment services shall be paid to the program by the client.

(5) Out-of-state treatment. Any client may receive treatment services at an out-of-state program that is licensed, and eligible, as determined by the division, based on the standards in this administrative regulation, to provide comparable services at the level of care determined necessary to meet the client's individual needs.]

Section 9. Administrative Hearing Requirements. (1) If the division takes action to deny, or revoke, a DUI program's certification or an individual's assessor or instructor certification, the division shall notify the program or individual assessor or instructor, in writing, stating a reason for the adverse action and notifying the program or individual assessor or instructor of the right to appeal the action pursuant to KRS Chapter 13B.

(2) A [Any] program or individual assessor or instructor may appeal a negative certification action taken by the division by notifying the division [to revoke, modify, suspend or deny certification or recertification of a DUI program, assessor, or instructor], in writing, within twenty (20) calendar days from [of] the date [issuance] of notice of [negative certification] action from the division. [Upon receipt of notice

of appeal, the director of the division shall designate a hearing officer to conduct a hearing and make a recommendation to the division.

(2) Notice of hearing shall be mailed to the program or individual not less than ten (10) days prior to the commencement of the hearing. The notice of hearing shall contain the reasons for negative certification action. The notice of hearing shall be mailed by certified mail, return receipt requested to the parties.]

(3) Upon receipt of an appeal, the secretary or his designee, shall give notice of the hearing to a program or an individual assessor or instructor, in writing, not less than twenty (20) calendar days in advance of the date set for the hearing and the notice shall be sent in accordance with KRS Chapter 13B. [The program, individual and the division may be represented by counsel and make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. No depositions shall be permitted for the purpose of discovery, however, the hearing officer may authorize depositions or witnesses, who for good cause shown, cannot be present at the hearing. A hearing officer shall reside at the hearing, shall keep order, administer oaths, may issue subpoenas and may admit relevant and probative evidence and shall conduct the hearing in accordance with reasonable administrative practice.]

(4) The secretary, or his designee, shall appoint a hearing officer to conduct a hearing and the hearing shall be conducted pursuant to KRS Chapter 13B. [All testimony at the hearing shall be recorded but need not be transcribed unless requested. The person or organization requesting a transcript shall bear the cost of such transcript.

(5) The hearing officer may place reasonable time limits upon the presentation of testimony, evidence and argument and may terminate or exclude irrelevant or redundant evidence, testimony or argument.

(6) The hearing officer shall send a written determination to the division including findings of fact and conclusion of law. With the determination, the hearing officer shall forward to the division the record consisting of all documents, exhibits, and recorded testimony introduced in the hearing.

(7) The division shall issue the hearing officer's final determination of certification status within ten (10) days of receipt of the determination from the hearing officer.

(8) No hearing officer shall participate in any hearing involving a program or individual with which the hearing officer has had in the past twelve (12) months preceding the hearing, any ownership, in whole or in part, employment, staff, fiduciary, contractual, creditor or consultative relationship.]

(5) [(9)] The division shall retain all records related to a hearing for a period of at least five (5) years.

Section 10. Incorporation by Reference. (1) The following material is [materials are] incorporated by reference:

(a) AOC 494 form (Rev. 5-96) Notice to Attend Alcohol Driver Education Program; -

(b) Application for Program Certification DUI Form 01 (revised 10/01/98);

(c) Application for Program Recertification DUI Form 06 (10/01/98);

(d) Complaint Form DUI Form 05 (10/01/98);

(e) DUI Assessor Certification Application DUI Form 10 (revised 10/01/98);

(f) DUI Assessor Recertification Application DUI Form 11 (10/01/98);

(g) DUI Instructor Certification Application DUI Form 12 (revised 10/01/98);

(h) DUI Instructor Recertification Application DUI Form 13 (10/01/98);

(i) Interstate Transfer Form DUI Form 08 (10/01/98);

(j) "Kentucky Alcohol and Other Drugs Education Program (KAODEP) Twenty (20) Hour" (1998);

(k) Kentucky DUI Assessment Instrument;

(l) Memorandum of Understanding DUI Form 07 (10/01/98);

(m) "Prime For Life Risk Reduction Program (PRI) Twenty (20) Hour" (1998);

(n) Program Certification Certificate DUI Form 15 (10/01/98);

(o) Program Review Form DUI Form 04 (10/01/98);

(p) Program Survey Form DUI Form 02 (revised 10/01/98);

(q) Report of Change Form DUI Form 03 (revised 10/01/98);

(r) Roster of Assessments DUI Form 09 (10/01/98);

(s) Site Visit Follow-up Compliance Review Form DUI Form 14 (10/01/98); and

(2) This material may be inspected, copied, or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, 100 Fair Oaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m.

ELIZABETH REHM WACHTEL, Ph.D., Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: April 7, 1999

FILED WITH LRC: April 8, 1999 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Elizabeth Rehm Wachtel, Ph.D.

(1) Type and number of entities affected: Currently there are 83 certified DUI programs and approximately 450 individuals certified as assessors and instructors that are affected. These programs and individuals deliver services to approximately 30,000 clients at 235 sites in 106 Kentucky counties per year. All certified programs and individuals will be affected by the revised certification requirements.

(2) Direct and indirect cost or savings to those affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No hearing was requested as a result of the Notice of Intent being published and no written comments were received.

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

1. First year following implementation: There may be increased costs related to the stricter credentialing requirements for certified and clinical staff and for technological costs if a program's computer system needs to be upgraded to administer the new computerized assessment instrument. There will be increased costs for certified programs that did not previously carry liability insurance and for the for profit programs to pay ten (10) dollars for a criminal background check on prospective employees. However, there will be decreased costs for every program conducting assessments since the new computerized assessment instrument developed in state by the University of Kentucky will be available to a program at no cost. A program will no longer be required to purchase the computerized assessment instrument at a cost of four dollars and fifty cents per assessment from an out of state vendor.

2. Second and subsequent years: There are none anticipated.

(3) Effects on the promulgating administrative body: Minimal

(a) Direct and indirect cost or savings:

1. First year: There are none anticipated.

2. Continuing cost or savings: Same as the first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Minimal

(4) Assessment of anticipated effect on state and local revenues: Minimal

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

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

(a) Geographical area in which administrative regulations will be implemented: No hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 189A mandates provisions.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The certification standards should improve the quality of alcohol and other drug services delivered to clients convicted of DUI pursuant to KRS Chapter 189A.010. The stricter and more prescriptive standards will help the Division of Substance Abuse ensure that quality services are delivered by competent staff in a certified DUI program. This should help to effect behavior changes in the individuals that drink and drive, reduce recidivism, improve the safety of the citizens of Kentucky and stop the violent crime of drinking and driving.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on the environment and public health may result if the standards in this administrative regulation are not implemented.

(c) If detrimental effect would result explain detrimental effect: Drinking and driving continues to be one of the most frequently committed crimes of violence in our nation. While one cannot measure in dollars the pain and anguish caused by the loss or injury of a loved one, the annual economic impact in Kentucky can be measured. The cost to Kentucky taxpayers, businesses, and families is estimated annually in the range of \$98 to \$234 million dollars. The delivery of quality alcohol and other drug services by competent professionals is a needed intervention to change the behavior of individuals that drink and drive. These certification standards will help the Division of Substance Abuse ensure that services delivered to a client convicted of DUI are provided in a safe environment and in a professional and competent manner.

(9) Identify any statute, administrative regulation or governmental policy that may be in conflict, overlapping, or duplication: There is no statute, administrative regulation or governmental policy in conflict. However, this administrative regulation overlaps with Kentucky statutes KRS 189A.040, KRS 189A.045, KRS 222.271, KRS 216B, and administrative regulations 908 KAR 1:320 and 908 KAR 1:370:

(a) Necessity of proposed regulation if in conflict. None in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None in conflict.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. The standards apply equally to all programs and individuals participating in Kentucky's statewide DUI program.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State of compliance standards. None

3. Minimum of uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? None

5. Justification for the imposition of stricter standard, or additional or different responsibilities of requirements. None

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, APRIL 15, 1999

FINANCE AND ADMINISTRATION CABINET
Office of Financial Management and Economic Analysis
(Amendment)

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

RELATES TO: KRS 45A.853

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

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 [advertis~~ed~~ 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 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 period [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 estab-

lished 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 prequalification 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 at least biennially [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: April 12, 1999

FILED WITH LRC: April 12, 1999 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, May 26, 1999 at 11:30 a.m. in Room 264 of the Capitol Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, May 19, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 regulations. 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: Kim Blitch, Financial Analyst, Office of Financial Management and Economic Analysis, 702 Capitol Avenue, Suite 261, Frankfort, Kentucky 40601, (502) 564-2924, Fax (502) 564-7416.

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.

FINANCE AND ADMINISTRATION CABINET

Office of Financial Management and Economic Analysis (Amendment)

200 KAR 21:030. Calculating the preference for Kentucky bond counsel firms for state bond issues.

RELATES TO: KRS 45A.873

STATUTORY AUTHORITY: KRS 45A.873, 45A.879

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.873 requires that in the competition for the Commonwealth's bond counsel business awarded pursuant to KRS 45A.840 to 45A.879, a bond counsel firm with its principal place of business located in Kentucky shall receive a preference over a bond counsel firm with its principal place of business located outside Kentucky. KRS 45A.873 further provides the preference, if any, shall be equal to the preference that the out-of-state firm receives in its state of origin when that firm as an in-state firm competes against out-of-state firms for state bond counsel business. The Office of Financial Management and Economic Analysis is responsible for calculating this preference. This administrative regulation sets forth the manner in which the preference shall be calculated.

Section 1. Calculation of Preference for Kentucky Bond Counsel.

(1) The Office of Financial Management and Economic Analysis shall

on a biennial [an annual] basis, in conjunction with the prequalification process mandated by KRS 45A.853, issue a letter to the state government debt management office or similar governmental agency of every state from which bond counsel firms requesting to be prequalified have their principal place of business, requesting that the agency provide the Office of Financial Management and Economic Analysis with a copy of that state's statute, administrative regulation, or written policy, if any, regarding any preference given to in-state bond counsel firms in competition for state bond counsel business.

(2) The Office of Financial Management and Economic Analysis shall accept only written responses to the request for information issued pursuant to subsection (1) of this section and shall only utilize written evidence of statutes, administrative regulations or written policies to calculate the preference, if any, due a firm. If a written response is not received within a reasonable amount of time established by the Office of Financial Management and Economic Analysis, then the state's failure to respond shall be deemed as an indication that the state does not give any preference to in-state firms competing for state bond counsel business. The Office of Financial Management and Economic Analysis shall accept written evidence that statutes, administrative regulations or written policies of other states regarding state bond counsel preference have been implemented or amended independent of the annual prequalification process if supplied or requested by such states.

(3) The Office of Financial Management and Economic Analysis shall compile a list of all bond counsel firms which shall receive a preference in the selection process and the corresponding calculation or formula for the preference to be given by the selection committees [states responding to the request for information and resulting responses]. This list shall be provided to the committee reviewing responses to requests for qualifications submitted pursuant to 200 KAR 21:010. Any additions or deletions to the list created pursuant to receipt of additional information independent of the annual prequalification process shall be forwarded by the Office of Financial Management and Economic Analysis to all selection committees established pursuant to KRS 45A.843.

JOHN P. MCCARTY, Secretary
KAREN POWELL, Attorney

APPROVED BY AGENCY: April 12, 1999

FILED WITH LRC: April 12, 1999 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, May 26, 1999 at 11 a.m. in Room 264 of the Capitol Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, May 19, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 regulations. 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: Kim Blitch, Financial Analyst, Office of Financial Management and Economic Analysis, 702 Capitol Avenue, Suite 261, Frankfort, Kentucky 40601, (502) 564-2924, Fax (502) 564-7416.

REGULATORY IMPACT ANALYSIS

Contact Person: Kim Blitch

(1) Type and number of entities affected: Bond counsel firms which seek to do business with 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: 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 affects upon competition) for the:

1. First year following implementation: The office of Financial Management and Economic Analysis shall compile a list of all bond counsel firms which shall receive a preference in the selection process and the corresponding calculation or formula for the preference to be given by the Selection Committee. Second and subsequent years: Same as first year.

2. Effects on the promulgating administrative body:

(3) Direct and indirect costs or savings:

(a) 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.

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

2. 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? Yes. Tiering is used. Kentucky bond counsel firms seeking to do business will be given a preference over out of state firms that receive preference in their state of business. However, if an out of state firms does not receive preference in their state then no preference is given to Kentucky bond counsel firms.

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:049. Small game and furbearer hunting on public areas.

RELATES TO: KRS 150.010, 150.025(1), 150.370(1), 150.399, 150.400, 150.410, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.620
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.

Section 1. The 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 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 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.
- (3) When deer hunting with a breech-loading firearm is allowed, a person shall not:
 - (a) Hunt small game or furbearers;
 - (b) Trap; or
 - (c) Allow an unleashed dog.
- (4) A person may hunt small game or a furbearer during the modern gun deer season on a wildlife management area where gun deer hunting is not permitted during the modern gun deer season.
- (5) Unless specified otherwise in Section 3 of this administrative regulation, a person shall not allow a dog 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 field trials; or
 - (b) By a squirrel hunter during an open spring squirrel season.

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 shall complete a harvest survey.
- (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 shall complete a harvest survey.
- (5) Central Kentucky Wildlife Management Area.
 - (a) Closed to small game and furbearer hunting except squirrels.
 - (b) A person shall not allow a dog to be unleashed:

1. April 1 until the third Saturday in August, except as provided in Section 2(5) of this administrative regulation; or

2. At other times of the year, except on a Tuesday, Thursday, Saturday, Sunday, or during an authorized field trial.

(c) A trapper shall obtain prior written permission from the area manager.

(d) A hunter or dog trainer 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 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 shall not allow a dog to be unleashed from April 1 until the third Saturday in August, except as provided in Section 2(5) of this administrative regulation.

(c) A hunter or dog trainer 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 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 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 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 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 shall complete a harvest survey.

(18) Nolin Lake Wildlife Management Area. Quail and rabbit: closed after December 31.

(19) Paintsville Lake Wildlife Management Area.

(a) ~~Grouse: October 1 through December 31.~~

(b) Quail and rabbit: closed after December 31.

(c) ~~Furbearers: closed after December 31.~~

(20) Peal Wildlife Management Area.

(a) Furbearer hunting: twenty (20) day season beginning the day after the modern gun deer season.

(b) Furbearer trapping: December 1 through 10, water sets only. Trappers shall be selected by drawing conducted by the area manager.

(c) Quail and rabbit: closed after December 31.

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(21) Pennyrite 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 breech-loading firearm.

(b) Except as authorized by the department, carry a breech-loading firearm with ammunition in the chamber or magazine; or

(c) 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.

(b) [(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 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 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 shall not hunt on a tract designated by numbers followed by the letter "A".

(b) Quail and rabbit:

1. Tracts 2, 3, 6 and 7: closed after December 31.

2. 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 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 shall check in and out daily at the designated check station.

(d) A person shall not:

1. Use a rifle 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.

(28) Westvaco Public Hunting Areas. A person hunting on a Westvaco Public Hunting Area 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) A person shall not hunt grouse.

(b) A hunter or dog trainer 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 shall check in and out daily at the designated check station.

C. THOMAS BENNETT, Commissioner

MIKE BOATWRIGHT, Chairman

ANN R. LATTA, Secretary

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: February 26, 1999

FILED WITH LRC: April 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 28, 1999, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 21, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the

public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4338, FAX (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: Roy Grimes

(1) Type and number of entities affected: Approximately 60,000 small game and furbearer hunters utilize the wildlife management areas covered by this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation, which continues long-standing hunting and trapping seasons, will have no impacts on cost of living or employment.

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

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

1. First year following implementation: This administrative regulation imposes no new paperwork or reporting requirements. Some wildlife management areas required hunters to check in and check out.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation imposes no new direct or indirect costs.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This administrative regulation imposes no new reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will not impact state and local revenues.

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

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

(a) Geographical area in which administrative regulation will be implemented: Hunting on, and other recreational uses of, wildlife management areas create positive economic impacts upon local economies in the vicinity of these areas. Each small game hunters spends approximately \$200 annually for equipment, transportation, food and lodging.

(b) Kentucky: Same as for local areas.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only available alternative is applying statewide hunting seasons to wildlife management areas. This alternative was rejected because these areas, because of high public use, require different seasons or other requirements.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Wildlife management areas represent environmentally valuable natural areas. This regulation allows public recreation on these areas while affording them needed protection from overuse.

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

(c) If detrimental effect would result, explain detrimental effect: Without special regulations, wildlife management areas could lose valuable wildlife populations or other natural features.

(9) Identify and statute, administrative regulation or government

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policy which may be in conflict, overlapping, or duplication: None

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

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

(10) Any additional information or comments:

(11) TIERING: IS tiering applied? Tiering was used in setting different seasons dates for various wildlife management areas, taking into account both biological concerns and hunter preference. Specific season dates or other requirements for wildlife areas allow public recreation while at the same time helping protect the flora and fauna of these areas.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 2:172. Deer hunting seasons and requirements.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.180, 150.340, 150.360, 150.370, 150.390, 150.395, 150.990

STATUTORY AUTHORITY: 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 grants the department authority to set hunting seasons, bag limits, methods of taking and other matters necessary to carry out the purpose of KRS Chapter 150. This administrative regulation establishes deer hunting seasons, prescribes legal methods of taking and sets forth tagging and checking requirements for deer hunting.

Section 1. Definitions. (1) "Adult" means an individual at least eighteen (18) years of age.

(2) "Antlered deer" means a deer with one (1) antler at least four (4) inches long, measured from the skin to the tip of the antler.

(3) "Antlerless deer" means a deer:

(a) Without antlers; or

(b) With both antlers less than four (4) inches long, measured from the skin to the tips of the antlers.

(4) "Any deer" means antlered or antlerless deer.

(5) "Archery equipment" means a long bow, recurve bow or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(6) "Arrow" means the projectile fired from a bow or crossbow.

(7) "Barbed broadhead" means a point or portion of a blade projecting backward from a broadhead designed to hold an arrow within an animal.

(8) "Bonus antlerless archery permit" means a permit which, in conjunction with a statewide deer permit, allows the holder to take one (1) additional antlerless deer by archery.

(9) "Bonus antlerless zone one permit" means a permit which, in conjunction with a statewide deer permit, allows the holder to take one (1) additional antlerless deer in a zone one county.

(10) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(11) "Deer" means a white-tailed (*Odocoileus virginianus*).

(12) "Firearm" means a breech or muzzle-loading rifle, shotgun or handgun.

(13) "Fully automatic firearm" means a firearm which fires more than one (1) time with a single pull of the trigger.

(14) "License year" means the period from March 1 through the following last day of February.

(15) "Modern gun" means a rifle, handgun or shotgun which is loaded from the rear of the barrel.

(16) "Muzzle-loading gun" means a rifle, shotgun or handgun which is loaded from the discharging end of the barrel or discharging end of the cylinder.

(17) "Shotshell" means ammunition containing more than one (1) projectile.

(18) "Zone" means the grouping of counties or portions of counties as stipulated in 301 KAR 2:174, Deer hunting zones.

Section 2. Archery and Crossbow Season Dates. A deer hunter may use:

(1) Archery equipment from the third Saturday in September

through the third Monday in January [15].

(2) A crossbow:

(a) For ten (10) days beginning the fourth Tuesday in November;

(b) During modern gun deer season; and

(c) During muzzle-loader seasons.

Section 3. Archery and Crossbow Zone Limits. (1) During the November modern gun deer season or muzzle-loader seasons, a deer hunter using archery equipment or a crossbow shall observe the same limits as a hunter using a firearm.

(2) During the youth hunt as specified in Section 8 of this administrative regulation, a deer hunter using archery equipment may take any deer in Zones 1 through 5 [6].

(3) During portions of archery or crossbow seasons not concurrent with the modern gun deer season or the muzzle-loader seasons a deer hunter:

(a) May take any deer in Zones 1 through 5 [6].

(b) Shall not take antlerless deer in Zone 6 [7].

Section 4. Muzzle-loading Gun Season Dates. A deer hunter may use a muzzle-loading gun:

(1) For two (2) days beginning the fourth Saturday in October.

(2) For seven (7) days beginning the second Saturday in December.

(3) During the modern gun deer season.

Section 5. Muzzle-loading Gun Season Zone Limits. During a season when a muzzle-loading gun is the only firearm allowed, a deer hunter using a muzzle-loading gun, archery equipment or a crossbow:

(1) May take any deer in Zones 1 through 4 [5].

(2) Shall not take antlerless deer in Zones 5 or 6 [or-7].

Section 6. Modern Gun Deer Season Dates. [~~Beginning the second Saturday in November;~~] A person may take deer with a firearm, archery equipment or a crossbow:

(1) Beginning the second Saturday in November:

(a) For ten (10) consecutive days in Zones 1 through 5 [6].

(b) [~~(2)~~] For five (5) consecutive days in Zone 6 [7].

(2) In Zone 1, beginning the third Saturday in December for two (2) consecutive days.

(3) During the December Zone 1 hunt, a person shall not take with a gun:

(a) Antlered deer; or

(b) More than one (1) antlerless deer.

Section 7. Zone Limits for the Modern Gun Deer Season. A deer hunter using firearms, archery equipment or crossbows during No-vember the modern gun deer season shall observe the following limits:

(1) Zone 1: any deer for the entire ten (10) day season.

(2) Zone 2: any deer the first five (5) days; antlered deer the last five (5) days.

(3) Zone 3: any deer the first two (2) days; antlered deer the last eight (8) days.

(4) Zones 4 and 5: [Zone 4: antlered deer the first eight (8) days; any deer the last two (2) days:

(5) Zones 5 and 6:] antlered deer for the entire ten (10) day season.

(5) [(6)] Zone 6 [7]: antlered deer for the entire five (5) day season.

Section 8. Youth Hunt. (1) For two (2) consecutive days beginning on the third Saturday in October, a person under the age of sixteen (16) may use a firearm to take:

(a) Any deer in Zones 1 through 4 [5].

(b) Antlered deer in Zones 5 and 6 [~~and~~ 7].

(2) An adult accompanying a juvenile during the youth hunt shall:

(a) Not carry a firearm; and

(b) Comply with the hunter orange provisions of Section 12 of this administrative regulation.

Section 9. Use of Tags. A deer hunter required to possess a deer permit:

(1) Shall not tag an antlered deer with an "antlerless deer" tag.

(2) May tag antlered or antlerless deer with the "any deer" tag.

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(3) Using a bonus antlerless archery permit or a bonus antlerless zone one permit shall:

- (a) Not take an antlered deer;
- (b) Have the receipt portion of a valid statewide deer permit in his possession; and
- (c) Tag and check deer as required by Sections 15 and 16 of this administrative regulation.

Section 10. Illegal Hunting Equipment. (1) A person shall not use or possess while deer hunting:

- (a) A device capable of taking a deer except a firearm, crossbow or archery equipment.
- (b) Rimfire ammunition.
- (c) A fully-automatic firearm.
- (d) A firearm with a magazine capacity greater than ten (10) rounds.
- (e) Steel jacketed ammunition.
- (f) Tracer bullet ammunition.
- (g) A shotgun shell containing more than one (1) projectile.
- (h) A broadhead smaller than seven-eighths (7/8) inch wide.
- (i) A barbed broadhead.
- (j) A crossbow without a working safety device.
- (k) A chemically treated arrow.
- (l) An arrow with a chemical attachment.

(2) Except when a firearm is permitted for deer hunting, a person hunting deer with archery equipment or a crossbow shall not carry a firearm.

Section 11. Season Limits. Except as provided in 301 KAR 2:178, 2:111 or 2:176, a person shall not take in one (1) license year more than:

- (1) One (1) antlered deer.
- (2) Four (4) deer, provided that the person has purchased the appropriate bonus permits as provided in this administrative regulation.

Section 12. Hunter Orange. (1) During the modern gun deer season, muzzle-loader seasons or the youth hunt, a person hunting any species, and a person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back and chest:

- (2) Subsection (1) of this section shall not apply to a person:
 - (a) Hunting migratory birds; or
 - (b) Hunting at night.
- (3) The hunter orange portions of a garment worn to fulfill the requirements of this section:
 - (a) May display a small section of another color.
 - (b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.
- (4) A camouflage pattern hunter orange garment worn without additional solid hunter orange on the head, back and chest shall not meet the requirements of this section.

Section 13. Hunter Requirements and [;] Shooting Hours[; and Taking of Other Species]. (1) An adult shall:

- (a) Accompany a person under sixteen (16) years old; and
- (b) Remain in a position to take immediate control of the juvenile's firearm.
- (2) An adult accompanying a juvenile hunter shall not be required to possess a hunting license or deer permit if the adult is not hunting.
- (3) A deer hunter:
 - (a) May be in the woods or stands before or after daylight hours, but shall not take deer except during daylight hours.
 - (b) Shall not use dogs.
 - (c) Shall not take swimming deer.
- (4) A hunter in a vehicle or boat, or on horseback, shall not take deer.

Section 14. License and Deer Permit Requirements. (1) Unless exempted by KRS 150.170(3), a person shall have a deer permit in his possession while hunting:

- (a) Deer; or
- (b) Wild hogs or coyotes during a season or wildlife management

area hunt where a firearm is allowed for deer hunting.

- (2) During a license year, a person shall use no more than:
 - (a) One (1) statewide deer permit;
 - (b) One (1) bonus antlerless archery permit; and
 - (c) One (1) bonus antlerless zone one permit.

(3) In lieu of a statewide deer permit, a person possessing a valid junior statewide hunting license may use no more than two (2) junior deer hunting permits.

(4) A juvenile hunter shall use the tag accompanying a junior deer hunting permit as either the "antlerless" or "any deer" tag as appropriate to the season and zone.

(5) A person whose name does not appear on the permit shall not use any portion of the deer permit.

Section 15. Tagging Deer. (1) A person exempt from purchasing a deer permit by KRS 150.170(3) shall:

- (a) Have a landowner/tenant carcass tag in his possession while hunting; and
- (b) Tag deer as stipulated in subsection (3) [(2)] of this section.
- (2) A person holding a senior/disabled license shall:
 - (a) Before hunting, write his name and address on cards corresponding to the number of deer he is allowed to take during the appropriate season.
 - (b) Immediately after taking a deer, write the date the deer was taken on the card; and
 - (c) Attach the card to the deer while it is being transported by vehicle or is out of the hunter's possession.

(3) After taking a deer, a person shall:

- (a) Immediately after taking a deer, ~~and before moving the carcass;~~ cut and remove the numbers on ~~[- punch, or mark with indelible ink]~~ the appropriate tag portion of the permit corresponding to [indicate] the day and month the deer was taken.
- (b) Attach the tag portion of the permit to the carcass:
 - 1. While transporting the carcass by vehicle; or
 - 2. Whenever the hunter is not in physical possession of the carcass.

Section 16. Checking Deer. (1) ~~[After taking a deer,]~~ A person shall check a ~~[the]~~ deer by:

~~[(1) Having an authorized employee of the department check the deer in the field; or~~

~~[(2) (a) Calling 1-877-245-4263 by 9 a.m. on the day following the day the deer was taken; and [the toll-free telephone number provided by the department;]~~

(b) Providing the information requested by the automated check-in system; and

(c) Writing the authorization number given by the system on the appropriate carcass tag portion of the deer permit. ~~[- or]~~

(2) A person shall not knowingly provide false information when checking a deer.

~~[(3)(a) Transporting the entire or field-dressed carcass to the nearest open check station by 9 a.m. on the day after the deer was taken;~~

~~(b) Giving a completed game check card to the person checking the deer;~~

~~(c) Retaining the hunter's copy of the game check card until the deer is processed; and~~

~~(d) Attaching the taxidermy portion of the game check card to any parts of the deer removed for mounting;]~~

Section 17. Transporting and Processing Deer. (1) A person shall:

- (a) Not transport unchecked deer out of Kentucky.
- (b) Have proof that a deer or parts of deer brought into Kentucky were legally taken.

(c) Not submit deer taken outside Kentucky for Kentucky trophy deer listing.

(d) Not sell deer hides except to a licensed:

- 1. Fur buyer;
- 2. Fur processor; or
- 3. Taxidermist.

(2) A person who processes deer shall:

- (a) Keep accurate records of the hunter's name, address and date received for each deer in his possession.

(b) Provide and affix to each deer a tag showing the hunter's name, address, [and] date received, and check-in authorization number. This tag shall remain on the carcass until it is processed.

(c) Not accept deer carcasses without proper owner identification.

C. THOMAS BENNETT, Commissioner
MIKE BOATWRIGHT, Chairman
ANN R. LATTA, Secretary
DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: February 26, 1999

FILED WITH LRC: April 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 28, 1999, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 21, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4338, FAX (502)564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: An estimated 212,000 hunters will participate in white-tailed deer seasons provided for by this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation continues deer seasons in effect for many years and should have no impact on costs of living or employment.

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

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

1. First year following implementation: This administrative regulation will impose a new requirement that landowners or tenants obtain a free carcass tag before hunting and check any deer taken. As in past years, deer hunters will be required to report deer harvested by checking the carcass at an official check station.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation will not cause the agency to incur additional costs or realize any additional savings.

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

3. Additional factors increasing or decreasing costs: None have been identified.

(b) Reporting and paperwork requirements: The department must collect, tabulate and analyze data from mandatory deer check stations. This is a continuing requirement which will impose no additional reporting or paperwork requirements on the agency.

(4) Assessment of anticipated effect on state and local revenues: State and local revenues will be positively affected by this activity, and by the purchase of required licenses and permits.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The sale of hunting licenses

and deer permits.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation applies to all geographical areas of the Commonwealth.

(b) Kentucky: Deer hunters expend money for equipment, transportation, food and lodging. These expenditures average approximately \$25 per hunter, for a positive direct economic impact of \$5,300,000.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative to regulated hunting is closing the season. This alternative was rejected because white-tailed deer are a renewable natural resource and their numbers are at levels which can sustain regulated harvest by hunters.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Regulated hunting controls deer populations and prevents the environmental damage to the landscape caused by deer overpopulation. Deer hunting provides outdoor recreation for over 200,000 Kentuckians annually.

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

(c) If detrimental effect would result, explain detrimental effect: Without hunting, deer populations grow unchecked, creating increasing levels of deer-vehicle collisions, crop depredations, and destruction of habitat.

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

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

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

(10) Any additional information or comments: None

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

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 2:174. Deer hunting zones.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.180, 150.340, 150.360, 150.370, 150.390, 150.395, 150.990

STATUTORY AUTHORITY: 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) gives the department the authority to make administrative regulations apply to a limited area or to the entire state. This administrative regulation zones the state for the purposes of controlling deer harvest and populations, and providing optimum opportunity for deer hunters.

Section 1. Definitions. "Zone" means counties or portions of counties grouped for deer hunting season dates and limits.

Section 2. Zone Assignments. (1) Zone 1 shall consist of Allen, Anderson, Ballard, Boone, Butler, Caldwell, Calloway, Campbell, Carlisle, Carroll, Christian, Crittenden, Franklin, Fulton, Gallatin, Graves, Grayson, Hancock, Hardin, Henry, Hickman, Hopkins, Jefferson, Kenton, Livingston, Logan, Lyon, Marshall, McCracken, McLean, Muhlenberg, Ohio, Oldham, Owen, Shelby, Spencer, Todd, Trigg, Trimble, Washington, [and] Webster, and Woodford Counties.

(2) Zone 2 shall consist of Adair, Barren, Boyd, Breckinridge, Bullitt, [Caldwell, Carroll,] Carter, Daviess, Elliott, Grant, Green, [Gallatin, Grayson,] Greenup, Harrison, Henderson, Larue, Marion, Meade, Mercer, Monroe, Nelson, Pendleton, Robertson, Scott, Simpson, Taylor, Union, and Warren [Lawrence, Livingston, Lyon, McLean, Morgan, Owen, Rowan, Shelby, Trigg, and Trimble] Counties.

(3) Zone 3 shall consist of Bath, Boyle, Bracken, [Anderson, Breckinridge, Calloway,] Casey, Clinton, Cumberland, Edmonson,

Fleming, Hart, Jessamine, Lawrence, Lewis, Mason, Menifee, [Davies, Grant, Henderson, Henry, Marion, Marshall, McCracken, Meade,] Metcalfe, Morgan, Rowan, and Russell [Monroe, Nelson, Simpson, Spencer, Union, Warren, Washington, and Woodford] Counties.

(4) Zone 4 shall consist of Clark, Fayette, Garrard, Jackson, Johnson, Laurel, Lincoln, Madison, Martin, Montgomery, Nicholas, Pulaski, Wayne, Whitley, and Wolfe [Bracken, Bullitt, Campbell, Clinton, Cumberland, Edmonson, Fleming, Franklin, Green, Harrison, Hart, Jessamine, Kenton, Larue, Lewis, Mason, Pendleton, Robertson, Russell, Scott, and Taylor] Counties.

(5) Zone 5 shall consist of Bell, Bourbon, Breathitt, Clay, Estill, Floyd, Harlan, Knott, Knox, Lee, Magoffin, Owsley, Powell, and Rockcastle [Bath, Boyle, Clark, Fayette, Garrard, Johnson, Lincoln, Madison, Martin, Menifee, Mercer, Montgomery, Nicholas, Pulaski, Wayne, and Wolfe] Counties.

(6) Zone 6 shall consist of Leslie, Letcher, McCreary, Perry, and Pike [Bourbon, Breathitt, Clay, Floyd, Jackson, Knott, Knox, Laurel, Lee, Magoffin, Powell, and Whitley] Counties.

~~[(7) Zone 7 shall consist of Bell, Estill, Harlan, Leslie, Letcher, McCreary, Owsley, Pike, and Rockcastle Counties.]~~

Section 3. Perry County shall be closed to deer hunting.]

C. THOMAS BENNETT, Commissioner

MIKE BOATWRIGHT, Chairman

ANN R. LATTA, Secretary

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: February 26, 1999

FILED WITH LRC: April 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 28, 1999, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 21, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4338, FAX (502)564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: An estimated 212,000 hunters will participate in white-tailed deer seasons provided for by this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation continues deer seasons in effect for many years and should have no impact on costs of living or employment.

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

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

1. First year following implementation: This administrative regulation will impose no new reporting or paperwork requirements.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation will not cause the agency to incur additional costs or realize any additional savings.

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

3. Additional factors increasing or decreasing costs: None have been identified.

(b) Reporting and paperwork requirements: The department must collect, tabulate and analyze data from mandatory deer check stations. This is a continuing requirement which will impose no additional reporting or paperwork requirements on the agency.

(4) Assessment of anticipated effect on state and local revenues: State and local revenues will be positively affected by this activity, and by the purchase of required licenses and permits.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The sale of hunting licenses and deer permits.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation applies to all geographical areas of the Commonwealth. Placing counties in zones with more liberal or more restrictive harvest requirements may create slight economic impact.

(b) Kentucky: Deer hunters expend money for equipment, transportation, food and lodging. These expenditures average approximately \$25 per hunter, for a positive direct economic impact of \$5,300,000.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative is a uniform season statewide. This alternative was rejected because such a uniform season would allow too many deer to be taken in some areas and not enough in others. It would neither provide optimal recreational opportunities nor meet deer population objectives.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Regulated hunting controls deer populations and prevents the environmental damage to the landscape caused by deer overpopulation. Deer hunting provides outdoor recreation for over 200,000 Kentuckians annually.

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

(c) If detrimental effect would result, explain detrimental effect: In some areas, deer populations could grow to levels which would create increasing incidents of deer-vehicle collisions, crop depredations, and destruction of habitat. In other areas, deer populations could be decreased or eliminated.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is applied to this administrative regulation. Each county of Kentucky was examined separately and placed in one of eight categories, depending upon deer population, last season's harvest and population objectives for the future.

**TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(Amendment)**

301 KAR 2:178. Deer hunting on wildlife management areas.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.180, 150.340, 150.360, 150.370, 150.390, 150.395, 150.990

STATUTORY AUTHORITY: 150.025(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.620 grant the department authority to set hunting seasons, bag limits, methods of taking and other matters necessary to carry out

the purpose of KRS Chapter 150 on wildlife management areas. This administrative regulation establishes deer hunting dates, application procedures and other matters pertaining to deer hunting on wildlife management areas that differ from statewide requirements.

Section 1. Definitions. (1) "Modern gun season" means the five (5) or ten (10) consecutive-day period beginning the second Saturday in November when breech-loading firearms may be used to take deer.

(2) "Private inholding" means privately owned property completely surrounded by a WMA.

(3) "Quota hunt" means a WMA deer hunt [hunts], including a youth hunt, where a participant is [hunts, whose participants are] selected by a random drawing.

(4) "Statewide deer requirements" means the season dates, zone descriptions and other requirements for deer hunting established in 301 KAR 2:172 and 2:174.

(5) "Wildlife management area or WMA" means a tract of land the department controls or manages through ownership, lease, license or cooperative agreement.

Section 2. General WMA Requirements. (1) Unless specified otherwise in this administrative regulation, statewide deer requirements shall apply to a WMA [WMAs].

(2) If specific deer hunting dates are given for a WMA in this administrative regulation, a person [persons] shall not hunt deer except [only] on those dates.

(3) On a WMA, Westvaco Public Hunting Area, the Daniel Boone National Forest, Reelfoot National Wildlife Refuge, Land Between the Lakes and the Big South Fork National River and Recreation Area, a person:

(a) Shall not use a nail, spike, screw-in device, wire or tree climber [nails, spikes, screw-in devices, wire or tree climbers] for attaching a tree stand or climbing a tree.

(b) May use a portable stand or climbing device that does not injure a tree.

(c) Shall not place a portable stand in a tree more than two (2) weeks before opening day, and shall remove it within one (1) week following the last day, of each hunting period.

(d) Shall plainly mark the portable stand with his name and address.

(e) Shall not use an existing permanent tree stand.

(4) Limits. A hunter shall not take more than one (1) deer from each of the WMAs listed in Section 5 of this administrative regulation except:

(a) Statewide [that statewide] limits shall apply to:

1. The Pioneer Weapons Area;

2. Dewey Lake WMA;

3. Westvaco public hunting area; and

4. Yatesville WMA;

(b) A person shall not take more than two (2) deer on:

1. West Kentucky WMA;

2. Higginson-Henry WMA;

3. Taylorsville Lake WMA; or

4. Yellowbank WMA.

[(a) West Kentucky WMA;

(b) The Pioneer Weapons Area;

(c) Dewey Lake WMA;

(d) Higginson-Henry WMA;

(e) Westvaco public hunting areas; or

(f) Yellowbank WMA;

(g) Yatesville Lake WMA.]

(5) The owner of a private inholding or his guest:

(a) May hunt on the owner's lands without application;

(b) Shall follow all other requirements for the WMA which surrounds the inholding.

(6) A person shall not hunt on a private inholding [inholdings] when deer hunting is not allowed on the surrounding WMA.

(7) Except to travel through a WMA on an established public road [roads] or to use an area [areas] designated open by a sign [signs], a person without a valid quota hunt permit shall not enter a WMA during a quota hunt [hunts] on that area.

(8) Except if waterfowl hunting or hunting at night, a person hunting any species or a person accompanying a hunter shall wear hunter

orange:

(a) Meeting the requirements specified in 301 KAR 2:272.

(b) On a WMA when firearms are permitted for deer hunting.

[(9) A person shall not:

(a) Enter portions of a WMA marked by signs as closed to public access; or

(b) Hunt in portions of a WMA marked by signs as closed to hunting.]

Section 3. Quota Hunt Procedures. (1) A person selected [by random drawing] for a quota hunt:

(a) [(1)] Shall hunt on the assigned date and in the assigned area [dates and in assigned areas];

(b) [(2)] May use a firearm [firearms], archery equipment or a crossbow [crossbows] during the quota hunt.

(2) A person whose name is not selected pursuant to this administrative regulation shall not hunt during a quota hunt listed in this administrative regulation or in 301 KAR 2:179.

(3) A person shall apply for a quota hunt drawing through an automated telephone system by calling 1-877-868-4868 from a touch-tone telephone between August 1 and August 31 and:

(a) Providing his Social Security number;

(b) Indicating his first and second choice of hunts; and

(c) Paying a three (3) dollar application fee for each application by:

1. Check;

2. Money order;

3. Visa; or

4. MasterCard.

(4) Five (5) or fewer persons may apply as a party by providing a Social Security number and paying the application fee for each person.

(5) A person shall not apply more than one (1) time.

(6) The department shall select hunters by a random drawing of all applicants.

(7) A person checking in for a quota hunt shall show:

(a) His Social Security number;

(b) A valid Kentucky hunting, combination or senior/disabled license; and

(c) If he possesses a hunting or combination license:

1. A valid deer permit with an unused carcass tag; or

2. The receipt portion of a valid deer permit and:

a. A bonus quota hunt deer permit;

b. If the quota hunt is in a Zone 1 county as defined by 301 KAR 2:174, a bonus Zone 1 antlerless deer permit; or

c. If the person will hunt with bow or crossbow, a bonus antlerless archery deer permit.

(d) If he possesses a senior/disabled license, the hand-made cards as specified in 301 KAR 2:172.

(8) A person who was not selected and applies to hunt the following year shall be given one (1) preference point for each year he was not selected.

(9) A random selection of those with preference points shall be made for each year's quota hunts before those without preference points are chosen.

(10) The commissioner may extend the application deadline if technical difficulties with the automated application system prevent applications from being accepted for one (1) or more days during the application period.

(11) A person who does not check out of a quota hunt as required by this administrative regulation shall not be eligible to quota hunt the following year.

Section 4. WMA Hunting Dates and Requirements. (1) Adair WMA. A person shall not hunt deer with a firearm.

(2) Ballard WMA.

(a) Quota youth hunt, any deer or antlerless deer as determined by a random drawing: two (2) consecutive days beginning the fourth [third] Saturday in October.

(b) Quota hunt, any deer or antlerless deer as determined by a random drawing: the first [fourth] Saturday and Sunday of November [October].

(c) Statewide deer requirements shall apply to the 300 acre tract

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south of Terrell Landing Road.

(d) A person shall check out before 6 p.m.

(3) Barren River Wildlife Management Area, On the Peninsula Unit, including Narrows, Goose and Grass Islands, a person:

(a) Shall not:

1. Hunt deer 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 deer with a crossbow.

(4) [(2)] Beaver Creek WMA.

(a) Archery hunt, antlered deer: the third Saturday in September through the third Monday in January [15], except during the quota hunt.

(b) Quota hunt, antlered deer: two (2) consecutive days beginning the first Saturday in November.

~~[(3) Buckhorn Lake WMA shall be open under Zone 7 requirements.]~~

(5) [(4)] Cane Creek WMA.

(a) Archery hunt: Zone 4 [6] archery season dates and harvest restrictions shall apply.

(b) Gun hunt, antlered deer: two (2) consecutive days beginning the second Saturday in November.

(6) [(5)] Central Kentucky WMA.

(a) Archery hunt, any deer:

1. Wednesdays between the fourth week in September through December 17, except during scheduled field trials as posted on the area bulletin board.

2. December 18 through the third Monday in January [15].

(b) A deer hunter shall check in and check out.

(7) [(6)] Clay WMA.

(a) Archery hunt, any deer: October 15 through the third Monday in January [15], except during the quota hunt.

(b) Quota hunt, any deer: the first Saturday and Sunday in November.

(c) Youth hunt, any deer: open during the statewide youth hunt.

(d) Deer hunters shall check in and check out.

(8) [(7)] Cyprus AMAX-Robinson Forest WMA.

(a) A person shall not hunt deer on the main block of Robinson Forest. [:

1. On the main block of Robinson Forest.

2. With a firearm during the modern gun season.

~~(b) Archery, muzzle-loader and youth hunt seasons shall correspond to statewide requirements.]~~

(b) [(d)] A deer hunter shall check in and out.

(9) [(8)] Daviess County WMA shall be closed to deer hunting.

(10) [(9)] Dewey Lake WMA.

(a) Archery hunts: any deer, the third Saturday in September through the third Monday in January [15], except during a quota hunt [persons shall not archery hunt during quota hunts].

(b) Youth hunt, any deer: open during statewide youth hunt. [quota hunt, any deer: two (2) consecutive days beginning the first Saturday in November.]

(c) Quota hunt, any deer or antlerless deer as determined by a random drawing at check in: two (2) consecutive days beginning the first Saturday in December.

(d) A deer hunter:

1. Shall check in and check out during quota hunts;

2. May take two (2) deer; and

3. Shall not take more than one (1) deer during a quota hunt.

(11) [(10)] Fishtrap Lake WMA.

(a) Archery hunt, antlered deer: third Saturday in September through the third Monday in January [15], except during the quota hunt.

(b) Quota hunt, antlered deer: two (2) consecutive days beginning on the Saturday before Thanksgiving. ~~[the fourth Saturday in November.]~~

(c) Youth hunt, antlered deer: open during statewide youth hunt.

(12) [(11)] Grayson Lake WMA.

(a) Youth quota hunts, any deer:

1. Two (2) consecutive days beginning the first Saturday in November.

2. Two (2) consecutive days beginning the first Saturday in December.

(b) Archery and crossbow hunt, any deer: the third Saturday in September through the third Monday in January [15].

(c) The portion of the area west of Route 1496 and east of Bruin Creek, the Bruin Creek fork of Grayson Lake, and Grayson Lake north of the Bruin Creek Fork shall be:

1. Open to youth quota hunting; and

2. Closed to archery and crossbow hunting.

(d) A deer hunter shall check in and shall check out.

(e) A quota hunter [Quota hunters] shall check out before 6 p.m.

(13) [(12)] Green River Lake WMA.

(a) Quota hunt, antlered deer: two (2) consecutive days beginning the first Saturday in November [December].

(b) Archery hunt, any deer: the third Saturday in September through the third Monday in January [15], except during the quota hunt.

(c) An archery hunter shall check in and check out.

(14) [(13)] Higginson-Henry WMA.

(a) Quota hunt, any deer or antlerless deer as determined by a random drawing: two (2) consecutive days beginning the first Saturday in December.

(b) Archery hunts.

1. Antlerless deer, the third Saturday in September through October 15.

2. Any deer, October 16 through the third Monday in January [15], except during the quota hunt.

(c) A deer hunter:

1. Shall check in and check out;

2. May take two (2) deer;

3. Shall not take more than one (1) deer during a quota hunt.

(15) [(14)] Kentucky River WMA.

(a) Quota hunts, Zone 1 [3] harvest restrictions apply:

1. Five (5) consecutive days beginning the second Saturday in November.

2. Five (5) consecutive days beginning the day after the first quota hunt ends.

(b) Archery hunt, any deer: the third Saturday in September through the third Monday in January [15], except during a quota hunt [the quota hunts].

(c) A quota hunter [Quota hunters] may hunt without checking in or out.

(d) Statewide deer requirements shall apply for muzzle-loader, crossbow, and youth hunt seasons.

(16) [(15)] Kleber WMA.

(a) Quota hunt, any deer: two (2) consecutive days beginning the first Saturday in December.

(b) Archery hunt, any deer: the third Saturday in September [October] through the third Monday in January [15], except during the quota hunt.

(c) Deer hunters shall check in and check out.

(17) [(16)] Lapland WMA.

(a) Quota hunts, Zone 2 [3] harvest restrictions apply:

1. Five (5) consecutive days beginning the second Saturday in November.

2. Five (5) consecutive days beginning the day after the first quota hunt ends.

(b) Archery hunt, any deer: the third Saturday in September through the third Monday in January [15], except during the quota hunts.

(c) A quota hunter [Quota hunters] may hunt without checking in or out.

(d) Statewide deer requirements shall apply for muzzle-loader, crossbow, and youth hunt seasons.

(18) [(17)] Curtis Gates Lloyd WMA.

(a) Quota hunts, Zone 2 [3] harvest restrictions apply:

1. Five (5) consecutive days beginning the second Saturday in November.

2. Five (5) consecutive days beginning the day after the first quota hunt ends.

(b) Archery hunt, any deer: the third Saturday in September through the third Monday in January [15], except during a quota hunt [the quota hunts].

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(c) A quota hunter [~~Quota-hunters~~] may hunt without checking in or out.

(d) Statewide deer requirements shall apply for muzzle-loader, crossbow, and youth hunt seasons.

(19) [(18)] Mill Creek WMA.

(a) Archery hunt, any deer: the third Saturday in September through the third Monday in January [15], except during the quota hunt.

(b) Quota hunt, antlered deer: two (2) consecutive days beginning the first Saturday in November.

(20) [(19)] Mud Camp Creek WMA.

(a) Quota hunts, Zone 3 [4] harvest restrictions apply:

1. Five (5) consecutive days beginning the second Saturday in November.

2. Five (5) consecutive days beginning the day after the first quota hunt ends.

(b) Archery hunt, any deer: the third Saturday in September through the third Monday in January [15], except during the quota hunts.

(c) A quota hunter [~~Quota-hunters~~] may hunt without checking in or out.

(d) Statewide deer requirements shall apply for muzzle-loader, crossbow, and youth hunt seasons.

(21) [(20)] Mullins WMA.

(a) Quota hunts, Zone 2 [3] harvest restrictions apply:

1. Five (5) consecutive days beginning the second Saturday in November.

2. Five (5) consecutive days beginning the day after the first quota hunt ends.

(b) Archery hunt, any deer: the third Saturday in September through the third Monday in January [15], except during the quota hunts.

(c) A quota hunter [~~Quota-hunters~~] may hunt without checking in or out.

(d) Statewide deer requirements shall apply for muzzle-loader, crossbow, and youth hunt seasons.

(22) [(21)] Obion Creek WMA.

(a) Quota hunt, Zone 1 harvest restrictions apply:

1. Five (5) consecutive days beginning the second Saturday in November; and

2. Five (5) consecutive days beginning the day after the first quota hunt ends. [any deer: two (2) consecutive days beginning the first Saturday in November.]

(b) Archery hunt, any deer: the third Saturday in September through the third Monday in January [15], except during a [the] quota hunt.

(23) [(22)] Paintsville Lake WMA.

(a) Quota hunt, any deer: two (2) consecutive days beginning the first Saturday in November.

(b) Archery hunt, any deer: the third Saturday in September through the third Monday in January [15], except no archery hunting during the quota hunt.

(c) Youth hunt, any deer: open during the statewide youth hunt.

(d) A person participating in the quota hunt shall check in and check out.

(24) [(23)] Peabody WMA.

(a) Quota hunt, any deer: five (5) consecutive days beginning the second Saturday in November. A quota hunter [~~Quota-hunters~~] may hunt without checking in or out.

(b) Gun hunt, any deer: five (5) consecutive days beginning the day after the last day of the quota hunt.

(c) Muzzleloader hunt, any deer: seven (7) consecutive days beginning the second Saturday in December.

(d) Archery hunt, any deer: the third Saturday of September through the third Monday in January [15], except during quota hunt.

(e) The youth hunt shall be open under statewide requirements.

(25) [(24)] Pennyrite WMA.

(a) Quota hunt, any deer or antlerless deer as determined by a random drawing: two (2) consecutive days beginning the first Saturday in November.

(b) Archery hunts:

1. Antlerless deer, the third Saturday in September through October 15.

2. Any deer, October 16 through the third Monday in January [15], except during the quota hunt.

(c) A quota hunter [~~Quota-hunters~~] shall check out by 6 p.m. daily.

(d) An archery hunter [~~Archery-hunters~~] shall check in and check out.

(26) [(25)] Pioneer Weapons WMA. Statewide requirements shall apply except that a person:

(a) Shall not use a breech-loading gun;

(b) May use a crossbow during the entire archery season.

(27) [(26)] Redbird WMA.

(a) Archery hunt, antlered deer: the third Saturday in September through the third Monday in January [15], except during the gun hunt.

(b) Gun hunt, antlered deer: two (2) consecutive days beginning the second Saturday in November.

(c) A gun deer hunter [~~Gun-deer-hunters~~] shall check his deer at the Redbird Ranger District Office.

(28) Dr. James R. Rich WMA.

(a) Quota hunt, any deer: two (2) consecutive days beginning the first Saturday in December.

(b) Archery hunt, any deer: the third Saturday in September through the third Monday in January, except during the quota hunt.

(29) [(27)] Stewart Island WMA.

(a) Muzzle-loader hunt, any deer: two (2) days beginning the fourth Saturday in October. [Quota hunt, any deer: two (2) consecutive days beginning on the last Saturday in October.]

(b) Quota hunt applicants shall be present at 10 a.m. central day-light time on the third Saturday of September in downtown Smithland to participate in a public drawing.]

(b) [(e)] Archery hunt, any deer: the third Saturday in September through October 14.

(30) [(28)] Swan Lake WMA: closed to deer hunting.

(31) [(29)] R. F. Tarter.

(a) Quota hunts, Zone 3 [4] harvest restrictions apply:

1. Five (5) consecutive days beginning the second Saturday in November.

2. Five (5) consecutive days beginning the day after the first quota hunt ends.

(b) Archery hunt, any deer: the third Saturday in September through the third Monday in January [15], except during the quota hunts.

(c) Quota hunters may hunt without checking in or out.

(d) Statewide deer requirements shall apply for muzzle-loader, crossbow, and youth hunt seasons.

(32) [(30)] Taylorsville Lake WMA.

(a) Archery hunt, any deer: the third Saturday in September through the third Monday in January [15], except during the quota hunts.

(b) Quota hunt, any deer:

1. Two (2) consecutive days beginning the first Saturday in November.

2. Two (2) consecutive days beginning the first Saturday in December.

(c) Youth hunt, any deer: open during the statewide youth hunt.

(d) Hunters shall check in and check out daily.

(e) A person:

1. May take two (2) deer; and

2. Shall not take more than one (1) deer during a quota hunt.

[(d) This area shall be open during the statewide youth hunt.]

(33) [(31)] Tradewater WMA.

(a) Quota hunt, any deer or antlerless deer as determined by a random drawing: two (2) consecutive days beginning the first Saturday in November.

(b) Archery hunts:

1. Antlerless deer, the third Saturday in September through October 15.

2. Any deer, October 16 through the third Monday in January [15], except during the quota hunt.

(c) A quota hunter [~~Quota-hunters~~] shall check out by 6 p.m. daily.

(d) An archery hunter [~~Archery-hunters~~] shall check in and check out.

(34) [(32)] Twin Knobs Campground. Quota hunt, any deer: the second Saturday in December for persons with a disability which impairs their mobility.

(35) [(33)] West Kentucky WMA.

(a) Archery hunts, any deer, the third Saturday in September through the third Monday in January, except that a person shall not archery hunt for nine (9) consecutive days beginning the Saturday following Thanksgiving, or the day before and during quota hunts, [:

1. ~~The third Saturday in September through December 10 on tracts one (1) through seven (7);~~

2. ~~December 14 through January 15 on tracts one (1) through seven (7) and in designated posted zones.]~~

(b) Quota hunts, any deer.

1. Two (2) consecutive days beginning the third Saturday in November.

2. Two (2) consecutive days beginning the second Saturday in December.

(c) Youth quota hunt, any deer: two (2) consecutive days beginning the first Saturday in November.

(d) Crossbow hunt, any deer: the day following the youth quota hunt for ~~eleven (11) [twelve (12)]~~ consecutive days.

(e) A gun hunter shall not use a breech-loading rifle or breech-loading handgun.

(f) A person shall not carry a firearm in posted zones.

(g) A person shall not take more than two (2) deer from this WMA.

1. Two (2) deer may be taken by archery; [:

a. ~~One (1) deer shall be antlerless and shall be tagged with a statewide tag;~~

b. ~~The other deer may be antlered or antlerless and shall be tagged with a bonus quota hunt permit;]~~

2. ~~No more than one (1) deer shall [may] be taken by gun; it shall be tagged with a statewide tag or a bonus quota hunt permit.~~

3. ~~A person shall not use more than one (1) bonus quota hunt permit on this area.]~~

(h) A deer hunter shall check in and check out.

(36) [(34)] Westvaco public hunting areas. Statewide deer requirements apply; in addition, a person hunting on Westvaco property:

(a) Shall possess a Westvaco Hunting Permit.

(b) Shall not hunt from or place a tree stand within fifty (50) yards of the property line.

(c) The portion of the area south of Westvaco Road shall be closed to public access between November 1 and March 15.

(37) [(35)] White City WMA.

(a) Archery hunt, any deer: the third Saturday in September through the third Monday in January [15], except during the quota hunts.

(b) Quota hunts, any deer.

1. Five (5) consecutive days beginning the second Saturday in November.

2. Five (5) consecutive days immediately following the first quota hunt.

(c) A quota hunter may hunt without checking in or out.

(38) [(36)] Yatesville WMA. Statewide deer requirements apply except:

(a) A person shall not take antlerless deer with a firearm. ~~[during the first five (5) days of the modern gun season;]~~

(b) A deer hunter shall check in and shall check out.

(39) [(37)] Yellowbank WMA.

(a) Youth quota hunt: the first weekend in November. ~~[The area shall be open during statewide archery and youth hunts;]~~

(b) Archery hunt, any deer: the third Saturday in September through the third Monday in January.

(c) A deer hunter shall check in and check out.

(d) [(e)] The sex of deer to be taken during the youth hunt shall be determined by a random drawing at check in.

(e) A person shall not take more than:

1. Two (2) deer from this area; or

2. One (1) deer during the youth quota hunt.

[(d) Zone 3 harvest restrictions shall apply;

(e) ~~A person shall not take more than one (1) deer during the youth hunt;]~~

(40) [(38)] Zilpo Campground. Quota hunt, any deer: the second Saturday in December for persons with a disability which impairs their mobility.

C. THOMAS BENNETT, Commissioner

MIKE BOATWRIGHT, Chairman

ANN R. LATTA, Secretary

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: February 26, 1999

FILED WITH LRC: April 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 28, 1999, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 21, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4338, FAX (502)564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: An estimated 212,000 hunters will participate in white-tailed deer seasons provided for by this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation continues deer seasons in effect on wildlife management areas for many years and should have no impact on costs of living or employment.

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

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

1. First year following implementation: This administrative regulation will impose no new reporting or paperwork requirements. As in past years, deer hunters will be required to check in and out at an official check station on most wildlife management areas, as well as submit applications for quota hunts.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation will not cause the agency to incur additional costs or realize any additional savings.

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

3. Additional factors increasing or decreasing costs: None have been identified.

(b) Reporting and paperwork requirements: The department must collect, tabulate and analyze data from deer check stations. This is a continuing requirement which will impose no additional reporting or paperwork requirements on the agency.

(4) Assessment of anticipated effect on state and local revenues: State and local revenues will be positively affected by this activity, and by the purchase of required licenses and permits.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The sale of hunting licenses and deer permits.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation applies to all geographical

cal areas of the Commonwealth.

(b) Kentucky: Deer hunters expend money for equipment, transportation, food and lodging. These expenditures average approximately \$25 per hunter, for a positive direct economic impact of \$5,300,000.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative to regulated hunting is closing the season. This alternative was rejected because white-tailed deer are a renewable natural resource and their numbers are at levels which can sustain regulated harvest by hunters.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Regulated hunting controls deer populations and prevents the environmental damage to the landscape caused by deer overpopulation. Deer hunting provides outdoor recreation for over 200,000 Kentuckians annually.

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

(c) If detrimental effect would result, explain detrimental effect: Without hunting, deer populations grow unchecked, creating increasing levels of deer-vehicle collisions, crop depredations, and destruction of habitat.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is applied in this administrative regulation to the extent that each wildlife management area was examined for hunter density, deer population levels and other biological or social factors before applying specific season dates or other hunter requirements on these areas.

**TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(Amendment)**

301 KAR 2:179. State park deer hunts.

RELATES TO: KRS 148.029(5), 150.025(2), 150.105, 150.360, 150.390, 150.640(1), 150.710

STATUTORY AUTHORITY: KRS 148.029(5), 150.105, 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 148.029(5) authorizes the Department of Parks, in cooperation with the Department of Fish and Wildlife Resources, to remove, destroy, or disturb wildlife on state parks. KRS 150.105 authorizes the Department of Fish and Wildlife Resources to authorize the destruction of animals that are causing damage to property or spreading disease. KRS 150.025(1) authorizes the Department of Fish and Wildlife to open seasons and make those seasons apply to a limited area of the state. This administrative regulation is necessary to allow controlled deer hunting at selected state parks to relieve serious overpopulations of white-tailed deer that are damaging the ecological integrity of the parks.

Section 1. Hunting for [either antlered or antlerless] deer shall be allowed:

(1) On the first Saturday and Sunday of December [5 and 6, 1998;] at:

- (a) Grayson Lake State Park, for antlered or antlerless deer; and
- (b) Taylorsville Lake State Park, for antlerless deer.

(2) On the third Tuesday and Wednesday of December for antlered or antlerless deer at Lake Cumberland State Resort Park. A person shall:

- (a) Not use a firearm or crossbow on this area; or
- (b) Wear hunter orange as specified in 301 KAR 2:172, Section 12, on a tract designated by the park superintendent.

(3) On the first Tuesday and Wednesday of January for antlered or antlerless deer [5 and 6, 1999;] at:

(a) Lake Barkley [Barren River Lake] State Resort Park;

(b) Dale Hollow State Resort Park;

(c) Greenbo Lake State Resort Park[; and

[(d) Lake Cumberland State Resort Park.

(3) On January 12 and 13, 1999, at Dale Hollow State Resort Park].

Section 2. A person shall not hunt on a state park unless he:

(1) Was selected by a random drawing pursuant to 301 KAR 2:178 [2:181E]; or

(2) Is a member of the successful applicant's hunting party.

Section 3. (1) A person shall:

(a) Check in:

- 1. Between 4 p.m. and 10 p.m. on the day before the hunt; or
- 2. After 5 a.m. on the day of the hunt;

(b) Furnish at check-in:

- 1. The authorization number as specified in 301 KAR 2:181, showing that he was a successful applicant for the hunt; and
- 2. A driver's license or other form of personal identification.

(2) A member of the successful applicant's party shall check in with the applicant.

(3) When checking in, a successful applicant or a member of his party shall show:

(a) A valid:

- 1. Current [1998] deer permit with an unfilled carcass tag; [or]
- 2. Quota hunt deer permit with an unused carcass tag; or
- 3. If hunting with a senior/disabled license, the hand-made cards required by 301 KAR 2:172; and

(b) ~~[Unless exempt from licensing requirements by KRS 150:170;]~~ A valid Kentucky:

- 1. Resident hunting license;
- 2. Resident combination hunting and fishing license; [or]
- 3. Annual nonresident hunting license; or
- 4. Senior/disabled license.

Section 4. A person participating in the hunt:

(1) Shall:

- (a) Wear hunter orange as required by 301 KAR 2:172(12);
- (b) Check deer taken at the designated park check station;
- (c) Check out before leaving the park; and
- (d) Obey the provisions of 301 KAR 2:172(10) and (13).

(2) Shall not:

(a) Use a firearm, archery equipment or crossbow prohibited by 301 KAR 2:172;

(b) Take more than one (1) deer;

(c) Take a white deer at Dale Hollow State Resort Park;

(d) Tag an antlered deer with an "antlerless only" tag;

(e) Injure a tree by using:

- 1. A tree stand except a portable stand;
- 2. Climbing devices which nail or screw to the tree; or
- 3. Climbing spikes.

(g) Discharge a firearm within 100 feet of a maintained road;

(h) Hunt:

- 1. In an area posted as closed by signs; or
- 2. Outside the park boundaries.

(3) A person who does not check out as required by this administrative regulation shall not be eligible to apply for a quota hunt the following year.

C. THOMAS BENNETT, Commissioner

MIKE BOATWRIGHT, Chairman

ANN R. LATTA, Secretary

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: February 26, 1999

FILED WITH LRC: April 15, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 28, 1999, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 21, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing

is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4338, FAX (502)564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: Approximately 475 hunters will be selected for these deer hunts.

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

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

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

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

1. First year following implementation: Applicants must call a toll-free application hot-line and pay a \$3 application fee.

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: Cost of personnel time to monitor hunts.

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 on revenue.

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

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

(a) Geographical area in which administrative regulation will be implemented: These days of deer hunting will increase travel and tourism to the region, increase visitation to the state park lodge and area motels, restaurants, and other businesses.

(b) Kentucky: No impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Not reducing deer numbers was rejected because allowing deer populations to increase beyond their present levels would cause serious environmental problems throughout these parks. Trapping and relocating was rejected as an alternative because not enough deer could be removed to alleviate the problem. Hiring marksmen to remove the deer was rejected because of the cost and loss of recreational opportunity. The technology for effective wildlife birth control does not exist.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Reduction in deer numbers will allow ecological conditions to recover and the health of the deer herd to improve.

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

(c) If detrimental effect would result, explain detrimental effect: Not removing deer from these state parks will result in serious damage to the plant communities in the park, and ultimately a mass die-off of deer from starvation and disease, with deer diseases possibly spreading to deer outside the park.

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

identified

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

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

(10) Any additional information or comments:

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

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

401 KAR 51:001. Definitions for ~~[and abbreviations of terms used in]~~ 401 KAR Chapter 51.

RELATES TO: KRS 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 CFR Chapter I, Part ~~[Appendices A through K to]~~ 50, ~~Appendices A to K~~, 51.100(s), 53, 60, ~~Appendices A and B [to 60], [Appendix B to]~~ 61, ~~Appendix B~~, 42 USC 7401 to 7671q ~~[7410, 7411(a)(8)]~~

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation defines the terms used ~~[provides for the defining of terms used]~~ in 401 KAR Chapter 51. The definitions contained in this administrative regulation, which have corresponding federal definitions, are not more stringent nor otherwise different than the corresponding federal definitions.

Section 1. Definitions. ~~[As used in the Division for Air Quality administrative regulations of 401 KAR Chapter 51, unless the content clearly indicates otherwise in a specific administrative regulation, the following terms shall have the following meanings:]~~

(1) "Acid rain emissions limitation" means a limitation on emissions of SO₂ or NO_x imposed by the Acid Rain Program under 42 USC 7651 to 7651o.

(2) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.

(3) "Air contaminant" is defined ~~[has the meaning given it]~~ in KRS 224.01-010.

(4) "Air pollutant" means an air contaminant.

(5) "Air pollution" is defined ~~[has the meaning given it]~~ in KRS 224.01-010.

(6) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(7) "Allocate" or "allocation" means the determination by the cabinet of the number of NO_x allowances to be credited to a NO_x budget unit.

(8) "Allocation period" means each ten (10) year period beginning April 1, 2003.

(9) "Allowance" means an authorization by the cabinet for a source subject to 401 KAR 51:100, 401 KAR 51:110, 401 KAR 51:130, or 401 KAR 51:140 to emit one (1) ton of NO_x during a control period.

(10) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source; or

(b) A physical change in or change in the method of operation of an affected facility which increases the potential to emit ~~[of]~~ a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(11) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent

method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to[~~in specific cases;~~] produce adequate results [adequate] for its determination of compliance.

(12) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(13) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

~~[(10) "Cabinet" has the meaning given it in KRS 224.01-010.]~~

(14) "ANSI" means American National Standards Institute.

(15) "AOAC" means Association of Official Analytical Chemists.

(16) "ASTM" means American Society for Testing and Materials.

(17) "BOD" means biochemical oxidant demand.

(18) "Boiler" means an enclosed fossil or other fuel fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

(19) "BTU" means British Thermal Unit.

(20) "°C" means degree Celsius (centigrade).

(21) "Cabinet" is defined in KRS 224.01-010.

(22) "Cal" means calorie.

(23) "Capital expenditure" means an expenditure for a physical or operational change to an affected facility that:

(a) Exceeds the product of:

1. The applicable "annual asset guidelines repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534; and

2. The affected facility's basis, as defined by 26 USC 1012; and

(b) Is not reduced by an excluded addition as defined in IRS Publication 534.

(24) "cfm" means cubic feet per minute.

(25) "CH₄" means methane.

(26) "Clinker" means the product of a portland cement kiln from which finished cement is manufactured by milling and grinding.

(27) "CO" means carbon monoxide.

(28) "CO₂" means carbon dioxide.

(29) "COD" means chemical oxygen demand.

(30) "Combined cycle system" means a system comprised of one (1) or more combustion turbines, heat recovery steam generators, or steam turbines configured to improve overall efficiency of electricity generation or steam production.

(31) "Combustion turbine" means an enclosed fossil or other fuel fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

~~[(11) "Capital expenditure" means an expenditure for a physical or operational change to an affected facility which exceeds the product of the applicable "Annual asset guideline repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534 which has been incorporated by reference in 401 KAR 50:010, and the affected facility's basis, as defined by section 1012 of the Internal Revenue Code which has been incorporated by reference in 401 KAR 50:010. However, the total expenditure for a physical or operational change to an affected facility shall not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.]~~

(32) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(33) "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(34) "Compliance supplement pool" means the quantity of NO_x allowances provided to Kentucky by the U.S. EPA to be:

(a) Allocated to NO_x budget units that achieve early reduction; or

(b) Used at the cabinet's discretion to assist NO_x budget sources that are unable to meet the compliance deadline.

(35) "Construction" means fabrication, erection, installation or

modification of an air contaminant source.

(36) "Continuous emission monitoring system for NO_x" or "CEMS for NO_x" means the equipment required by 63 Fed. Reg. 57530 to 57535 (40 CFR 96.70 to 96.76), to sample, analyze, measure, and provide, by readings taken at least once every fifteen (15) minutes of the measured parameters, a permanent record of NO_x emissions, expressed in tons per hour for NO_x. The following systems are necessary component parts, as required by 40 CFR Part 75, included in a continuous emission monitoring system:

(a) Flow monitor;

(b) NO_x pollutant concentration monitor;

(c) Diluent gas monitor (O₂ or CO₂) if required by 63 Fed. Reg. 57530 to 57535 (40 CFR 96.70 to 96.76);

(d) Continuous moisture monitor if required by 63 Fed. Reg. 57530 to 57535 (40 CFR 96.70 to 96.76); and

(e) Automated data acquisition and handling system.

(37) "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(38) "Control period" means the period beginning May 1 of a year and ending September 30 of the same year, inclusive.

(39) "Diesel engine" means a compression ignited two (2) or four (4) stroke engine in which liquid fuel injected into the combustion chamber ignites when the air charge has been compressed to a temperature sufficiently high for auto ignition.

(40) "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(41) "District" is defined in KRS 224.01-010.

(42) "dscf" means dry cubic feet at standard conditions.

(43) "dscm" means dry cubic meter at standard conditions.

(44) "Dual fuel engine" means a compression ignited stationary internal combustion engine that is burning liquid fuel and gaseous fuel simultaneously.

(45) "Electric generating unit" means a fossil fuel fired turbine or a combination of fossil fuel fired boilers and turbines used to generate twenty-five (25) megawatts or more of electricity, some of which is offered for sale.

(46) "Emergency standby engine" means an internal combustion engine used only if normal power line or natural gas service fails, or for the emergency pumping of water for either fire protection or flood relief. An emergency standby engine is not an engine operated to supplement a primary power source if the load capacity or rating of the primary power source has been reached or exceeded.

~~[(17) "District" has the meaning given it in KRS 224.01-010.]~~

(47) "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.

(48) "Engine rating" means the output of an engine listed by the engine manufacturer on the nameplate of the unit, regardless of derating.

(49) "Engine shutdown" means the period of time a unit is cooled from its normal operating temperature to cold or ambient temperature.

(50) "Engine startup" means the period of time a unit is heated from cold or ambient temperature to normal operating temperature as specified by the manufacturer.

(51) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(52) "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(53) "Existing source" means a source which is not a new source.

(54) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(55) "°F" means degree Fahrenheit.

(56) "Fixed capital cost" means the capital needed to provide all the depreciable components.

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(57) "Fossil fuel" means natural gas, petroleum, coal, or a form of solid, liquid, or gaseous fuel derived from natural gas, petroleum, or coal.

(58) "Fossil fuel fired" means, for a unit:

(a) The combustion of fossil fuel, alone or in combination with another fuel, if the fossil fuel combusted comprises more than fifty (50) percent of the annual heat input on a BTU basis during a year starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995; or

(b) The combustion of fossil fuel, alone or in combination with another fuel, if the fossil fuel is projected to comprise more than fifty (50) percent of the annual heat input on a BTU basis during a year, and the unit is to be fossil fuel fired as of the date, during the year the unit begins combusting fossil fuel.

(59) "ft" means feet.

(60) "Fuel" means natural gas, petroleum, coal, wood, or a [and any] form of solid, liquid, or gaseous material [fuel] derived from these materials for the purpose of creating useful heat.

(61) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(62) "g" means gram.

(63) "gal" means gallon.

(64) "Generator" means a device that produces electricity.

(65) "gr" means grain.

(66) "HCl" means hydrochloric acid.

(67) "Heat input" means the product (in MMBTU per unit of time) of the gross calorific value of the fuel (in BTU per lb) and the fuel feed rate into a combustion device (in mass of fuel per unit of time) that:

(a) Does not include the heat derived from preheated combustion air recirculated flue gases, or exhaust from other sources; and

(b) Is measured, recorded, and reported to the cabinet by the NOx authorized account representative in accordance with 63 Fed. Reg. 57530 to 57535 (40 CFR 96.70 to 96.76).

(68) "Hg" means mercury.

(69) "HF" means hydrogen fluoride.

(70) "hr" means hour.

(71) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(72) "H₂O" means water.

(73) "H₂S" means hydrogen sulfide.

(74) "H₂SO₄" means sulfuric acid.

(75) "in" means inch.

(76) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(77) "Industrial boiler or turbine" means a fossil fuel fired boiler or turbine having a maximum design heat input of 250 MMBTU per hour or more that is not an electric generating unit.

(78) "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

(79) "J" means joule.

(80) "Kg" means kilogram.

(81) "l" means liter.

(82) "lb" means pound.

(83) "Lean burn engine" means a two (2) or four (4) stroke spark ignited engine that is not a rich burn engine.

(84) "Long dry kiln" means a kiln that:

(a) Is fourteen (14) feet or larger in diameter;

(b) Is 400 feet or greater in length;

(c) Employs no preheating of the feed;

(d) Has a dry inlet feed.

(85) "Long wet kiln" means a kiln that:

(a) Is fourteen (14) feet or larger in diameter;

(b) Is 400 feet or greater in length;

(c) Employs no preheating of the feed; and

(d) The inlet feed to the kiln is a slurry.

(86) "Low emission combustion technology" or "LEC" means a control device certified by the manufacturer and approved by the cabinet and the U.S. EPA to achieve NOx emissions of three (3) grams per horsepower or less from a lean burn engine by increasing the air-to-fuel ratio and improving ignition.

(87) "Low NOx burners" means combustion equipment designed to reduce flame turbulence, delay fuel to air mixing, and establish fuel-rich zones for initial combustion.

(88) "m" means meter.

(89) "m³" means cubic meter.

(90) "Maintenance operation" means the use of an emergency standby engine and fuel system during testing, repair and routine maintenance to verify its readiness for emergency standby use.

(91) "Major source" means a source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(92) "Malfunction" means a failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner that is not caused entirely or in part by poor maintenance, careless operation, or other preventable upset condition or preventable equipment breakdown.

[~~(30) "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.~~]

(93) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(94) "Maximum design heat input" means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.

(95) "Maximum potential hourly heat input" means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input and is:

(a) A value calculated according to 40 CFR Part 75 using the maximum fuel flow rate and the maximum gross calorific value, if the unit intends to use 40 CFR Part 75, Appendix D to report heat input; or

(b) A value reported according to 40 CFR Part 75 using the maximum potential flowrate and either the maximum percent CO₂ concentration (in percent CO₂) or the minimum percent O₂, if the unit intends to use a flow monitor and a diluent gas monitor.

(96) "Maximum potential NOx emission rate" means the emission rate of NOx (in lb per MMBTU) calculated according to 40 CFR 75, Appendix F, Section 3, using the maximum potential NOx concentration as defined in 40 CFR 75, Appendix A, Section 2, and the maximum percent O₂ or the minimum percent CO₂ under all operating conditions of the unit except for unit startup, shutdown, and malfunction.

(97) "Maximum rated hourly heat input" means a unit specific maximum hourly heat input (MMBTU) which is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

(98) "Mid-kiln firing" means the secondary firing in kilns by injecting solid fuel at an intermediate point in the kiln using a specially designed feed-injection mechanism for the purpose of decreasing NOx emissions through:

(a) Burning part of the fuel at a lower temperature; and

(b) Reducing conditions at the solid waste injection point that may destroy some of the NOx formed upstream in the kiln burning zone.

(99) "min" means minute.

(100) "mg" means milligram.

(101) "µg" means microgram.

(102) "MJ" means megajoules.

(103) "MM" means million.

(104) "mm" means millimeter.

(105) "mo" means month.

(106) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

(107) "Modification" means a physical change in, or change in the method of operation of, an affected facility which:

(a) Increases the amount of an air pollutant (to which a standard

applies) emitted into the atmosphere by that facility or which results in the emission of an air pollutant (to which a standard applies) into the atmosphere not previously emitted; and

(b) Is not solely [- The following shall not, by themselves, be considered modifications]:

1. [(a)] Maintenance, repair, or [and] replacement that [which] the cabinet determines to be routine for a source category;

2. [(b)] An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

3. [(c)] An increase in the hours of operation;

4. [(d)] Use of an alternative fuel or raw material if, prior to the date a [any] standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change[- Conversion to coal required for energy considerations, as specified in 42 USC 7411(a)(8), shall not be considered a modification];

5. Conversion to coal required for energy considerations, as specified in 42 USC 7411(a)(8);

6. [(e)] The addition or use of a [any] system or device whose primary function is the reduction of air pollutants, unless [except when] an emission control system is removed or is replaced by a system which the cabinet determines to be less environmentally beneficial; or

7. [(f)] The relocation or change in ownership of an existing facility.

(108) "Monitoring device" means the total equipment, required in applicable administrative regulations, used to measure and record (if applicable) process parameters.

(109) "Monitoring system" means a monitoring system that meets the requirements of 40 CFR Part 96.

(110) "MWe" means megawatt electrical.

(111) "N₂" means nitrogen.

(112) "Nameplate capacity" means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time if not restricted by seasonal or other deratings as measured with United States Department of Energy standards.

(113) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable administrative regulation[- A source, upon reconstruction, becomes a new source], irrespective of a change in emission rate.

(114) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(115) "ng" means nanograms.

(116) "NO" means nitric oxide.

(117) "NO₂" means nitrogen dioxide.

(118) "NOx" means nitrogen oxides.

(119) "NOx authorized account representative" means the person who is authorized by the owner or operator to:

(a) Represent and legally bind the owner and operator in all matters pertaining to the NOx Budget Trading Program in accordance with 40 CFR 96, Subpart B for a NOx budget source and all NOx budget units at the source; and

(b) Transfer or otherwise dispose of NOx allowances held in the general account in accordance with 40 CFR 96, Subpart F, for a general account.

(120) "NOx budget emissions limitation" means, for a NOx budget unit, the tonnage equivalent of the NOx allowances available for compliance deduction for the unit and for a control period under 40 CFR 96.54(a) and (b) adjusted by deductions of sufficient NOx allowances to account for:

(a) Actual utilization under 40 CFR 96.42(e) for the control period; or

(b) Excess emissions for a prior control period under 40 CFR 96.54(d); or

(c) Withdrawal from the NOx budget program; or

(d) A change in regulatory status for a NOx budget opt in source under 40 CFR 96.86 or 40 CFR 96.87.

(121) "NOx budget opt in source" means a unit that has been elected to become a NOx budget unit under the NOx Budget Trading Program and whose NOx budget opt in permit has been issued and is in effect.

(122) "NOx budget source" means a source that includes one (1) or more NOx budget units.

(123) "NOx Budget Trading Program" means a multistate NOx air pollution control and emission reduction program established for Kentucky in 401 KAR 51:130, as a means of mitigating the interstate transport of O₃, O₃ precursors, and NOx.

(124) "NOx budget unit" means a unit that is subject to the NOx Budget Trading Program emissions limitation under 401 KAR 51:110 or 40 CFR 96.80.

(125) "Nonselective catalytic reduction (NSCR)" means a catalyst placed in the exhaust stream of a rich burn engine that simultaneously reduces NOx, CO, and HC to water, CO₂, and N₂.

(126) "O₂" means oxygen.

(127) "O₃" means ozone.

(128) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(129) "Opt in" means to be elected to become a NOx budget unit under the NOx Budget Trading Program through a final NOx budget opt in permit.

(130) "Output" means the shaft work output from an engine plus the energy reclaimed by a useful heat recovery system.

(131) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source of [to] which an affected facility is a part.

(132) "oz" means ounce.

(133) "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(134) "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(135) "Peak load" means the maximum instantaneous operating load.

(136) "Permitted capacity factor" means the annual permitted fuel use divided by the manufacturer's specified maximum fuel consumption times 8,760 hours per year.

(137) "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, co-partnership, association, firm, trust, estate, or other entity.

(138) "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on [Appendix J to] 40 CFR 50, Appendix J [which has been incorporated by reference in 401 KAR 50:015;] and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(139) "PM₁₀ emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(140) "Portland cement" means a hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates.

(141) "Portland cement kiln" means a system, including solid, gaseous or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce Portland cement clinker.

(142) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design, which shall:

(a) Include air pollution control equipment and restrictions on the hours of operation or on the type or amount of material combusted, stored, or processed, if the limitation or its effect on emissions is federally enforceable; and

(b) Not include secondary emissions.

[(144) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A physical or operational limitation on the capacity of the

source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.];

(143) "ppb" means parts per billion.

(144) "ppm" means parts per million.

(145) "ppm(w/w)" means parts per million (weight by weight).

(146) "Precalciner kiln" means a kiln where the feed to the kiln system is preheated in cyclone chambers and utilizes a second burner to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln which forms clinker.

(147) "Preheater kiln" means a kiln where the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln which forms clinker.

(148) "psia" means pounds per square inch absolute.

(149) "psig" means pounds per square inch gage.

(150) "Reconstruction" means the replacement of components of an existing affected facility to the extent that:

(a) The fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility;

(b) The estimated life of the affected facility after the replacements exceeds fifty (50) percent of the life of a comparable entirely new affected facility;

(c) The components being replaced cause or contribute to the emissions from the affected facility; and

(d) It is technologically and economically feasible to meet the applicable requirements of 401 KAR Chapters 50 to 65. [the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these administrative regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

(d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.];

(151) "Reduced emission combustion technology" or "REC" means the control of a natural gas fueled lean burn spark ignited internal combustion reciprocating engine that:

(a) Increases fuel efficiency and decreases uncontrolled NOx emissions by at least forty (40) percent, using modifications to fuel valves or fuel delivery systems and enhanced air and fuel mixing in the cylinders;

(b) Is approved by the cabinet and the U.S. EPA.

(152) "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by [Appendices A through K to] 40 CFR Part 50, Appendices A to K; [and B to] 40 CFR Part 60, Appendices A and B; and [Appendix B to] 40 CFR Part 61, Appendix B, [which have been incorporated by reference in 401 KAR 50:015. This term may be more narrowly defined within a specific administrative regulation.];

(153) "Rich burn engine" means a two (2) or four (4) stroke spark ignited engine where the manufacturer's original recommended operating air-to-fuel ratio divided by the stoichiometric air-to-fuel ratio is less than or equal to 1.1.

(154) "Run" means the net period of time, either intermittent or continuous within the limits of good engineering practice during which an emission sample is collected.

[(47) "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering prac-

tice.];

(155) "S" means at standard conditions.

(156) "sec" means second.

(157) "Secondary emissions" means emissions that:

(a) 1. Occur as a result of the construction or operation of a major stationary source or major modification; and

2. Do not come from the major stationary source or major modification itself;

(b) Are specific, well defined, quantifiable, and impact the same general area as the stationary source modification which caused the secondary emissions;

(c) Include emissions from an offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification; and

(d) Does not include emissions which come directly from a mobile source, including emissions from the tailpipe of a motor vehicle, a train, or vessel.

[(48) "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.];

(158) "Selective catalytic reduction (SCR)" means an add on control technology that:

(a) Is placed in the exhaust stream of a dual fuel or diesel stationary internal combustion engine; and

(b) Reduces NOx emissions by injecting ammonia into the flue gas in the presence of a catalyst to form water and N₂.

(159) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(160) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(161) "Shutdown" means the cessation of an operation.

(162) "SO₂" means sulfur dioxide.

(163) "Source" means one (1) or more affected facilities contained within a given contiguous property line, which means the property is [The property shall be considered contiguous if] separated only by a public thoroughfare, stream, or other right of way.

(164) "sq" means square.

(165) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(166) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the administrative regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51, of the administrative regulations of the Division for Air Quality.

(167) "Standard conditions":

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(168) "Start-up" means the setting in operation of an affected facility.

(169) "State implementation plan" or "SIP" means the most recently prepared plan or revision required by 42 USC 7410 which has been approved by the U.S. EPA.

(170) "Stationary internal combustion engine" means a reciprocating internal combustion engine that:

(a) Is attached to a foundation at a facility or is designed to be capable of being carried or moved from one (1) location to another

and remains at a single site at a building, structure, facility, or installation for more than twelve (12) consecutive months; or

(b) Replaces an engine at a site that is intended to perform the same or similar function as the engine replaced, and is included in calculating the consecutive time period; and

(c) Is not a nonroad engine or an engine used solely for competition.

(171) "Stoichiometric air-to-fuel ratio" means the air-to-fuel ratio where all fuel and all oxygen in the air and fuel mixture will be consumed.

(172) "TAPPI" means Technical Association of the Pulp and Paper Industry.

(173) "Total suspended particulate" means particulate matter as measured by the method described in [Appendix B of] 40 CFR Part 50, Appendix B, [which has been incorporated by reference in 401 KAR 50.015;]

(174) "tpy" means tons per year.

(175) "TSP" means total suspended particulates.

(176) "TSS means total suspended solids.

(177) "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(178) "Unit" means a fossil fuel fired stationary boiler, combustion turbine, or combined cycle system.

(179) "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the administrative regulations of the Division for Air Quality.

(180) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(181) "U.S. EPA" means United States Environmental Protection Agency.

(182) "UTA" means universal transverse mercator.

(183) "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; methylene chloride; 1,1,1-trichloroethane (methyl chloroform) trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12) chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC- 115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1, 2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTf); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4, 5,5,5-decafluoropentane (HFC 43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoro-propane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mf); chlorofluoromethane (HCFC-31); 1 chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane(C₄F₉OCH₃); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane((CF₃)₂ CFCF₂OCH₃);1-ethoxy-1,1,2,2,3,3,4,4,4-nona-fluorobutane(C₄F₉OC₂H₅); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-hepta-fluoropropane ((CF₃)₂ CFCF₂OC₂H₅); methyl acetate; and perfluorocarbon compounds which fall into the following [these] classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; [and]

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine; or

(e) Other compounds that have negligible photochemical reactivity and which are inadvertently measured by test methods that have been approved by the cabinet and the U.S. EPA. [These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet and the U.S. EPA. If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.]

(184) "yd" means yard.

[Section 2- Abbreviations. The abbreviations used in the administrative regulations of 401 KAR Chapter 51 shall have the following meanings:

AOAC - Association of Official Analytical Chemists
ANSI - American National Standards Institute
ASTM - American Society for Testing and Materials
BOD - Biochemical oxidant demand
BTU - British Thermal Unit
°C - Degree Celsius (centigrade)
Cal - calorie
cfm - cubic feet per minute
CFR - Code of Federal Regulations
CH₄ - methane
CO - Carbon monoxide
CO₂ - Carbon dioxide
COD - Chemical oxidant demand
dscf - dry cubic feet at standard conditions
dscm - dry cubic meter at standard conditions
°F - Degree Fahrenheit
ft - feet
g - gram
gal - gallon
gr - grain
hr - hour
HCl - Hydrochloric acid
Hg - mercury
HF - Hydrogen fluoride
H₂O - water
H₂S - Hydrogen sulfide
H₂SO₄ - Sulfuric acid
in - inch
J - joule
KAR - Kentucky Administrative Regulations
kg - kilogram
KRS - Kentucky Revised Statutes
l - liter
lb - pound
m - meter
m³ - cubic meter
min - minute
mg - milligram
MJ - megajoules
MM - million
mm - millimeter
mo - month
Ng - nanograms
N₂ - Nitrogen
NO - Nitric oxide
NO₂ - Nitrogen dioxide
NO_x - Nitrogen oxides
oz - ounce
O₂ - oxygen
O₃ - ozone
ppb - parts per billion
ppm - parts per million
ppm (w/w) - parts per million (weight by weight)
ug - microgram
psia - pounds per square inch absolute
psig - pounds per square inch gage

S—at standard conditions
 sec—second
 SIP—State implementation plan
 SO₂—Sulfur dioxide
 sq—square
 TAPPI—Technical Association of the Pulp and Paper Industry
 tpy—tons per year
 TSP—Total suspended particulates
 TSS—Total suspended solids
 U.S. EPA—United States Environmental Protection Agency
 UTM—Universal Transverse Mercator
 VOC—Volatile organic compound
 yd—yard]

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: April 13, 1999

FILED WITH LRC: April 14, 1999 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on May 25, 1999, at 10 a.m. (Eastern Time) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing, by May 18, 1999, five (5) workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. A transcript of the hearing will be made. If you request a transcript, you will be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the administrative regulation. Send written notification of your intent to be heard at the hearing, or your written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Millie Ellis, Supervisor, Regulation Development Section, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, Telephone: (502) 573-3382 fax: (502) 573-3787.

REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: The amendments to this administrative regulation add the definitions of terms used in the Kentucky administrative regulations implementing the NOx SIP Call as promulgated in 63 Fed. Reg. 57356 (October 27, 1998). Revisions have also been made to make language revisions suggested by the Legislative Research Commission (LRC). No entities are directly affected by the addition and revisions to these definitions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There are no costs or savings associated with 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 costs or savings associated with this administrative regulation.

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

1. First year following implementation: There are no compliance, reporting, or paperwork requirements in this administrative regulation.

2. Second and subsequent years: There are no compliance, reporting, or paperwork requirements in this administrative regulation, as stated in (2)(c)1 above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no first year costs or savings associated with this administrative regulation.

2. Continuing costs or savings: There are no continuing costs or savings associated with this administrative regulation.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements associated with this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: This amendment will have no economic impact in the Commonwealth.

(b) Kentucky: This amendment will have no economic impact in the Commonwealth.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this amendment merely provides the definitions for terms used in implementing the NOx SIP Call and makes revisions requested by LRC staff.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This amendment will have no effects on public health and the environment.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on environment and public health would not result if this amendment is not implemented by the state.

(c) If detrimental effect would result, explain detrimental effect: A detrimental effect would not result as stated in (8)(b) above.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet has no additional information or comments.

(11) TIERING: Is tiering applied? No. This regulation imposes no requirements. Therefore, tiering is not applicable.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for the amendment to this administrative regulation.

2. State compliance standards. There are no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate for the amendment to this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for the amendment to this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected by this amendment.

3. State the aspect or service of local government to which this administrative regulation relates. This amendment does not relate to any known aspect or service of local government.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

JUSTICE CABINET
Department of Corrections
Division of Adult Institutions
(Amendment)

501 KAR 6:040. Kentucky State Penitentiary.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Kentucky State Penitentiary.

Section 1. (1)(a) Kentucky State Penitentiary policies and procedures, April 14, 1999 [June 12, 1998] are incorporated by reference.

(b) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Kentucky State Penitentiary policies and procedures include:

KSP 01-02-01	Public Information and Media Communications
KSP 020000-15	Legal Assistance
KSP 02-01-01	Inmate Commissary Program
KSP 02-08-01	Inventory Records and Control
KSP 02-11-01	Requisition and Purchase of Supplies and Equipment
KSP 02-12-01	Inmate Personal Funds
KSP 05-02-01	Management Information System
KSP 06-01-01	Inmate Records [(Amended 6/12/98)]
KSP 10-02-01	Special Management Units: Assignment, Classification Review and Release
KSP 10-02-05	Special Security Unit (Amended 4/14/99)
KSP 10-04-01	Special Needs Inmates
KSP 11-03-01	Therapeutic Diets
KSP 11-06-01	Food Service Inspections
KSP 120000-11	Religious Services - Staffing
KSP 120000-18	Religious Services - Religious Programming
KSP 13-01-01	Pharmacy Procedures (Amended 4/14/99)
KSP 13-02-01	Health [Hospital] Services (Amended 4/14/99)
KSP 13-02-02	Organization of Medical Services (Amended 4/14/99) [Sick-Gall]
KSP 13-02-03	Continuity of Care (Amended 4/14/99) [Health Evaluations]

KSP 13-02-04	Levels of Care and Staff Training (Amended 4/14/99) [Emergency Medical Procedure]
KSP 13-02-05	Consultations (Amended 4/14/99)
KSP 13-02-08	Health [Medical] Records (Amended 4/14/99)
KSP 13-02-09	Psychiatric and Psychological Services (Amended 4/14/99)
KSP 13-02-11	Psychological and Psychiatric Treatment Upon Release
KSP 13-02-12	Dental Services for Special Management Units
KSP 13-02-13	Optometric Services
KSP 13-06-02	Informed Consent (Added 4/14/99)
KSP 14-03-01	Marriage of Inmates
KSP 14-04-01	Legal Services
KSP 14-06-01	Inmate Grievance Procedure
KSP 15-01-01	Inmate Grooming and Dress Code
KSP 15-03-01	Award of Meritorious Good Time
KSP 15-06-01	Adjustment Procedures
KSP 16-01-01	Visiting Program (Amended 4/14/99)
KSP 16-02-01	Inmate Correspondence
KSP 16-03-02	Inmate Telephone Access
KSP 16-04-01	Inmate Packages
KSP 17-01-01	Inmate Personal Property
KSP 17-01-02	Disposition of Unauthorized Property
KSP 17-01-03	Procedures for Providing Clothing, Linens and Other Personal Items
KSP 17-01-04	Property Room, Clothing Storage and Property Inventory Control
KSP 18-01-01	General Guidelines and Functions of the Classification Committee [(Amended 6/12/98)]
KSP 18-01-02	Functions of the Classification Committee
KSP 18-06-01	Classification Document [(Amended 6/12/98)]
KSP 18-10-01	Parole Progress Report
KSP 18-11-01	Transfers to Kentucky Correctional Psychiatric Center (KCPC)
KSP 18-15-01	Protective Custody Unit [(Amended 6/12/98)]
KSP 19-04-01	Inmate Work Programs and Safety Inspections of Inmate Work Locations [(Amended 6/12/98)]
KSP 19-04-02	Unit Classification Committee: Inmate Work Assignments [(Amended 6/12/98)]
KSP 19-05-01	Correctional Industries
KSP 20-04-01	Educational Programs
KSP 22-04-01	Arts and Crafts Program [(Amended 6/12/98)]
KSP 25-04-01	Inmate Furloughs
KSP 25-08-01	Extended Furloughs
KSP 25-10-01	Discharge of Inmates by Shock Probation

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: April 6, 1999

FILED WITH LRC: April 15, 1999 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1999, at 9 a.m., in the State Office Building Auditorium. Individuals interested in being heard at this hearing shall notify this agency in writing by May 14, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack T. Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Phone (502) 564-2024, Fax (502) 564-6494.

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REGULATORY IMPACT ANALYSIS

Contact person: Tamela Biggs, Staff Attorney

(1) Type and number of entities affected: 327 employees of the correctional institutions, 811 inmates, and all visitors to state correctional institutions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

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

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET Department of Corrections Division of Adult Institutions (Amendment)

501 KAR 6:060. Northpoint Training Center.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation

standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Northpoint Training Center.

Section 1. (1)(a) Northpoint Training Center policies and procedures, April 14, 1999 [October 14, 1997], are incorporated by reference.

(b) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Northpoint Training Center policies and procedures include:

NTC 01-05-01	Extraordinary Occurrence Reports
NTC 01-10-01	Legal Assistance for Corrections Staff
NTC 01-11-01	Political Activities of Merit Employees
NTC 01-15-01	Establishment of the Warden as Chief Executive Officer (Amended 4/14/99)
NTC 01-17-01	Relationships with Public, Media and Other Agencies [(Amended 10/14/97)]
NTC 02-02-02	Warden's Participation in the Agency Budgeting Process
NTC 02-03-01	Accounting for Appropriations and Expenditures of Funds
NTC 02-04-01	Internal Control and Monitoring of Accounting Procedures
NTC 02-07-02	Institutional Religious Center [Chapel] Fund (Amended 4/14/99)
NTC 02-08-01	Inmate Canteen [(Amended 10/14/97)]
NTC 02-10-01	Insurance Coverage [(Amended 10/14/97)]
NTC 02-12-01	Inmate Accounts (Amended 4/14/99) [(Amended 10/14/97)]
NTC 04-01-01	Training and Staff Development (Amended 4/14/99)
NTC 04-04-01	Firearms and Chemical Agents Training
NTC 06-01-01	Offender Records
NTC 06-01-02	Records - Release of Information
NTC 06-01-03	Taking Offender Record Folders onto the Yard
NTC 08-05-01	The Fire and Safety Officer
NTC 08-05-02	Fire Procedures
NTC 08-05-03	Fire Prevention
NTC 08-05-04	Storage of Flammables and Dangerous Chemicals and Their Use
NTC 08-07-01	Safety Standards
NTC 10-01-01	Special Management Unit
NTC 10-03-01	Protective Custody
NTC 11-03-01	Food Services: General Guidelines
NTC 11-04-02	Menu, Nutrition and Special Diets
NTC 11-05-02	Health Standards and Regulations for Food Service Employees [(Amended 10/14/97)]
NTC 11-06-01	Inspection and Sanitation
NTC 11-07-01	Purchasing and Storage of Food Products
NTC 12-01-01	Institutional Inspection
NTC 12-02-01	Personal Hygiene for Inmates; Clothing and Linens
NTC 12-02-02	Issuance of Personal Hygiene Products
NTC 12-07-01	Grooming and Hair Care Standards
NTC 13-01-01	Emergency Medical Care Plan
NTC 13-01-02	Emergency and Specialized Health Services
NTC 13-02-01	Administration and Authority for Health Services
NTC 13-03-01	Sick Call and Pill Call
NTC 13-04-01	Utilization of Pharmaceutical Products
NTC 13-05-01	Dental Services
NTC 13-05-03	Dental Radiation Levels
NTC 13-05-04	Attest Steam Incubator
NTC 13-06-01	Licensure and Training Standards
NTC 13-07-01	Provisions for Health Care Delivery
NTC 13-08-01	Medical and Dental Records
NTC 13-09-01	Special Diets
NTC 13-11-01	Inmate Health Screening and Evaluation
NTC 13-12-01	Special Health Care Programs
NTC 13-13-01	Inmate Self-administration of Medication
NTC 13-17-01	Inmates Assigned to Health Services
NTC 13-19-01	Mental Health Care Program
NTC 13-19-03	Suicide Prevention and Intervention Program

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NTC 13-20-01	Infectious Disease
NTC 13-20-02	Infection Control
NTC 13-20-03	Disposal of Biohazard Waste
NTC 13-21-01	Vision Care and Optometry Services
NTC 13-22-01	Informed Consent
NTC 13-23-01	Special Needs Inmates
NTC 14-01-01	Legal Services Program
NTC 14-01-02	Receiving, Viewing, Handling and Storage of Video Tapes
NTC 14-02-01	Inmate Grievance Procedure
NTC 14-03-01	Inmate Rights and Responsibilities
NTC 14-03-02	Board of Claims
NTC 15-01-01	Restoration of Forfeited Good Time
NTC 15-02-01	Due Process/Disciplinary Procedures
NTC 15-02-02	Extra Duty Assignments
NTC 15-02-03	Hearing Officer
NTC 15-03-01	Rules for Inmates Assigned to Outside Detail
NTC 15-03-02	Rules and Regulations for General Population Dormitories
NTC 15-03-03	<u>Nonsmoking Dormitory (Added 4/14/99)</u>
NTC 15-04-01	Inmate Identification
NTC 15-05-01	Drug Abuse and Intoxicants Testing
NTC 16-01-01	Mail Regulations <u>(Amended 4/14/99)</u>
NTC 16-02-01	Visiting <u>[(Amended 10/14/97)]</u>
NTC 16-02-02	Extended and Special Visits
NTC 16-02-03	Honor Dorm and Outside Detail Dorm Visiting
NTC 16-02-04	Controlled Visitation
NTC 16-03-01	Inmate Furloughs
NTC 16-05-01	Telephone Use and Control
NTC 17-01-01	Personal Property Control
NTC 17-01-02	Authorized Inmate Personal Property
NTC 17-01-03	Unauthorized Inmate Property
NTC 17-01-04	Disposition of Unauthorized Property
NTC 17-01-05	State Issue and Required Inmate Clothing
NTC 17-03-01	Assessment and Orientation
NTC 18-01-01	Parole Progress Report
NTC 18-02-01	Classification
NTC 18-02-02	Classification - 48 Hour Notification
NTC 18-03-01	Special Notice Form
NTC 18-05-01	Transfers of Inmates
NTC 18-05-02	Transfer of Inmates to Kentucky Correctional Psychiatric Center
NTC 19-01-01	Inmate Work Program
NTC 19-01-03	Temporary Leave from Job Assignment
NTC 19-02-01	Correctional Industries
NTC 19-02-02	Guidelines for Correctional Industries
NTC 20-01-01	Educational Programs
NTC 20-02-02	Live Work Projects in Vocational School Classes
NTC 21-01-01	Library Services
NTC 22-03-01	Conducting Inmate Organizational Meetings and Programs <u>[(Amended 10/14/97)]</u>
NTC 23-01-01	Religious Services <u>[(Amended 10/14/97)]</u>
NTC 23-03-01	Marriage of Inmates <u>[(Amended 10/14/97)]</u>
NTC 24-04-01	Honor Housing <u>[(Amended 10/14/97)]</u>
NTC 24-05-01	Unit Management
NTC 25-01-01	Release Preparation Program <u>[(Amended 10/14/97)]</u>
NTC 25-01-02	Temporary and Community Center Release <u>[(Amended 10/14/97)]</u>
NTC 25-01-03	Graduated Release <u>[(Amended 10/14/97)]</u>
NTC 25-02-01	Funeral Trips and Bedside Visits <u>[(Amended 10/14/97)]</u>
NTC 25-03-01	Inmate Release Procedure <u>[(Amended 10/14/97)]</u>
NTC 26-01-01	Citizen Involvement and Volunteer Services Program <u>[(Amended 10/14/97)]</u>

DOUG SAPP, Commissioner
TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: April 6, 1999

FILED WITH LRC: April 15, 1999 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1999, at 9 a.m. in the State Office Building Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by May 14, 1999, five (5) days prior

to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to be heard at the public hearing, you may submit comments on the proposed administrative regulation. Send written notification to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack T. Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, (502) 564-2024, FAX: (502) 564-6494.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Tamela Biggs

(1) Type and number of entities affected: 302 employees of the correctional institutions, 1,148 inmates, and all visitors to state correctional institutions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

None

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

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

**JUSTICE CABINET
Department of Corrections
Division of Adult Institutions
(Amendment)**

501 KAR 6:120. Blackburn Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards by the American Correctional Association. This administrative regulation establishes the policies and procedures for the Blackburn Correctional Complex.

Section 1. Incorporation by Reference. (1)(a) "Blackburn Correctional Complex Policies and Procedures", April 14, 1999 [February 12, 1998], is incorporated by reference.

(b) There will be no public hearing on these policies and procedures as they are secured policies under the provisions of KRS 197.025 which states that such policies shall not be accessible to the public or inmates.

(2) Blackburn Correctional Complex Policies and Procedures:

BCC 01-07-01	Extraordinary Occurrence Reports	BCC 10-01-01	Special Management Inmates (Deleted 4/14/99)
BCC 01-09-01	Legal Assistance for Staff	BCC 10-01-02	Temporary Segregation Holding Area
BCC 01-11-01	Roles of Consultants, Contract Employees, Volunteers and Employees of Other Agencies	BCC 11-01-01	Menu and Special Diets (Amended 4/14/99)
BCC 01-13-01	Relationships with Public, Media, and Other Agencies	BCC 11-02-01	Food Service: Inspection, Health Protection and Sanitation (Amended 4/14/99)
BCC 01-13-02	Public Information and News Media Access	BCC 11-03-01	Food Service: Meals
BCC 01-15-01	Internal Affairs Office	BCC 11-04-01	Dining Room Guidelines (Amended 4/14/99)
BCC 01-16-01	Tours of Blackburn Correctional Complex	BCC 11-05-01	Food Service Security: Knife & Other Sharp Instrument and Utensil Control
BCC 01-19-01	Inmate Access to BCC Staff	BCC 11-06-01	Purchasing, Storage and Farm Products
BCC 02-01-01	Inmate Canteen [(Amended 2/12/98)]	BCC 11-07-01	Food Service Operations Manual (Amended 4/14/99)
BCC 02-02-01	Fiscal Responsibility [(Amended 2/12/98)]	BCC 12-02-01	Personal Hygiene Items
BCC 02-02-02	Fiscal Management: Accounting Procedures [(Amended 2/12/98)]	BCC 12-02-02	Clothing, Linens, Bedding Issuance and Shower Facilities
BCC 02-02-03	Fiscal Management: Checks [(Amended 2/12/98)]	BCC 12-05-01	Barber Shop Services
BCC 02-02-04	Fiscal Management: Budget	BCC 12-06-01	BCC Housekeeping Plan
BCC 02-02-05	Fiscal Management: Insurance	BCC 13-01-01	Sick Call and Pill Call (Amended 4/14/99)
BCC 02-02-06	Fiscal Management: Audits	BCC 13-02-01	Administration and Authority for Health Services
BCC 02-04-01	Billing Method for Specialized Health Services [(Amended 2/12/98)]	BCC 13-03-01	Provisions of Health Care Delivery
BCC 02-05-01	Property Inventory [(Amended 2/12/98)]	BCC 13-04-01	Licensure and Training Standards
BCC 02-06-01	Purchasing [(Amended 2/12/98)]	BCC 13-05-01	Medical Alert System
BCC 02-07-01	Inmate Personal Accounts [(Amended 2/12/98)]	BCC 13-06-01	Health Care Practices
BCC 04-02-01	Firearms Training (Deleted 4/14/99)	BCC 13-07-01	Emergency Medical Care Plan (Amended 4/14/99)
BCC 04-03-01	Educational Assistance Program	BCC 13-07-02	Emergency and Specialized Health Services (Amended 4/14/99)
BCC 05-01-01	Inmate Participation in Authorized Research [(Amended 2/12/98)]	BCC 13-07-03	Immediate Medical Treatment for Person's Injured by Weapon or Chemical Agent (Amended 4/14/99)
BCC 06-02-01	Release of Records [(Amended 2/12/98)]	BCC 13-08-01	Inmate Health Screening and Evaluation
BCC 06-02-02	Offender Records [(Amended 2/12/98)]	BCC 13-09-01	Prohibition on Medical Experimentation
BCC 06-03-01	Reporting Inmate Misconduct Following Favorable Recommendation by the Parole Board	BCC 13-10-01	Dental Services
BCC 08-02-01	Natural Disaster Plan (Tornado)	BCC 13-11-01	Suicide Prevention and Intervention Program
BCC 08-03-01	Emergency Preparedness Plan Manual	BCC 13-12-01	Use of Pharmaceutical Products (Amended 4/14/99)
BCC 08-04-01	Fire Safety Plan, Drills and Related Staff Duties	BCC 13-12-02	Parenteral Administration of Medications and Use of Psychotropic Drugs (Amended 4/14/99)
BCC 08-04-02	Immediate Release of Inmates from Locked Areas	BCC 13-13-01	Inmate Health Education
BCC 08-05-01	Duties of Fire Safety and Sanitation Officer	BCC 13-14-01	Management of Serious and Infectious Diseases
BCC 08-06-01	Storage Control and Accountability of Flammable, Toxic, Caustic and Other Hazardous Materials	BCC 13-15-01	Informed Consent
BCC 09-03-01	Inmate Identification	BCC 13-16-01	Health Records
BCC 09-08-02	Use of Restraints [(Amended 2/12/98)]	BCC 13-17-01	Notification of Inmate Family in the Event of Serious Illness, Injury or Surgery
BCC 09-10-03	Development of Institutional Post Orders	BCC 13-19-01	Physicians Referrals and [I] Continuity of Care (Amended 4/14/99)
BCC 09-14-01	Prohibiting Inmate Authority Over Other Inmates	BCC 13-20-01	Chronic and Convalescent Care
BCC 09-18-01	Use of State Vehicles and Staff-owned Vehicles	BCC 13-22-01	Psychiatric and Psychological Services, Handling of Mentally Retarded Inmates and Transfers (Amended 4/14/99)
BCC 09-19-01	Duties and Responsibilities of the Institutional Cap-	BCC 14-01-01	Office of Public Advocacy Attorney Visits
		BCC 14-02-01	Law Library (Deleted 4/14/99)
		BCC 14-04-01	Inmate Rights and Responsibilities
		BCC 14-06-01	Legal and Support Services for Inmates (Deleted 4/14/99)
		BCC 15-02-02	Room Assignment (Amended 4/14/99)
		BCC 15-03-01	Rules and Regulations for Dormitories (Amended 4/14/99)
		BCC 15-05-01	Extra Duty Assignments
		BCC 16-01-01	Inmate Furloughs (Amended 4/14/99)
		BCC 16-02-01	Inmate Visiting (Amended 4/14/99)
		BCC 16-03-02	Outgoing Inmate Packages
		BCC 16-03-03	Inmate Correspondence (Amended 4/14/99)
		BCC 17-02-01	Authorized Inmate Personal Property
		BCC 17-03-01	Processing of New Inmates From Local Jails
		BCC 18-01-01	Classification of the Inmate (Amended 4/14/99) [:
		BCC 18-02-01	Institutional Classification and Reclassification
		BCC 19-01-01	Racial Balance in Living Areas (Deleted 4/14/99)
		BCC 19-02-01	Inmate Work Programs (Amended 4/14/99)
			Classification of Inmates to Governmental Service Program
		BCC 19-03-01	Correctional Industries
		BCC 20-01-01	Academic and Vocational School
		BCC 20-04-01	Educational Program Evaluation (Amended

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	4/14/99)
BCC 20-05-01	Educational Program Planning (Amended 4/14/99)
BCC 20-06-01	Academic and Vocational Curriculum
BCC 21-01-01	Library Services
BCC 21-01-02	Audio or Video Tape Court Transcripts (Amended 4/14/99)
BCC 22-01-01	Arts and Crafts/Production and Sale of Items
BCC 22-02-01	Privileged Trips
BCC 22-03-01	Recreational Employees
BCC 22-04-01	Recreation and Inmate Activities
BCC 22-04-02	Inmate Clubs and Organizations
BCC 22-04-03	Conducting Inmate Organizational Meetings and Programs
BCC 22-04-04	Recreation Program Availability
BCC 22-04-05	Supervision of Leisure-time Craft Club Activities and Materials
BCC 22-06-01	Music Club
[BCC 22-08-01	Unit Recreation Program (Deleted 4/14/99)]
BCC 22-09-01	Use of Inmates in Recreation Programs
BCC 23-01-01	Religious Services
BCC 24-01-01	Duties and Responsibilities of Classification and Treatment Officers
BCC 24-02-01	Duties and Responsibilities of the Unit Director and Assistant to the Unit Director
BCC 24-03-01	Social Services
BCC 25-01-01	Inmate Check Out Procedure
BCC 25-05-01	Supplemental Parole Progress Reports
BCC 26-01-01	Citizen Involvement and Volunteer Service Program.

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: April 6, 1999

FILED WITH LRC: April 15, 1999 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1999, at 9 a.m., in the State Office Building Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by May 14, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Phone (502) 564-2024, Fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS

Contact person: Tamela Biggs, Staff Attorney

(1) Type and number of entities affected: 98 employees of the correctional institution, 382 inmates, and all visitors to state correctional institutions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

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

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

CABINET FOR WORKFORCE DEVELOPMENT Department for Adult Education and Literacy (Amendment)

785 KAR 1:010. Testing program.

RELATES TO: KRS 151B.023, [151B.110:] 151B.125, EO 98-837 [151B.410]

STATUTORY AUTHORITY: KRS 151B.023, [151B.110:] 151B.125, EO 98-837 [151B.410]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.023 [151B.110] requires the Department [State Board] for Adult [and Technical] Education and Literacy to be responsible for adult education programs and services in Kentucky. EO 98-837 grants the Commissioner of the Department for Adult Education and Literacy (commissioner) authority to promulgate administrative regulations and administer all adult education and literacy programs. [KRS 151B.023(4) provides that the Department for Adult Education and Literacy shall be the agency solely designated for the purposes of adopting state plans required for federal adult education programs and services in Kentucky.] KRS 151B.125 recognizes the General Educational Development (GED) test for high school equivalency purposes in Kentucky. This administrative regulation establishes the procedure for testing an adult at an official GED testing center to determine his eligibility for receiving a high school equivalency diploma.

Section 1. (1) The GED test shall provide a valid means of measuring the educational achievement of an adult who is a nonhigh school graduate and of comparing the adult's competency with that of high school graduates. The test shall be a high school level battery consisting of five (5) comprehensive examinations:

(a) Test 1: Writing Skills Test (Parts I and II);

(b) Test 2: Social Studies Test;

(c) Test 3: Science Test;

(d) Test 4: Interpreting Literature and the Arts Test; and

(e) Test 5: Mathematics Test.

(2) An applicant shall be certified as test-ready. An applicant presenting a GED-on-TV voucher from Kentucky Educational Television

study shall not be required to meet the test-readiness prerequisite.

(3) The GED test shall be administered to an applicant with a Kentucky address, officially withdrawn from public or private school as certified by the local school district, who has reached his 19th birthday. An officially withdrawn applicant who is at least seventeen (17) years of age and whose last enrolled class has graduated or who has been out of formal instruction [classroom] for a period of one (1) year may be administered the GED test. An applicant, officially withdrawn from school, who is sixteen (16) years of age shall meet one (1) of the following criteria:

- (a) Committed or placed in state correctional facility; or
- (b) Completed Job Corps Program of instruction.

(4)(a) An applicant at least sixteen (16) years of age who believes exigent circumstances exist and who does not meet the conditions of subsection (3)(a) or (b) of this section may request an exemption from the local school superintendent or designee in the district where the applicant resides.

(b) An exemption granted on the basis of exigent circumstances or a denial shall be in writing. A copy of the decision shall be mailed or faxed within five (5) working days to the state GED administrator. Dissatisfaction resulting from a denial may be appealed to the commissioner [of the Department for Adult Education and Literacy].

(c) Exigent circumstances shall include:

1. Sentenced by a court to an educational program and program completed; or

2. Admission to a postsecondary program which is contingent upon earning a high school equivalency diploma (GED).

(5) The GED test may be administered to an applicant with a Kentucky address, not officially withdrawn from school, but considered to be a state agency child (SAC) as defined in 905 KAR 7:250, and who has reached his 16th birthday. The SAC shall have approval from his interdisciplinary team and be certified as test ready. By virtue of identification as a SAC, the eligible GED SAC applicant shall not need approval for GED testing from the local school superintendent.

(6)(a) The GED test may be administered to an applicant with a Kentucky address, not officially withdrawn from school, who has reached his 16th birthday, and meets the following criteria:

1. Detained in a juvenile detention center or juvenile holding facility;

2. At least one (1) year behind academically from his graduating class; and

3. Minimum stay in detention of thirty (30) days.

(b) The eligible applicant shall be certified as test ready.

(c) It will be necessary for the local school superintendent to approve an applicant who meets the above criteria.

(7) An official GED testing center shall be established under contract with the GED Testing Service of the Commission on Accreditation with the location authorized by the commissioner [State Board for Adult and Technical Education]. A GED testing service for an individual confined to a state correctional or health institution shall be approved by the commissioner [State Board for Adult and Technical Education].

(8) [(6)] The testing fee shall be a uniform fee of thirty (30) dollars or six (6) dollars per subtest. The Department for Adult Education and Literacy shall not charge a fee for testing services provided for an individual confined to a state correctional or health institution.

(9) [(7)] An applicant seeking a high school equivalency diploma shall complete the appropriate application form provided for this purpose prior to taking the GED test. This form shall be available from a local adult education provider, local school superintendent or the Department for Adult Education and Literacy. Military personnel shall not be required to complete the application form prior to taking the test. Military personnel shall complete an application form before a high school equivalency diploma shall be issued. Military personnel may use the Military GED Application (Form 300-M).

(10) [(8)] If an applicant passes the five (5) subtests with a minimum standard test score of forty (40) but does not attain an average standard score of forty-five (45), he shall be eligible to retake a subtest in an attempt to raise the overall standard score. The testing center proctor shall recommend which subtest may be retaken.

Section 2. Incorporation by Reference. (1) The following material

is incorporated by reference:

(a) "GED Testing Application (DAEL-6)", revised 7/1/99 [10/96] edition, Cabinet for Workforce Development, Department for Adult Education and Literacy; and

(b) "Application for High School Equivalency Diploma or Certificate (Military GED Application) (Form 300-M)", revised 7/85 edition, GED Testing Service, Washington, D.C.

(2) This material may be inspected, copied, or obtained at the Department for Adult Education and Literacy, Capital Plaza Tower, Third Floor, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

REECIE D. STAGNOLIA, Acting Commissioner

SARAH M. JACKSON, General Counsel

APPROVED BY AGENCY: April 12, 1999

FILED WITH AGENCY: April 15, 1999 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1999, at 9 a.m. ET in the offices of the Department for Adult Education and Literacy, 500 Mero Street, Third Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 14, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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: Harlan Stubbs, Kentucky GED Administrator, Department for Adult Education and Literacy, Capital Plaza Tower, Third Floor, 500 Mero Street, Frankfort, Kentucky 40601, Phone (502) 564-5114, Fax (502) 564-5436.

REGULATORY IMPACT ANALYSIS

Contact Person: Harlan Stubbs

(1) Type and number of entities affected: Approximately 16,000 examinees who are administered the GED tests each year, approximately 200 local adult education providers, and 51 GED testing centers 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. A public hearing was scheduled to receive oral and written comments on this administrative regulation. However, the hearing was cancelled as a result of the Notice of Intent being published and no comments being 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. A public hearing was scheduled to receive oral and written comments on this administrative regulation. However, the hearing was cancelled as a result of the Notice of Intent being published and no comments being 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: These new requirements should have a minimal impact on the costs associated with implementation.

2. Second and subsequent years: These new requirement should have a minimal impact on the costs associated with implementation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No impact on costs.

2. Continuing costs or savings: No impact on costs.

3. Additional factors increasing or decreasing costs: No impact

on costs.

(b) Reporting and paperwork requirements: These new requirements should have minimal impact on the costs associated with implementation.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No cost for implementation and enforcement of 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: A public hearing was scheduled to receive oral and written comments on this administrative regulation. However, the hearing was cancelled as a result of the Notice of Intent being published and no comments being received.

(b) Kentucky. A public hearing was scheduled to receive oral and written comments on this administrative regulation. However, the hearing was cancelled as a result of the Notice of Intent being published and no comments being received.

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

(8) Assessment of expected benefits:

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

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

(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? Tiering was not applied. Adult education services must be applied on a consistent and equitable basis in accordance with federal guidelines.

**PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control
(Amendment)**

804 KAR 4:210. Supplemental bar license.

RELATES TO: KRS 244.330

STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: Due to 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 as an additional license [existing licensees], if such licensees can show this board the need for such supplemental bar and upon payment of an additional fee.

Section 1. (1) A supplemental bar license(s) may be issued to the holder of a retail liquor drink license upon a showing to the Distilled Spirits Administrator of good cause and need for the supplemental bar(s) [license, and upon payment of a fee equivalent to the amount of the annual license fee paid by the licensee. This supplemental license may only be issued for use on the premises for which the applicants of existing retail drink license was issued.]

(2) The licensee shall pay the fee enumerated in KRS 243.030(8) for each supplemental bar license issued up to a maximum of five (5) such licenses.

(3) A retail licensee who has been issued five (5) supplemental bar licenses may request approval from the Distilled Spirits Administrator for issuance of additional supplemental bar licenses without additional payments. Such requests shall be made in writing and addressed to Distilled Spirits Administrator, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Suite A-2, Frankfort, Kentucky 40601.

(4) The supplemental license(s) may only be issued for use on the premises for which the applicants existing retail liquor drink li-

cense was issued.

RICHARD N. JOHNSTONE, Commissioner

REBECCA W. GOODMAN, General Counsel

APPROVED BY AGENCY: March 15, 1999

FILED WITH LRC: March 15, 1999 at 1 p.m.

PUBLIC HEARING: A public hearing on this new administrative regulation shall be held on Friday, May 21, 1999, at 10 a.m., in the Hearing Room of the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Suite A-2, Frankfort, Kentucky 4001. Individuals interested in being heard at this hearing shall notify this agency in writing by Friday, May 14, 1999, five working days prior to the hearing, of their intent to attend. If the required notification of intent to attend the hearing is not received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the new administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the new administrative regulation to contact person.

CONTACT PERSON: Mrs. Fannie Miller, Secretary to the Board, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Suite A-2, Frankfort, Kentucky 40601, phone 502-564-4850, fax 502-564-1442.

REGULATORY IMPACT ANALYSIS

Contact person: Rebecca W. Goodman

(1) Type and number of entities affected: 4

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

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

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

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

1. First year following implementation: Minimal paperwork.

2. Second and subsequent years: Minimal paperwork.

(3) Effects on the promulgating administrative body: No new employees needed. No new forms to be implemented for the new licenses.

(a) Direct and indirect costs or savings: None

(b) Reporting and paperwork requirements: Minimal

1. First year: No costs to promulgating administrative body.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(4) Assessment of anticipated effect on state and local revenues: Anticipate \$20,900 in state fees. No anticipated effect on local revenues.

(5) Source of revenue to be used for implementation and enforcement of 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: Anticipate 5 or more licensees to apply for licenses.

(b) Kentucky: See 6(a) above.

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

(8) Assessment of expected benefits:

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

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

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

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- (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: In-state licensees in favor of implementation of this new administrative regulation.
- (11) TIERING: Is tiering applied? Tiering was not applied because this regulation will be applied equally to all in-state liquor licensees.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. No federal statute or regulation constituting a federal mandate.
2. State compliance standards. Licensing standards applied equally to all in-state retail liquor licensees.
3. Minimum or uniform standards contained in the federal mandate. None
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? None
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No
2. State what unit, part or division of local government to which this administrative regulation will affect. None
3. State the aspect or service of local government to which this administrative regulation relates. None
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-): None
Expenditures (+/-): None
Other Explanation: This administrative regulation amendment will limit to 5 the number of supplemental bar licenses a licensee needs to purchase.

CABINET FOR HEALTH SERVICES Office of Inspector General (Amendment)

902 KAR 20:140. Operation and services; hospice.

RELATES TO: KRS 216B.010, 216B.015, 216B.030, 216B.105, 216B.990 [to 216B.130, 216B.990(1), (2)]
STATUTORY AUTHORITY: KRS 216B.010, 216B.042; 216B.105]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 require [mandate] that the Cabinet for Health Services [Human Resources] regulate health facilities and health services. This administrative regulation provides [for the] licensure requirements for the operation of a hospice and the services to be provided by a hospice.

Section 1. Definitions. (1) "Administrator" means a person who has served as a hospice administrator under a state approved hospice program or has at least a Bachelor of Arts or Bachelor of Science degree in a health care, human services, or administrative area or has equivalent administrative work experience in a health care facility.

(2) "Bereavement" means the period of time during which a person [for group of people] experiences, responds emotionally to and adjusts to the loss by death of another person.

(3) "Palliative care" means care directed at reducing or abating pain and other troubling symptoms of the disease process in order to

achieve relief of distress.

(4) "Supplemental service" is a hospice service provided under the health care facility's existing license.

~~[(4) "Palliative care" means care directed at reducing or abating pain and other troubling symptoms of the disease process in order to achieve relief of distress.]~~

(5) "Terminally ill" means a person who is experiencing an illness for which therapeutic strategies directed toward care and control of disease are no longer effective.

(6) "Volunteer" means a lay or professional person who contributes time and talent to the hospice program without economic remuneration ~~[(e.g., physician, concerned citizens, clergy)].~~

Section 2. Scope of Operation and Services. A hospice is a centrally administered program of palliative and supportive services, including skilled nursing services, to meet the physical, psychological, social, and spiritual needs of a terminally ill person [persons] and his family [their families] on a twenty-four (24) hour, seven (7) days a week, on-call basis. Services are provided in the home or in an inpatient health care facility as a supplemental service by a medically supervised, interdisciplinary team of professional and lay personnel during the final stages of illness, at death, and through bereavement.

Section 3. Administration and Organization. (1) A hospice program shall seek licensure to operate as:

(a) A freestanding hospice; or

(b) A hospice operated by a hospital, long term care facility, home health agency, or health maintenance organization, or other licensed health care facility or service.

(2) The licensee shall be legally responsible for the operation of the hospice and for compliance with federal, state, and local laws and regulations pertaining to the operation of the service.

(3) The licensee shall have permanent facilities for the administration of the program and storage of the patient records.

(4) The licensee shall establish policies for the administration and operation of the service. The policies shall include:

(a) Acceptance of patients;

(b) Development of a plan of care through the interdisciplinary team;

(c) Quality care audits for direct service;

(d) Personnel policies and procedures which include position descriptions, a description of lines of authority, wage and salary ranges, benefits, evaluation and grievance procedures, and orientation and training programs; and

(e) Use of volunteers, voluntary selection criteria, training and roles in the hospice program.

(5) Contracted services. If a hospice contracts for services, the contract [such contracts] shall be in writing and shall:

(a) Designate clearly the services to be provided;

(b) Describe how the personnel under contract will provide the service and how they will be supervised;

(c) Provide education about hospice care, for participating personnel, conducted by the hospice staff; and

(d) Describe the process of coordination for medical recordkeeping, patient evaluation and care planning.

(6) Contracted services with health care facilities. In addition to the general requirements for contracted services detailed in subsection (5) of this section, contracted services for a health care facility shall be governed by the following:

(a) Any contract entered into between a hospice and a health care facility as defined in KRS 216B.015 or service provider shall specify that the hospice maintain professional, financial and administrative responsibility for planning, coordinating and prescribing hospice services and care on behalf of the hospice patient and his [or her] family;

(b) The hospice shall furnish to the inpatient provider a copy of the patient's plan of care and specify the inpatient services to be furnished and that the inpatient provider agrees to the terms contained therein;

(c) A hospice shall not charge fees for services provided directly by the hospice care team which are duplicative of the contractual services provided by a health care facility to the individual or his family; and

(d) Staffing for hospice services provided on a contractual basis shall not be included in the overall staffing level of a health care facility.

ity.

(7) Medical records.

(a) A medical record shall be maintained for each [every] individual who is accepted as a hospice patient. The medical records shall include:

1. Written referral from the attending physician of the patient to the hospice program.
2. Medical history.
3. Social and psychological information on the patient and family.
4. All doctors orders and the approved care plan.
5. Documentation of all medical services provided.

(b) All medical records shall be kept confidential and retained for a minimum of five (5) years, or in the case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longer.

(8) Personnel. The hospice shall have:

(a) A medical director who is a licensed physician, available on at least a consultative basis who:

1. Is responsible for directing medical aspects of the hospice care program; and
2. Participates in the development of medical policies and procedures.

(b) An administrator who is responsible for the daily operation of the hospice and the implementation of policies and procedures for all activities and services whether provided directly by hospice personnel or by contract.

(c) A patient-care coordinator who is a registered nurse available on a full or part-time basis and knowledgeable of home-based skilled nursing services for the terminally ill.

Section 4. Services. (1) The hospice program shall provide palliative and supportive services including skilled nursing services to meet the physical, psychological, social, and spiritual needs of a terminally ill person [persons] and his family [their-families]. Hospice services shall:

(a) Be available on a twenty-four (24) hour, seven (7) day a week, on-call basis;

(b) Be provided by an interdisciplinary team which shall include:

1. The patient and the patient's family, if willing to participate.
2. The medical director (the patient's attending physician, and other staff physicians may also be members of the team).
3. A nurse.
4. A social worker.
5. A representative of the clergy if the patient so chooses.
6. Volunteers, if available.

(2) Patients may be admitted to a hospice program only upon referral from a physician and upon the request of the patient and family. The patient's attending physician shall be responsible for the direct medical care of the patient's illness.

(3) The hospice shall provide the following services directly:

- (a) Coordination of the medical aspects of the hospice program;
- (b) Patient and [f] family assessment of physical, psychological, spiritual, social, and economic needs;
- (c) Development and coordination of a care plan which includes the delineation of responsibilities of each team member and provides for regularly scheduled team meetings for planning and evaluation as well as for individual case management;
- (d) Patient counseling and bereavement counseling of the family; and

(e) Education and training services for staff, volunteers, and family members.

(4) Skilled nursing services shall be provided directly or through contract as indicated by the patient's needs.

(5) The following services shall be provided directly, through contract, or through referral as indicated by the patient and family needs:

- (a) Nutrition services;
- (b) Homemaker, home health aide services;
- (c) Physical therapy services;
- (d) Occupational therapy; and
- (e) Speech therapy.

(6) The hospice shall follow up on patient [patients-given] referrals to determine whether services were provided and shall make appropriate entries into the patient's medical records for services provided

on a referral basis.

(7) The patient's plan of care shall be reviewed by the attending physician in consultation with agency professional personnel at such intervals as the severity of the patient's illness requires, but in all cases, at least once every two (2) months. Verbal authorization to change the plan of care shall be reviewed and signed by the attending physician within twenty-one (21) [seven-(7)] days after the order is issued.

(8) Original orders for drugs and changes in orders for drugs shall be signed by the physician and made a part of the patient's medical record. Verbal authorization by the physician to change drug orders shall be reviewed and signed by the physician within twenty-one (21) [seven-(7)] days after the order is issued.

TIMOTHY L. VENNO, Inspector General

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: April 8, 1999

FILED WITH LRC: April 8, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1999, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by May 14, 1999, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Hiren B. Desai, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the General Counsel, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: There are presently 29 licensed hospices.

(2) Direct and indirect costs or savings to those affected:

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

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

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

1. First year following implementation: No additional reporting requirements imposed.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No direct or indirect costs should be associated with this program beyond printing this new regulation.

1. First year: \$500 for printing regulation.

2. Continuing costs or savings: No additional costs or savings, since reprinting of regulations is provided for in the continuing budget.

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

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

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

(5) Source of revenue to be used for implementation and en-

forcement of administrative regulation: General funds.

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

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

(b) Kentucky: No public comments addressing this issue were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 216B mandates that minimum standards be established for licensure.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: These are minimum health care standards intended to protect the public.

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

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

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication. No conflict.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. This is a licensure program and, as such, applies to all licensed services.

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

905 KAR 1:180. Protection and permanency [DSS] policy and procedures manual.

RELATES TO: KRS 194B.060 [194.060], 199.420 to 199.990, 200.080 to 200.120, 205.201 to 205.204, 205.455 to 205.465, Chapters 208, 209, 600 to 645, 42 USC 671, 675, 9901-9912

STATUTORY AUTHORITY: KRS 194B.050 [194.050(1)], 199.420, 200.080, 209.030, 605.150, 615.050, 620.180, 625.120, 630.140, 635.100, 640.120, 645.250, 1998 Ky. Acts ch. 150, EO 98-731 [EO 96-862, 96-1576]

NECESSITY, FUNCTION, AND CONFORMITY: 42 USC 9901-9912, [~~Block Grants for Social Services - Title XX;~~] authorizes grants to states for social services. KRS 194B.050 [194.050(1)] authorizes the Cabinet for Families and Children to adopt administrative regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. [~~Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Services under the Cabinet for Families and Children. Executive Order 96-1576, effective December 16, 1996, transferred the residential treatment facilities, services and programs for public and youthful offenders from the Cabinet for Families and Children, Department for Social Services, Division of Children's Residential Services to the Justice Cabinet, Department of Juvenile Justice.~~] This administrative regulation is amended to incorporate into regulatory form, by reference, materials used by the cabinet in the implementation of a statewide social service program.

Section 1. Incorporation by Reference. (1) The Protection and Permanency [Department for Social Services] Policy and Procedures Manual as revised April 1999 [August 1997;] is incorporated by reference.

(2) This material [~~Copies of the Department for Social Services Policy and Procedures Manual~~] may be inspected, copied or obtained at the [~~in any department field office in each of the 120 counties or at~~

~~the Office of the Commissioner,~~] Department for Community-Based [Social] Services, Division of Protection and Permanency, 275 East Main, 6 Floor West, Frankfort, Kentucky 40621. Office hours are [; ~~between the hours of~~ 8 a.m. to [and] 4:30 p.m., Monday through Friday.

DIETRA PARIS, Commissioner

VIOLA MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: April 15, 1999

FILED WITH LRC: April 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1999 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 14, 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, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact: Cathy G. Mobley

(1) Type and number of entities affected: The type and number of entities affected are all families, children and adults who may be benefited by the implementation of a statewide protection and permanency program through the current policies and procedures of the department.

(2) Direct and indirect costs or savings to those affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. A public hearing was requested as a result of the Notice of Intent being published but no written or verbal comments were received. To be determined after the hearing on this ordinary regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. Implementation of this regulation will not affect the cost of doing business in the areas served. A public hearing was requested as a result of the Notice of Intent being published but no written or verbal comments were received. To be determined after the hearing on this ordinary regulation.

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

1. First year following implementation: There are no first year additional compliance, reporting or paperwork requirements as this administrative regulation only removes from the Protection and Permanency policy and procedures manual the Children's Residential Services Program which has been transferred to the Department of Juvenile Justice and the Aging Services Program which was transferred to the Department for Health Services, pursuant to EO 96-1576.

2. Second and subsequent years: There are no second or subsequent year additional compliance, reporting or paperwork requirements as this administrative regulation only removes from the Protection and Permanency policy and procedures manual the Children's Residential Services Program which has been transferred to the Department of Juvenile Justice pursuant to EO 96-1576.

(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: There is no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Sources of revenue used to implement this administrative regulation include the Social Services Block Grant, 42 USC 9901-9912, Medicaid and 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: A public hearing was requested as a result of the Notice of Intent being published but no written or verbal comments were received. To be determined after the public hearing on this ordinary regulation.

(b) Kentucky: A public hearing was requested as a result of the Notice of Intent being published but no written or verbal comments were received. To be determined after the public hearing on this ordinary regulation.

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

(8) Assessment of expected benefits:

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

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. This administrative regulation amends the policies and procedures of all offices of the Department for Community Based Services providing protection and permanency services, and is effective statewide. Tiering was not appropriate in this regulation because the administrative regulation applies equally to all of those individuals or entities regulated by it.

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

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

RELATES TO: KRS 205.245, 216.557(1), 20 CFR 416.2095, 416.2096, 8 USC 1621, 1641

STATUTORY AUTHORITY: KRS 194B.050 [194.050], 205.245, 42 USC 1382e-g, EO 98-731 [HB-321-1998]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children is authorized to administer a state funded program of supplementation to all December, 1973, former recipients of aid to the aged, blind and disabled, disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 provides for the mandatory supplementation program and also for supplementation to other needy persons who are aged, blind, or have a disability. The cabinet shall operate a supplement program for certified personal care homes which accept state supplementation recipients and have [a] thirty-five (35) percent of the residents in the personal care home's occupied licensed personal care beds who have a diagnosis of mental illness or mental retardation. This administrative regulation sets forth the provisions of the supplementation program.

Section 1. Definitions. (1) "Aid to the Aged, Blind and Disabled Program" means the former state funded program for an individual [individuals] who was [were] aged, blind or had a disability.

(2) "Qualified alien" means an alien who, at the time the person applies for, receives, or attempts to receive state supplementation, is an alien as defined in Section 1(10) of 904 KAR 2:006.

(3) "Specialized personal care home" means a licensed personal care home which receives funding from the Department for Mental Health and Mental Retardation Services to employ a mental health professional [professionals] who has [have] specialized training in the

care of a resident [residents] with mental illness or mental retardation.

Section 2. Mandatory State Supplementation. (1) A mandatory state supplementation payment [payments] shall be equal to the difference between:

(a) The Aid to the Aged, Blind and Disabled Program payment for the month of December, 1973, plus any other income available to the recipient as of that month; and

(b) The total of the Supplemental Security Income Program payment and other income for the current month.

(2) A recipient includes a [Recipients include] former Aid to the Aged, Blind and Disabled Program recipient [recipients] who became ineligible for the Supplemental Security Income Program due to income but whose special needs entitled him [them] to an Aid to the Aged, Blind and Disabled Program payment as of December, 1973.

(3) A mandatory payment [payments] shall continue until:

(a) The needs of the recipient as recognized in December, 1973, have decreased; or

(b) Income has increased to the December, 1973 level.

(4) The mandatory payment shall not be increased unless::

(a) Income as recognized in December, 1973, decreases;

(b) The Supplemental Security Income Program payment is reduced but the recipient's circumstances are unchanged; or

(c) The standard of need utilized by the department in determining optional supplementation payments for a class of recipients is increased.

(5) In a case [cases] of a husband and wife living together, an income change [changes] after September, 1974, shall not result in an increased mandatory payment unless total income of the couple is less than December, 1973, total income.

Section 3. Optional State Supplementation. (1) Optional state supplementation shall be available to a person who:

(a) Except as specified in Sections 5, 6, and 7 of this administrative regulation, meets technical requirements and resource limitations of the medically needy program for a person [persons] who is [are] aged, blind, or have a disability as contained in 907 KAR 1:011, Sections 1(4), 5(5), (6), (7), (12), (13), 9, 10, and 11, 907 KAR 1:640, Sections 1(1), (5), (6), (9), 3(3), 5(3), 907 KAR 1:645, 907 KAR 1:650, Sections 1(6), 3, and 907 KAR 1:660, Sections 1(1), (3), (5), (6), 2(1), 2(b), (c), (e), (3), (4), (5), (7); and

(b) Requires a special living arrangement [arrangements]; and

(c) Has insufficient income to meet the [their] need for care.

(2) A special living arrangement [arrangements] shall include:

(a) Residence in a personal care home which:

1. Meets the requirements and provides services as specified in 902 KAR 20:036; and

2. Is licensed under KRS 216B.010 to 216B.131; or

(b) Residence in a family care home which:

1. Meets the requirements and provides services as specified in 902 KAR 20:041; and

2. Is licensed under KRS 216B.010 to 216B.131; or

(c) A situation in which a caretaker must be hired to provide care other than room and board.

(3) A [Each] person applying for or receiving state supplementation shall be required to:

(a) Furnish a Social Security number; or

(b) If a Social Security number has not been issued, apply for a Social Security number.

(4) If potential eligibility exists for Supplemental Security Income Program, application for Supplemental Security Income Program shall be mandatory.

Section 4. Eligibility for Caretaker Services. (1) A service [Services] by a caretaker shall be made to enable the individual with an illness or infirmity to:

(a) Remain safely and adequately:

1. At home;

2. In another family setting; or

3. In a room and board situation; and

(b) Prevent institutionalization.

(2) A service [Services] by a caretaker shall be made at regular intervals by:

- (a) A live-in attendant; or
- (b) One (1) or more persons hired to come to the home.
- (3) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if:
 - (a) The client is taken daily or periodically to the home of the caretaker; or
 - (b) The caretaker service is provided by the following persons living with the applicant:
 - 1. The spouse;
 - 2. Parent of an adult child who has a disability or a minor child; or
 - 3. Adult child of a parent who is aged, blind or has a disability.
 - (4) Eligibility for caretaker supplementation shall be verified by agency contact with the caretaker to establish:
 - (a) How often the service is provided;
 - (b) The service prevents institutionalization; and
 - (c) Payment is made for the service.

Section 5. Resource Consideration. (1) Except as stated in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy as contained in 907 KAR 1:640, Sections 1(1), (5), (6), (9), 3(3), 5(3), 907 KAR 1:645, 907 KAR 1:650, Sections 1(6), 3, and 907 KAR 1:660, Sections 1(1), (3), (5), (6), 2(1), (2)(b), (c), (e), (3), (4), (5), (7).

(2) The individual or couple shall not be eligible if countable resources exceed the limit of:

- (a) \$2000 for individual; or
- (b) \$3000 for couple.

Section 6. Income Considerations. (1) Except as noted in subsections (2) through (9) of this section, income and earned income deductions shall be considered according to the policy [policies] for the medically needy in 907 KAR 1:640, Sections 1(1), (5), (6), (9), 3(3), 5(3), 907 KAR 1:645, 907 KAR 1:650, Sections 1(6), 3, and 907 KAR 1:660, Sections 1(1), (3), (5), (6), 2(1), (2)(b), (c), (e), (3), (4), (5), (7).

(2) The optional supplementation payment shall be determined by adding:

(a) Total net income of the applicant or recipient, or applicant or recipient and spouse; and

(b) Except for a payment [payments] for medical insurance or medical care and services, a payment [payments] made to a third party in behalf of an applicant or recipient; and

(c) Subtracting the total of paragraphs (a) and (b) of this subsection from the standard of need in Section 7 of this administrative regulation.

(3) Income of the ineligible spouse shall be:

(a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and

(b) Conserved in the amount of one-half (1/2) of the Supplemental Security Income Program standard for an individual for:

- 1. Himself; and
- 2. Each minor dependent child.

(4) Income of the eligible individual shall not be conserved for the needs of the ineligible spouse or minor dependent children.

(5) Income of the child shall be considered when conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.

(6) The earnings of the eligible individual and spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(7) If one (1) member of a couple is institutionalized and the spouse maintains a home, income in the amount of the Supplemental Security Income Program standard for one (1) shall be conserved for the spouse, if this spouse is a recipient of the Supplemental Security Income Program.

(8) A husband and wife residing in the same personal care or family care home may be considered to be living with each other if treating the husband and wife as living apart would prevent either of them from receiving state supplementation.

(9) The Supplemental Security Income Program twenty (20) dollars general exclusion shall not be an allowable deduction from income.

Section 7. Standard of Need. (1) The standard shall be based on

living arrangement as follows:

(a) 1. For an eligibility determination for a resident of a personal care home made on or after January 1, 1999, \$894 [1998, \$828].

2. [For an eligibility determination for a resident of a personal care home made between May 1, 1998, and June 30, 1999, \$888.]

3. a. After June 30, 1999, if funds remain available, the standard shall remain at \$894 [888].

b. After June 30, 1999, if funds are not available, the standard shall be \$834 [828, plus an applicable cost of living adjustment].

(b) For an eligibility determination for a resident of a family care home made on or after January 1, 1999, \$639 [1998, \$633];

(c) Caretaker.

1. For an eligibility determination for a single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability made on or after January 1, 1999, \$533 [1998, \$527];

2. For an eligibility determination for an eligible couple, both aged, blind, or have a disability and one (1) requiring care made on or after January 1, 1999, \$779 [1998, \$769];

3. For an eligibility determination for an eligible couple, both aged, blind or have a disability and both requiring care made on or after January 1, 1999, \$823 [1998, \$813].

(2) In a couple case [cases], if both are eligible, the couple's income is combined prior to comparison with the standard of need. One-half (1/2) of the deficit is payable to each.

(3) The personal care or family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollars personal needs allowance which shall be retained by the client.

Section 8. Temporary Stay in a Medical Institution. (1) A recipient of optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for any of the first three (3) full months of medical confinement if:

(a) Admitted to:

- 1. A hospital;
- 2. A psychiatric hospital; or
- 3. A nursing facility;

(b) The recipient's physician shall certify that he expects the recipient to be medically confined for ninety (90) full consecutive days or less; and

(c) The state supplementation recipient receives benefits from the Supplemental Security Income Program.

(2) If discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge.

Section 9. Citizenship requirements. An applicant or recipient shall be:

(1) A citizen of the United States; or

(2) A qualified alien pursuant to Section 1(2) of this administrative regulation.

Section 10. Residence Requirements. (1) The applicant or recipient shall be a resident of Kentucky.

(2) A supplemental payment [payments] may be made to a Kentucky resident [residents] residing outside the state if:

(a) The individual has been placed in the other state by this state.

(b) Except with regard to the requirement shown in Section 8 of this administrative regulation, the other requirements for eligibility contained in this administrative regulation shall be applicable.

(c) For an out-of-state placement [placements], the licensure shall be in accordance with a similar licensure act of the other state.

(d) If there is no similar licensure act in the other state, the payment shall not be made unless this state determines that, except for being in another state, the facility meets standards for licensure under the provisions of KRS 216B.010 to 216B.131.

(e) To be eligible for a supplemental payment while placed out-of-state:

- 1. The individual shall require the level of care provided in the out-of-state placement;
- 2. There shall not be a suitable placement available in Kentucky; and
- 3. The placement shall be preauthorized by staff of the Department.

ment for Community-Based Services.

(3) Except as specified in subsection (9) of this section, an applicant placed in Kentucky by another state shall not be considered a resident of Kentucky.

(4) The state of residence shall be Kentucky for an applicant or recipient of state supplementation if the individual:

- (a) Is age twenty-one (21) and over;
- (b) Is residing in the state; and
- 1. Intends to remain permanently or for an indefinite period; or
- 2. Entered the state with a job commitment or to seek employment.

(5) The applicant or recipient residing in a personal care home shall be considered incapable of indicating intent to become a Kentucky resident if the individual:

(a) Has an I.Q. of forty-nine (49) or less or has a mental age of seven (7) or less, based on the following tests:

- 1. Bayley Scales of Infant Development;
- 2. McCarthy Scales of Children's Abilities;
- 3. Stanford-Binet;
- 4. Wechsler Adult Intelligence Scale - Revised (WAIS-R);
- 5. Wechsler Intelligence Scale for Children-III (WISC-III);
- 6. Wechsler Intelligence Scale for Children - Revised (WISC-R); or
- 7. Wechsler Preschool and Primary Scale of Intelligence (WPPSI);

or

(b) Is judged legally incompetent; or

(c) Is found incapable of indicating intent based on medical or other documentation acceptable to the state.

(6) For an applicant or recipient residing in a family care home or requiring caretaker services, the state of residence shall be Kentucky if the individual is:

- (a) Under age twenty-one (21);
- (b) Eligible for a supplemental payment based on blindness or disability; and
- (c) Residing in the state; or
- (d) An individual age twenty-one (21) or over and incapable of indicating intent, is simply residing in the state.

(7) For an applicant or recipient residing in a personal care home who is under age twenty-one (21) or who is age twenty-one (21) or older and became incapable of indicating intent before age twenty-one (21), the state of residence shall be Kentucky if Kentucky is the state of residence of the individual's:

- (a) Parents; or
- (b) If one has been appointed, his legal guardian; or
- (c) Parent applying for the supplemental payment on behalf of the individual if:

- 1. The other parent lives in another state; and
- 2. There is no appointed legal guardian.

(8) For an applicant or recipient residing in a personal care home who became incapable of indicating intent at or after age twenty-one (21), the state of residence shall be Kentucky if:

- (a) He was living in Kentucky when he became incapable of indicating intent; or
- (b) If this cannot be determined, the state of residence shall be Kentucky unless he was living in another state when he was first determined to be incapable of indicating intent.

(9) For an individual subject to a determination of residency according to subsections (7) and (8) of this section, the state of residence shall be Kentucky if Kentucky and the state that would otherwise be the individual's state of residency have entered into an interstate residency agreement providing for reciprocal residency status.

(10) An individual receiving a mandatory state supplemental payment from Kentucky shall be considered a resident of Kentucky if he continues to reside in Kentucky.

(11) An individual receiving a mandatory or optional supplemental payment from another state shall not be considered a resident of Kentucky.

(12) A former Kentucky resident who becomes incapable of indicating intent while residing out of this state, may reestablish Kentucky residency if:

- (a) He returns to Kentucky; and
- (b) He has a guardian, parent or spouse residing in Kentucky.

Section 11. Persons with Mental Illness or Mental Retardation

Supplement. A certified personal care home may qualify for quarterly supplement payments of fifty (50) cents per diem for each state supplementation recipient in their care as of the first calendar day of each qualifying month. The personal care home shall meet the following criteria to qualify for a supplementation payment:

(1) The personal care home shall be licensed in accordance with KRS 216B.010 to 216B.131; and

(2) The personal care home shall care for a resident [residents] who has [have]:

(a) A primary or secondary diagnosis of mental retardation including mild or moderate, or other ranges of retardation whose needs can be met in a personal care home; or

(b) A primary or secondary diagnosis of mental illness excluding organic brain syndrome, senility, chronic brain syndrome, Alzheimer's, and similar diagnoses; or

(c) A medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis.

(3) The personal care home shall care for a thirty-five (35) percent mental illness or mental retardation population in all of its occupied licensed personal care home beds.

(4) The personal care home shall not be eligible for a payment [payments] during the days it received a Type A citation pursuant to KRS 216.557(1) [time it has a conditional rating] by the Office of Inspector General. [Rating requirements are specified in KRS 216.550 and 900 KAR 2:030.]

(5) The personal care home shall have a licensed nurse or an individual who has received and successfully completed certified medication technician training on duty for at least four (4) hours during the first or second shift each day. The personal care home shall not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician training in effect prior to July 1990, as a result of this minimum requirement.

(6) The personal care home shall file an Application for MI or MR Supplement Program, incorporated by reference in this administrative regulation, with the Department for Community-Based Services by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter.

(a) Quarters shall begin in January, April, July and October.

(b) Once certified, unless eligibility is discontinued, a new application shall not be required.

(c) The personal care home shall provide the Department for Community-Based Services with its tax identification number and address as part of the application process.

(7) The personal care home shall provide the Department for Community-Based Services with a monthly report.

(a) The report shall list:

1. Every resident [All residents] of the personal care home who was a resident [were residents] on the first day of the month; and

2. The resident's [residents'] Social Security number [numbers].

(b) In order to maintain confidentiality, the personal care home shall annotate the monthly report as follows:

1. A star shall indicate a resident has a mental illness or mental retardation diagnosis.

2. A check mark shall indicate a resident receives state supplementation.

3. A star and a check mark shall indicate the resident has a mental illness or mental retardation diagnosis and is a recipient of state supplementation.

(c) The monthly report shall be used for:

- 1. Certification;
- 2. Payment; and
- 3. Audit purposes.

(d) The monthly report shall be postmarked to the Department for Community-Based Services by the fifth working day of the month.

(8) The personal care home shall notify the Department for Community-Based Services if its mental illness or mental retardation percentage goes below thirty-five (35) percent for all personal care residents. A facility [Facilities] may be randomly audited to verify percentages and payment accuracy.

Section 12. Training. (1) The personal care home licensed nurse or individual who has successfully completed certified medication technician training shall attend the mental illness or mental retardation

basic training workshop provided through the Department for Mental Health and Mental Retardation Services. Other staff may attend the basic training workshop in order to assure the facility always has at least one (1) certified staff employed for certification purposes.

(2) The mental illness or mental retardation basic training shall be provided through a one (1) day workshop. The following topics shall be covered:

(a) Importance of proper medication administration.

(b) Side effects and adverse medication reactions with special attention to psychotropics.

(c) Signs and symptoms of an acute onset of a psychiatric episode.

(d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bi-polar disorder, or mental retardation.

(e) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or mental retardation.

(f) Instruction in providing a necessary activity [activities] to meet the needs of a resident [residents] who has [have] a diagnosis of mental illness or mental retardation.

(3) Initial basic training shall include the licensed nurse or the individual who has successfully completed certified medication technician training and may include the owner or operator. The individual [~~These individuals~~] shall be trained in the quarter during which the application is filed.

(4) To assure that a staff member who has received basic training is always employed at the facility, a maximum of five (5) may be trained during a year.

(a) If staff turnover results in the loss of the licensed nurse or individual who has successfully completed certified medication technician training and five (5) staff have been trained, the personal care home shall request in writing to the Department for Community-Based Services an exemption of the five (5) staff rule.

(b) The personal care home shall have on staff a licensed nurse or individual who has successfully completed certified medication technician training who:

1. Has received the mental illness or mental retardation basic training; or

2. Is enrolled in the next scheduled mental illness or mental retardation basic training workshop at the closest location.

(5) The Department for Mental Health and Mental Retardation Services may provide advanced level training for personal care homes.

(a) Advanced level training shall be provided through one (1) day workshops.

(b) Each advanced level workshop shall consist of two (2) three (3) hour sessions per day.

(c) Each three (3) hour session shall cover a topic appropriate for staff who work with a resident [residents] who has [have] a diagnosis of mental illness or mental retardation.

(d) Attendance of advanced level training workshops shall be optional for a Persons with Mental Illness or Mental Retardation Supplement Program participant [participants].

(6) The Department for Mental Health and Mental Retardation Services shall provide within five (5) working days:

(a) A certificate to direct care staff who complete the workshop; and

(b) A listing to the Department for Community-Based Services of staff who completed the training workshop.

(7) The Department for Community-Based Services shall pay twenty-five (25) dollars for each staff member receiving basic or advanced level training up to the maximum of five (5) staff per year to a personal care home who has applied for the Persons with Mental Illness or Mental Retardation Supplement Program.

(8) Attendance of the basic training workshop shall be optional for a specialized personal care home.

Section 13. Persons with Mental Illness or Mental Retardation Supplement Program Certification. (1) The Office of the Inspector General, Division of Licensing and Regulation, shall visit the personal care home to certify eligibility to participate in the Persons with Mental Illness or Mental Retardation Supplement Program:

(a) The personal care home's initial Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey, incor-

porated by reference in this administrative regulation, may be separate from the annual survey;

(b) The initial Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey shall be in effect until the next licensure survey that may be greater than or less than twelve (12) months;

(c) A personal care home's annual Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey [recertification] may be completed during the annual licensure survey;

(d) The Department for Community-Based Services shall notify the Division of Licensing and Regulation that the facility is ready to be certified.

(2) The Division of Licensing and Regulation shall review records, observe and interview residents and staff during the certification process. The Division of Licensing and Regulation shall review records to assure the following criteria is met:

(a) Certification is on file at the personal care home to verify staff attended basic training provided by the Department for Mental Health and Mental Retardation Services. This provision shall be waived for a specialized personal care home.

(b) The personal care home's certified staff have trained all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or mental retardation basic training workshop. The personal care home shall maintain documentation of attendance at the in-service training for all direct care staff.

(c) An activity is [Activities are] being regularly provided and meets [meet] the needs of the resident [residents]. When a resident does [residents do] not attend a group activity, an activity [activities, activities] shall also be designed to meet the needs of an individual resident [residents], for example, reading or other activity that may be provided on an individual basis. An individualized care plan is [plans are] not required to meet this criteria.

(d) Medication administration meets licensure requirements and licensed nurse or individual who has successfully completed certified medication technician training demonstrates a knowledge of psychotropic drug side effects.

(3) The Division of Licensing and Regulation shall review the personal care home copy of the training certification prior to performing their record review during the Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey process.

(4) If thirty-five (35) percent mental illness or mental retardation population is met on the day of the visit, the personal care home shall be deemed to have an ongoing qualifying percentage effective with month of request for certification. The personal care home shall be responsible for notifying the Department for Community-Based Services, within ten (10) working days, if the mental illness or mental retardation population goes below thirty-five (35) percent of all occupied personal care beds in the facility.

(5) The Office of the Inspector General, Division of Licensing and Regulation, shall provide a monthly statement to the Department for Community-Based Services identifying certified personal care homes eligible for the Persons with Mental Illness or Mental Retardation Supplement Program. This information shall be provided by the fifth working day of each month for the prior month.

(6) The Office of Inspector General, Division of Licensing and Regulation, shall inform the Department for Community-Based Services monthly of a personal care home which receive a Type A citation [conditional rating]. This information shall be provided by the fifth working day of each month for the prior month.

(7) The personal care home shall receive a reduced payment for the number of days the Type A citation occurred on the first administratively feasible quarter following notification by the Office of Inspector General, Division of Licensing and Regulation, pursuant to 921 KAR 2:050.

Section 14. Hearings and Appeals. An applicant or recipient [Applicants or recipients] of benefits under a program [programs] described in this administrative regulation [herein] who is [are] dissatisfied with any action or inaction on the part of the cabinet shall have the right to a hearing under 921 KAR 2:055.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Notice of Decision to Personal Care Home", edition 3/99 [Application for Mental Illness or Mental Retardation Supplement", (6/98), Cabinet for Families and Children];

(b) "Monthly Report Form", edition 3/99 [(6/98), Cabinet for Families and Children];

(c) "Application for MI or MR Supplement Program Benefits [Certification]", edition 3/99 [(6/98), Cabinet for Families and Children]; and

(d) "Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey", edition 3/99 [Monthly Statement Certifying Personal Care Homes for the Supplement Program", (6/98), Cabinet for Families and Children].

(2) This material may be inspected, copied, or obtained at the Cabinet for Families and Children, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney at Law

APPROVED BY AGENCY: April 6, 1999

FILED WITH LRC: April 9, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1999, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 14, 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: As of January, 1999, there are approximately 5,140 recipients of state supplementation benefits who will be affected by the increase in the state supplementation standards due to the mandated cost of living adjustment.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: 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: For increases in the state supplementation standards:

1. First year following implementation: The standards for state supplementation recipients increased by \$6 for recipients in personal care homes and family care homes, \$6 for recipients of caretaker services for single individual or individual with ineligible spouse, and \$10 for caretaker services for couple (one or both requiring care). Therefore, the standard of need is as follows:

Personal Care - \$894

Family Care - \$639

Caretaker:

Single - \$533

Individual with Ineligible Spouse - \$533

Eligible Couple, One Requiring Care - \$779

Eligible Couple, Both Requiring Care - \$823

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

(3) Effects on the promulgating administrative body: For increases in the state supplementation standards:

(a) Direct and indirect costs or savings (costs to the agency):

1. First Year (costs to agency in benefits): \$207,000

2. Continuing costs: \$413,000

The cost of living increase is funded in the SFY 1999 and SFY 2000 State Supplementation Program budgets. The first year fiscal impact is based on January 1, 1999 through June 30, 1999. The continuing fiscal impact is based on SFY 2000.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Kentucky: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since state supplementation pass along provisions are set forth through an agreement with the Department of Health and Human Services.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This amendment implements the mandated pass along of the 1998 Supplemental Security Income cost of living increases for eligibility determinations made on or after January 1, 1999, for state supplementation applicants and recipients. The state supplementation recipients residing in personal care or family care homes or receiving caretaker services will be assured of the ability to continue to purchase these services. Also, this administrative regulation revises the Mental Illness or Mental Retardation Supplement Program to conform with the repeal of the conditional rating in KRS 216.550, as a result of HB-679.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public health would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Since 1977, the Commonwealth of Kentucky has had an agreement with the Department of Health and Human Services to pass along any Supplemental Security Income benefit increases to state supplementation recipients. This amended administrative regulation includes the 1999 cost of living increases to place Kentucky in compliance with federal Supplemental Security Income guideline. In order to be in compliance, we must assure that the state supplementation benefits are not reduced due to the cost of living increase granted by the Social Security Administration to its beneficiaries. This assures their continued ability to purchase the personal care they need in order to avoid costly institutional care under Title XIX (Medicaid).

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

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

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

(10) Any additional information or comments: Since 1977 the Commonwealth of Kentucky has had an agreement with the Department of Health and Human Services to pass along any cost of living Supplemental Security Income benefit increases to state supplementation recipients.

(11) TIERING: Is tiering applied? No. Tiering was not applied

since application of policy is applied in a like manner for all state supplementation recipients as set forth through an agreement with the Department of Health and Human Services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 CFR 416.2095 and 416.2096
2. State compliance standards. This amended administrative regulation includes the 1999 cost of living increases to place Kentucky in compliance with federal Supplemental Security Income guideline.
3. Minimum or uniform standards contained in the federal mandate. This administrative regulation is needed to comply with the agreement the Commonwealth of Kentucky has with the Department of Health and Human Services to pass along any cost of living increases in Supplemental Security Income benefits to state supplementation recipients.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

CABINET FOR FAMILIES AND CHILDREN Department for Community-Based Services Division of Program Development (Amendment)

921 KAR 3:030. Application process.

RELATES TO: KRS 194B.050 [194.050]; 7 CFR 273.2, 273.10, 42 USC 1973gg-10, 7 USC 2020(e)(2)(B)(ii), (iii), (iv)

STATUTORY AUTHORITY: KRS 13A.120, 116.048, 194B.050, 7 USC 2020(e)(2)(B)(ii), (iii), (iv), EO 98-731 [194.050]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children shall administer a Food Stamp Program as prescribed under 7 USC 2011-2029. KRS 194B.050 [194.050] provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of citizens of the Commonwealth. This administrative regulation sets forth the application process used by the cabinet in the administration of the Food Stamp Program. KRS 116.048 designates the cabinet to have responsibility for the administration of the Food Stamp Program as a voter registration agency in accordance with 42 USC 1973gg-10. Therefore, this administrative regulation sets forth policy and procedures necessary to provide an eligible Food Stamp Program participant the opportunity to register, or to decline from registering, to vote.

Section 1. Right to apply or Reapply. (1) An individual shall have the right to apply or reapply for food stamp benefits on the same day that the household first contacts the food stamp office in person during office hours.

(2) The cabinet shall make the application process readily accessible to a household [households].

(3) [(2)] In accordance with the procedures described in 920 KAR 1:070, interpreter services shall be provided for a person [persons] who is [are]:

- (a) Deaf; or
- (b) Hard of hearing.

(4) [(3)] Interpreter services shall be provided for a non-English speaking individual, utilizing procedures and forms specified by 920 KAR 1:070.

(5) [Section 2- Application Process:] An application shall be considered to have been filed when:

(a) [(1)] An application form containing the name, address and signature of the applicant is received by the food stamp office [completed and signed];

(b) [(2)] The applicant or representative is interviewed;

(c) [(3)] Required information on the application is provided to the food stamp office and verified; and

(d) [(4)] The application is received by the appropriate office.

Section 2. [3-] Who May Sign an Application. An application for food stamps shall be signed by:

- (1) A responsible member of the household; or
- (2) The household's authorized representative.

Section 3. [4-] Where an Application is [Applications are] Filed. (1) Except as provided in subsection (2) of this section, an application shall be filed in any [the] office of the Department for Community-Based Services and processed [Social Insurance] in the county in which an applicant resides.

(2) A concurrent application for Supplemental Security Income (SSI) and Food Stamps shall be filed in the service area office of the Social Security Administration.

Section 4. [5-] Prompt Action on an Application [Applications]. The cabinet shall provide an eligible household, that completes the initial application process, an opportunity to participate as soon as possible but not later than:

- (1) Thirty (30) days after the application is filed for a household ineligible for expedited services; or
- (2) The fifth calendar day following the date an application is filed for a household eligible for expedited services.

Section 5. [6-] Expedited Service. A household eligible for expedited services shall be:

- (1) A household in which:
 - (a) Monthly gross income is less than \$150; and
 - (b) Liquid resources do not exceed \$100; or
- (2) A destitute migrant or seasonal farm work household whose liquid resources do not exceed \$100; or
- (3) A household containing a homeless individual [individuals]; or
- (4) A household for whom monthly rent or mortgage and actual utilities exceed the household's combined monthly gross income and liquid resources.

Section 6. [7-] Public Assistance Application Process. (1) A household in which every member is [all members are] applying for Kentucky Transitional Assistance Program (K-TAP) shall be allowed to simultaneously apply for food stamp benefits. A single interview shall be conducted for both programs.

(2) Time standards specified in Section 4 [5] of this administrative regulation shall apply to a public assistance application [applications].

(3) A household in which every member receives [all members receive], or is [are] authorized to receive, K-TAP or [Supplemental Security Income-] [SSI] shall be considered categorically eligible unless the entire household is:

- (a) Institutionalized; or
 - (b) Disqualified from receiving food stamps.
- (4) A categorically eligible household [households] shall not be required to verify the following eligibility factors:
- (a) Resources;
 - (b) Gross and net income limits;
 - (c) Social Security number information;
 - (d) Sponsored alien information; and
 - (e) Residency.

Section 7. [8-] Joint SSI and Food Stamp [FS] Application Process. A household in which every member is an applicant [all members are applicants] or recipient [recipients] of [Supplemental Security Income-] [SSI] shall be allowed to simultaneously apply for both SSI and food stamps at the appropriate Social Security Administration office.

Section 8. [9-] Voter Registration. (1) In accordance with KRS 116.048 and 42 USC 1973gg-10, an applicant or recipient meeting all of the following criteria shall be provided the opportunity to complete an application to register to vote or update his current voter registration:

- (a) Be age eighteen (18) or over; and
- (b) Be present in the office at the time of the interview or when a change of address is reported; and
- (c) Not be registered to vote or not registered to vote at his current address.

(2) An individual not included in the assistance application shall not be registered to vote in this process, including an:

- (a) Authorized representative; or
- (b) Individual acting as a responsible party.

(3) An individual providing a voter registration service [services] who seeks to unlawfully influence an applicant's political preference or party registration as prohibited by KRS 116.048(4) may [could] be fined or imprisoned, not to exceed five (5) years, or both.

(4) Forms and information utilized in the voter registration process shall remain confidential and be used only for voter registration purposes.

(5) Only a Board of Elections official [officials] may view forms and information utilized directly in the voter registration process.

(6) Completion of the Voter Registration Form is only an application to apply to register to vote. The State Board of Elections shall approve the application to register to vote and send a confirmation or denial notice to the applicant.

(7) Forms necessary to register a Food Stamp Program participant to vote are incorporated by reference in this administrative regulation.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "KIM-77, Intent to Apply", edition 4/99;
- (b) "KIM-100, KAMES Application", edition 4/99;
- (c) "KIM-100, Supplement A, Representative/Interested Party", edition 3/97;
- (d) "KIM-100, Supplement B, Utility/Shelter Information", edition 4/99;
- (e) "KIM-100, Supplement C, Additional Members/Striker and Boarder Information", edition 1/98;
- (f) "KIM-100, Supplement D, Farm/Self-Employment/Rental Income", edition 10/97;
- (g) "KIM-100, Supplement E, Vehicles", edition 10/97;
- (h) "KIM-100, Supplement F, Emergency Shelter/Foster Care", edition 10/97;
- (i) "KIM-100, Supplement G, Member General Information", edition 4/99;
- (j) "KIM-100, Supplement H, IM Alien Information", edition 10/97;
- (k) "KIM-100, Supplement I, State Supplementation/Pass Through", edition 10/97;
- (l) "KIM-100, Supplement J, Long Term Care", edition 4/99;
- (m) "KIM-100, Supplement L, General Deprivation", edition 10/97;
- (n) "KIM-100, Supplement M, Incapacity/Unemployment", edition 4/99;
- (o) "KIM-100, Supplement N, Deprivation", edition 10/97;
- (p) "KIM-100, Supplement P, DCSE Cooperation/Absence Verification", edition 10/97;
- (q) "KIM-100, Supplement PP, AP Referral", edition 12/96;
- (r) "KIM-100, Supplement Q, KWP/Work Registration", edition 4/99;
- (s) "KIM-100, Supplement R, Earned Income", edition 10/97;
- (t) "KIM-100, Supplement S, Unearned Income", edition 10/97;
- (u) "KIM-100, Supplement SS, Lump Sum/Pass Income", edition 10/97;
- (v) "KIM-100, Supplement T, Resources", edition 10/97;
- (w) "KIM-100, Supplement U, Medical Expenses", edition 10/97;
- (x) "KIM-100, Supplement V, Health Insurance", edition 10/97;
- (y) "KIM-100, Supplement W, KAMES-Integration Supplement - Lock-In & KenPAC", edition 3/97;
- (z) "KIM-100, Supplement X, IM Nonmember", edition 4/99;
- (aa) "KIM-100, Supplement XX, KAMES-Integration Supplement - FS Nonmember", edition 3/97;
- (bb) "KIM-100, Supplement Y, Student Information", edition 10/97;
- (cc) "PAFS-706, Voter Registration Rights and Declination", edition 4/95;
- (dd) "Voter Registration Application for U.S. Citizens Only", edition 4/99.

(2) This material may be inspected, copied, or obtained at the Department for Community-Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30

p.m. [10. Material Incorporated by Reference. (1) Forms necessary for the application process and voter registration in the Food Stamp Program are incorporated by reference. These forms include the:

- (a) KFS-77, revised 3/95;
- (b) The KIM-100, Revised 1/95;
- (c) The KIM-100 Supplement A, revised 1/95;
- (d) The KIM-100 Supplement B, revised 5/93;
- (e) The KIM-100 Supplement C, revised 7/94;
- (f) The KIM-100 Supplement D, revised 1/95;
- (g) The KIM-100 Supplement E, revised 1/95;
- (h) The KIM-100 Supplement F, revised 5/93;
- (i) The KIM-100 Supplement G, revised 1/95;
- (j) The KIM-100 Supplement H, revised 1/95;
- (k) The KIM-100 Supplement I, revised 1/95;
- (l) The KIM-100 Supplement J, revised 1/95;
- (m) The KIM-100 Supplement K, revised 5/93;
- (n) The KIM-100 Supplement L, revised 1/95;
- (o) The KIM-100 Supplement M, revised 1/95;
- (p) The KIM-100 Supplement N, revised 5/93;
- (q) The KIM-100 Supplement O, revised 5/93;
- (r) The KIM-100 Supplement P, revised 5/93;
- (s) The KIM-100 Supplement Q, revised 1/95;
- (t) The KIM-100 Supplement R, revised 7/94;
- (u) The KIM-100 Supplement S, revised 1/95;
- (v) The KIM-100 Supplement SS, revised 3/94;
- (w) The KIM-100 Supplement T, revised 1/95;
- (x) The KIM-100 Supplement U, revised 5/93;
- (y) The KIM-100 Supplement V, revised 1/95;
- (z) The KIM-100 Supplement W, revised 5/93;
- (aa) The KIM-100 Supplement X, revised 1/95;
- (bb) The KIM-100 Supplement XX, revised 5/93;
- (cc) The KIM-100 Supplement Y, revised 1/95;
- (dd) The KIM-100 Supplement Z, revised 1/95;
- (ee) The PAFS-706, revised 1/95;
- (ff) The Voter Registration Application, revised 1/95.

(2) These forms may be inspected and copied at the Department for Community-Based Services, 275 East Main Street, Frankfort, Kentucky 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 at Law
 APPROVED BY AGENCY: April 6, 1999

FILED WITH LRC: April 9, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1999, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 14, 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 December 1998, there were 158,373 participating families and 396,813 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: 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

(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 USC 2020

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, APRIL 15, 1999

REVENUE CABINET
Department of Law
Division of Tax Policy
(New Administrative Regulation)

103 KAR 1:050. Forms manual.

RELATES TO: KRS 42.470, 61.870-61.884, 131.020, 131.030, 131.041-131.081, 131.081(2), 131.081(9), 131.081(15), 131.110, 131.130, 131.130(3), (10), 131.155, 131.170, 131.181, 131.183, 131.190, 131.190(1), 131.340, 131.500, 131.500(1), (2), (3), (10), 131.510(1), (2)(a), 131.540, 132.020, 132.043, 132.060-132.090, 132.130-132.180, 132.190, 132.200, 132.215, 132.216, 132.220-132.270, 132.290, 132.310, 132.320, 132.450, 132.487, 132.510, 132.820, 132.990, 133.045, 133.110, 133.120, 133.130, 133.240, 134.420, 134.430, 134.500, 134.580, (4), 134.590, 134.800, 134.805, 134.810, 134.815, 134.820, 134.825, 134.830, 135.010, 135.020, 135.050, 136.020, 136.030, 136.040, 136.050, 136.070, 136.090, 136.100, 136.115-136.180, 136.181-136.187, 136.1873, 136.310, 136.320, 136.330, 136.335, 136.377, 136.392, 136.545, 136.575, 137.130, 137.160, 138.195, 138.210, 138.240, 138.250, 138.260, 138.270, 138.341, 138.342, 138.344-138.355, 138.358, 138.320, 138.450, 138.460, 138.464, 138.470(4), (5), (6), 138.480, 138.530, 138.870, 138.876, 138.880, 138.885, 139.095, 139.170, 139.185, 139.210, 139.230, 139.240, 139.250, 139.260(1), (2), (3), 139.270, 139.410, 139.420, 139.470(1), (7), (10), (11), (14), 139.480, 139.483, 139.495, 139.497, 139.5382(1)(a), 139.550, (1), (2), (4), 139.560, 139.590(1), 139.620(1), 139.770(2), 140.010, 140.060, 140.080, (1)(a), 140.100, 140.130, 140.160, 140.165, 140.190, 140.222, 140.240, 140.250, 140.260, 140.265, 140.300-140.360, 140.350, 141.010(11), 141.0105, 141.011, 141.020, 141.0202, 141.0205, 141.021, 141.0215, 141.030, 141.040, 141.041, 141.042, 141.044, 141.050, (4), 141.065, 141.070, 141.120, 141.150, 141.151, 141.160, 141.170, 141.180, 141.190, 141.200, 141.206, 141.210, 141.235, 141.300, 141.305, 141.315, 141.325, 141.330, 141.335, 141.340, 141.347, 141.370, 141.390, 141.400, 141.403, 141.407, 141.990, 142.010, 142.040, 142.050, 142.321, 142.327, 142.357, 143.030, (1), 143.037, 143.040, 143.050, 143.060, (1), 143.085, 143.990, 143A.010, 143A.030, 143A.035, 143A.037, 143A.080, 143A.090, 143A.100(1), 143A.991, 144.120(4), 154.12-219, 154.22-050, 154.22-060, 154.22-070, 154.24-110, 154.24-130, 154.26-090, 154.28-090, 154.45-090, 154.45-100, 154.45-110(1), 155.170, 209.160, 224.01-310(1), 224.50-822, 224.50-823, 224.60, 234.321, 234.370, 243.710, 243.720, 243.730, 243.850, 243.884, 299.530, 304.4-030, 304.11-050, 351.175, 395.470(3), 413.120, 11 USC 501, PL 105-261, Section 170 of the Kentucky Constitution

STATUTORY AUTHORITY: KRS 131.130(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(3) authorizes the Revenue Cabinet to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required revenue forms.

Section 1. Administrative - Required Forms. (1) Revenue Form KY-1345, "Handbook for Electronic Filers of Individual Income Tax Returns, Tax Year 1998" shall provide information to assist tax preparers and transmitters in the submission of 1998 Federal and Kentucky Individual Income Tax Returns.

(2) Revenue Form 10A001, "Request to Inspect Public Records", shall be completed by the public to request access to public records specified on the form.

(3) Revenue Form 10A070, "Authorization Agreement for Electronic Funds Transfer", shall be completed by taxpayers to authorize the Revenue Cabinet to move funds by electronic means from taxpayer accounts to the Revenue Cabinet as payment for taxes.

(4) Revenue Form 10A100, "Kentucky Tax Registration Application for Withholding, Corporation, Coal, Sales and Use Taxes", shall be used to apply for tax registration of the following taxes:

(a) Employer's Kentucky withholding;

(b) Corporation income and license;

(c) Coal severance and processing; and

(d) Sales and use.

(5) Revenue Form 10A100-I, "Instructions for Kentucky Tax Registration Application for Withholding, Corporation, Coal, Sales and Use Taxes" provides instructions for the proper completion of Revenue Form 10A100, Kentucky Tax Registration Application for Withholding, Corporation, Coal, Sales and Use Taxes.

(6) Revenue Form 10A101, "Kentucky General Business License Application", shall be completed by every person required to obtain a seller's permit as provided in KRS 139.210 and every person required to register and collect Kentucky use tax under KRS 139.340.

(7) Revenue Form 10F100, "Your Rights As A Kentucky Taxpayer", shall provide the public with information describing taxpayer rights provided by KRS Chapters 131, 133 and 134.

(8) Revenue Form 12A012, "Receipt of Seized Property", shall be presented for execution to the taxpayer receiving returned property from the Kentucky Revenue Cabinet that was previously seized for failure to pay taxes in order to establish documentation that the property was returned to the taxpayer.

(9) Revenue Form 12A018, "Kentucky Revenue Cabinet Offer in Settlement", shall be presented for execution to persons requesting to settle their tax liabilities for less than the delinquent tax liability based upon doubt as to collectibility or doubt as to liability.

(10) Revenue Form 12A104, "Notice of Seizure", shall be presented to the owner or officer of the entity from which the Kentucky Revenue Cabinet is seizing property for failure to pay taxes owed to the Commonwealth.

(11) Revenue Form 12A107, "Notice of Sale", shall be presented to the owner of seized property, the newspaper with the highest circulation for that area, and posted at the courthouse, and three other public places within the county, where the seizure was made, for the purpose of notifying the property owner, and advertising to the public the sale of the seized property.

(12) Revenue Form 12A109, "Release of Levy", shall be presented to the bank or third party on which the levy was served for the purpose of releasing the seized property.

(13) Revenue Form 12A110, "Release of Levy on Wages, Salary, and Other Income", shall be presented to an employer for the purpose of releasing a wage levy.

(14) Revenue Form 12A500, "Certificate of Partial Discharge of Tax Lien", shall be presented to anyone who makes a proper application for a lien release on a specific piece of property where the Revenue Cabinet's lien attaches no equity or where the equity that the lien encumbers is paid to the Revenue Cabinet.

(15) Revenue Form 12A501, "Certificate of Subordination of Kentucky Revenue Tax Lien", shall be presented to anyone who makes proper application requesting that the Revenue Cabinet subordinate its lien position to a new mortgage and demonstrates that such subordination is in the Commonwealth's best interest.

(16) Revenue Form 12A502, "Application for Certificate of Subordination of Kentucky Revenue Lien", shall be presented to anyone who requests to have the Revenue Cabinet subordinate its lien position to a new mortgage.

(17) Revenue Form 12A503, "Application for Specific Lien Release", shall be presented to anyone who requests that the Revenue Cabinet release its tax lien so that a specific piece of property can be sold.

(18) Revenue Form 12A504, "Personal Assessment of Corporate Officer", shall be presented to a corporate officer for the purpose of establishing responsibility of payment of trust taxes owed to the Commonwealth.

(19) Revenue Form 12A505, "Waiver Extending Statutory Period for Assessment of Corporate Officer", shall be presented to the corporate officers for the purpose of entering into a payment agreement to pay the trust taxes owed to the Commonwealth and the terms of the payment agreement extends past the statutory period for assessing responsible corporate officers.

(20) Revenue Form 12A506, "Waiver Extending Statutory Pe-

riod for Collections", shall be presented to the taxpayer for the purpose of extending the period in which the liability can be collected.

(21) Revenue Form 12A507, "Table for Figuring the Amount Exempt From Levy On Wages, Salary, and Other Income", shall be presented to employers with a wage levy on an employee for the purpose of calculating the dollar amount of wages due to the employee.

(22) Revenue Form 12A508-1, "Notice of Assessment", shall be presented to an officer of a corporation who is personally liable for trust taxes for the purpose of assessing an officer for trust taxes owed to the Commonwealth.

(23) Revenue Form 12A509, "Notification of Delinquent Taxpayer", shall be presented to the Mines and Minerals district office and the Mines and Mineral's office located in Frankfort, for the purpose of notifying the Mines and Mineral's Department that the Kentucky Revenue Cabinet is requesting that a mine license not be renewed, and notification to the entity itself for non-payment and/or filing of taxes owed to the Commonwealth.

(24) Revenue Form 12A510, "Guidelines for Wage Levy Processing", shall be presented to employers to explain how to process a wage levy on an employee.

(25) Revenue Form 12A511, "Guidelines for Bank Levy Processing", shall be presented to banks to explain how to process a bank levy.

(26) Revenue Form 12A512, "Confidential Agent Appointment", shall be presented to an agent of the taxpayer who desires to represent a taxpayer for the purpose of resolving tax issues.

(27) Revenue Form 12A513, "Nexus Questionnaire", shall be presented to companies who are unsure if they have a Kentucky tax presence for the purpose of establishing nexus with the state.

(28) Revenue Form 12A514, "Questionnaires for Persons Relative to a Notice of Assessment", shall be presented to an officer of a corporation for the purpose of resolving responsibility of the trust taxes owed to the Commonwealth.

(29) Revenue Form 12A516, "Requirements for Agreed Judgments", shall be presented to a business owner against whom the Kentucky Revenue Cabinet has a judgment for taxes for the purpose of allowing the business owner to make installment payments approved through the Franklin Circuit Court.

(30) Revenue Form 12A517, "Notice of State Tax Lien", shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(31) Revenue Form 12A518, "Certificate of Release of Tax Lien", shall be presented to the county clerk and to the taxpayer against whom the tax lien is filed for the purpose of releasing the lien and notifying the taxpayer of the release.

(32) Revenue Form 12A519, "Proof of Claim", shall be presented to the bankruptcy courts for the purpose of asserting the Kentucky Revenue Cabinet's claim upon the taxpayer's assets for the payment of delinquent taxes.

(33) Revenue Form 12A638, "Statement of Financial Condition for Individuals and Instructions", shall be presented to individuals requesting to make payments or settle their tax liability to the Commonwealth for the purpose of establishing the financial ability to make payments or settle.

(34) Revenue Form 12A639, "Statement of Financial Condition for Business and Instructions", shall be presented to business owners requesting to make payments or settle a tax liability to the Commonwealth for the purpose of establishing the financial ability to make payments or settle.

(35) Revenue Form 12B019, "Notice of Levy on Wages, Salary, and Other Income", shall be presented to employers for the purpose of levying wages from an employee who owes taxes to the Kentucky Revenue Cabinet.

(36) Revenue Form 12B020, "Notice of Levy", shall be presented to banks for the purpose of levying bank accounts of taxpayers who owe taxes to the Kentucky Revenue Cabinet.

(37) Revenue Form 12F020, "Understanding the Kentucky Revenue Cabinet Collection Process", shall be presented to persons who owe delinquent taxes or anyone interested in information on delinquent taxes for the purpose of explaining the collection process

on delinquent taxes owed to the Commonwealth.

(38) Revenue Form 12F030, "Voluntary Disclosure Program", shall be presented to persons requesting to enter into a voluntary disclosure agreement with the Kentucky Revenue Cabinet for the purpose of resolving tax liabilities with the state of Kentucky.

(39) Revenue Form 21A020, "Request for Copy of Tax Refund Check", shall be completed and submitted to the Revenue Cabinet in order to obtain a copy of a cashed refund check.

(40) Revenue Form 21A050, "Business Account Numbers", shall be issued to business taxpayers to confirm processing of the Kentucky Tax Registration Application for Individual Income Tax Employer Withholding, Corporation Income and License, Coal Severance and Processing and Sales and to advise as to the account numbers assigned by the cabinet.

(41) Revenue Form 31A001, "Vendor Contact Authorization", shall be used by a Revenue Cabinet representative to obtain permission from a taxpayer to contact his vendors concerning the issuance of exemption certificates.

(42) Revenue Form 31A012, "Interstate Sales/Income Tax Questionnaire", shall be used to establish possible taxing jurisdiction for sales and use tax and income tax for the states of Ohio and Indiana.

(43) Revenue Form 31A014, "SEATA - Southeastern Association of Tax Administrators Nexus Questionnaire", shall be used to establish possible taxing jurisdiction for sales and use tax and income tax for the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, Virginia and West Virginia.

(44) Revenue Form 31A149, "Agreement Fixing Period of Limitation Upon Assessment of Sales, Use or Severance Tax", shall be completed by a taxpayer and a representative of the Kentucky Revenue Cabinet whereby both parties consent and agree that certain sales, use or severance tax deficiencies or overpayments for specific periods may be assessed or refunded beyond the normal four (4) year statute of limitations.

(45) Revenue Form 31A685, "Authorization to Examine Bank Records", shall be used by the Revenue Cabinet to obtain permission from a taxpayer to examine records in connection with transactions at the taxpayer's bank.

(46) Revenue Form 31A725, "Statute of Limitations Agreement", shall be completed by a taxpayer and a representative of the Kentucky Revenue Cabinet whereby both parties consent and agree that certain income tax deficiencies or overpayments for specific periods may be assessed or refunded beyond the normal four (4) year statute of limitations.

(47) Revenue Form 42F102, "Large Employer Program Electronic File Fact Sheet", shall provide employers with information on the "ELF" Federal/State Electronic Tax Filing Program.

Section 2. Alcoholic Beverage Tax. (1) Revenue Form 73A504, "Acknowledgment of Tax Liability on Imported Alcoholic Beverages", shall be used by persons importing distilled spirits, wine and malt beverages into Kentucky through the United States Bureau of Customs for personal consumption in this state to acknowledge liability for the alcoholic beverage excise tax.

(2) Revenue Form 73A525, "Monthly Report of Distillers, Rectifiers or Bottlers", shall be used by distillers, rectifiers or bottlers of distilled spirits to report liability for distilled spirits excise tax and wholesale sales tax.

(3) Revenue Form 73A526, "Wholesaler's Monthly Distilled Spirits Tax Report", shall be used by wholesalers of distilled spirits to report liability for distilled spirits excise tax, wholesale sales tax and case sales tax.

(4) Revenue Form 73A527, "Wholesaler's List of Individual Spirits Shipments Acquired", shall be used by wholesalers of distilled spirits to itemize monthly receipts of distilled spirits from all sources.

(5) Revenue Form 73A530, "Consignor's Report of Alcoholic Beverages Shipped", shall be used by consignor's of distilled spirits and wine to report trafficking in alcoholic beverages during the previous month.

(6) Revenue Form 73A531, "Transporter's Report of Alcoholic Beverages Delivered", shall be used by transporters of distilled spirits, wine and malt beverages to report shipments of alcoholic beverages.

ages delivered into the state during the previous month.

(7) Revenue Form 73A535, "Report on Destruction of Alcoholic Beverages", shall be used by governmental officials to certify quantities of tax-paid alcoholic beverages no longer suitable for consumption that are destroyed in the officials' presence.

(8) Revenue Form 73A575, "Wholesaler's Monthly Wine Tax Report", shall be used by wine wholesalers to report liability for wine excise tax and wine wholesale sales tax.

(9) Revenue Form 73A576, "Vintner's Wine Report", shall be used by vintners to report liability for wine excise tax and wine wholesale sales tax.

(10) Revenue Form 73A577, "Wholesaler's List of Individual Wine Shipments Acquired", shall be used by wine wholesalers to report shipments of wine received during the previous month.

(11) Revenue Form 73A626, "Brewer's Monthly Report Schedule", shall be used by brewers of malt beverages to report sales and distribution of malt beverages into Kentucky.

(12) Revenue Form 73A627, "Beer Distributor's Monthly Report", shall be used by beer distributors to report shipments of malt beverages received during the previous month.

(13) Revenue Form 73A628, "Distributor's Monthly Malt Beverage Excise Tax and Wholesale Sales Tax Report", shall be used by distributors of malt beverages to report liability for malt beverage excise tax and malt beverage wholesale sales tax.

(14) Revenue Form 73A629, "Beer Distributor's Sales to Federal Agencies", shall be used by beer distributors to report shipments of malt beverages to federal military agencies.

Section 3. Bank Franchise Tax - Required Forms. (1) Revenue Form 73A800, "Kentucky Registration Application for Bank Franchise Tax", shall be used by financial institutions which are regularly engaged in business in Kentucky to register for the Kentucky Bank Franchise Tax.

(2) Revenue Form 73A801, "1998 Bank Franchise Tax Return", shall be used by financial institutions to determine the net capital and Kentucky Bank Franchise Tax due for the calendar year 1998.

(3) Revenue Form 73A801I, "1998 Kentucky Bank Franchise Tax Forms and Instructions Packet", provides in a single packet the forms used by financial institutions to register for the Kentucky Bank Franchise Tax, to determine the net capital and annual tax due, and to request a ninety (90) day extension of time to file the Kentucky Bank Franchise Tax Return.

(4) Revenue Form 73A802, "Application for Ninety (90) Day Extension of Time to File Kentucky Bank Franchise Tax Return", shall be used by financial institutions to request a ninety (90) day extension of time to file the Kentucky Bank Franchise Tax Return.

Section 4. Cigarette Tax - Required Forms. (1) Revenue Form 73A181, "Application for Cigarette Wholesaler License", shall be used by persons interested in acting as a cigarette wholesaler to apply for the necessary license.

(2) Revenue Form 73A182, "Application for Cigarette Subjobber License", shall be used by persons interested in acting as a cigarette subjobber to apply for the necessary license.

(3) Revenue Form 73A183, "Application for Cigarette Vending Machine Operator License", shall be used by persons interested in acting as a cigarette vending machine operator to apply for the necessary license.

(4) Revenue Form 73A184, "Application for Cigarette Transporter License", shall be used by persons interested in acting as a cigarette transporter to apply for the necessary license.

(5) Revenue Form 73A185, "Application for Cigarette Unclassified Acquirer License", shall be used by persons interested in acting as a cigarette unclassified acquirer to apply for the necessary license.

(6) Revenue Form 73A190, "Cigarette License", shall be used by the Revenue Cabinet to give evidence to cigarette wholesalers, subjobbers, vending machine operators, transporters and unclassified acquirers that they have been granted the appropriate license.

(7) Revenue Form 73A404, "Cigarette Tax Stamps or Meter Units Order Form", shall be used by licensed cigarette wholesalers or unclassified acquirers to order cigarette tax stamps.

(8) Revenue Form 73A406, "Cigarette Tax Credit Certificate",

shall be used by the Revenue Cabinet to give credit to a licensed cigarette wholesaler or unclassified acquirer for cigarette tax stamps returned or destroyed.

(9) Revenue Form 73A420, "Monthly Report of Cigarette Wholesaler", shall be used by a licensed cigarette wholesaler to report cigarette inventory, tax stamp reconciliation, and liability for cigarette administration and enforcement fee.

Section 5. Corporation Income and License Taxes. (1) Revenue Form 41A720, "Form 720, 1998 Kentucky Corporation Income and License Tax Return", shall be used by corporations to determine corporation income and license tax due in accordance with KRS 141.040 and 136.070, respectively, for years beginning in 1998.

(2) Revenue Form 41A720A, "Schedule A, Apportionment and Allocation", shall be used by corporations which have property or payroll both within and without of Kentucky to apportion and allocate net income to Kentucky in accordance with KRS 141.120.

(3) Revenue Form 41A720CC "Schedule CC, Coal Conversion Tax Credit", shall be used by corporations to compute the credit allowed by KRS 141.041 for coal used or substituted for other fuels in an eligible heating facility as described by KRS 141.041(1).

(4) Revenue Form 41A720ES, "Form 720ES, 1999 Kentucky Corporation Income Tax Estimated Tax Voucher", shall be used by corporations to submit payments of estimated corporation income tax as required by KRS 141.044.

(5) Revenue Form 41A720Ezc, "Schedule EZC, Enterprise Zone Tax Credit shall be used by corporations to determine the credit allowed to qualified businesses in accordance with KRS 154.45-100.

(6) Revenue Form 41A720HH, "Schedule HH, Kentucky Housing for Homeless Families Deduction", shall be used by individuals, corporations, fiduciaries, and partnerships to determine the credit allowed by KRS 141.0202.

(7) Revenue Form 41A720I, "Instructions, 1998 Kentucky Corporation Income and License Tax Return", shall be used by corporations to file the 1998 Kentucky Corporation Income and License Tax Return and related schedules.

(8) Revenue Form 41A720RC, "Schedule RC, Application for Income Tax Credit for Recycling and/or Composting Equipment", shall be used by individuals, corporations, fiduciaries, and partnerships to request approval for the amount of credit allowed by KRS 141.390 for the purchase and installation of recycling or composting equipment. This form shall also be used by individuals, corporations and fiduciaries to substantiate and keep a record of the amount of approved credit claimed on their income tax return.

(9) Revenue Form 41A720RC(C), "Schedule RC - Part I Continuation", shall be used by individuals, corporations, fiduciaries, and partnerships to list additional equipment for which approval of the credit allowed by KRS 141.390 is being requested.

(10) Revenue Form 41A720RC (K-1), "Schedule RC (K-1), Pro Rata/Distributive Share of Approved Recycling and/or Composting Equipment Tax Credit", shall be used by S corporations and partnerships to report to each shareholder/partner their pro rata/distributive share of approved income tax credit for the purchase and installation of recycling or composting equipment. This form shall also be used by shareholders/partners to substantiate and keep a record of the amount of approved credit claimed on their income tax return.

(11) Revenue Form 41A720S, "Form 720S, 1998 Kentucky S Corporation Income and License Tax Return", shall be used by S corporations to determine the amount of ordinary income or (loss) and to determine total shareholders' shares of income, (loss), credits, deductions, etc. for tax years beginning in 1998. This form shall also be used to determine the S corporation's income tax liability in accordance with KRS 141.040(5), if applicable and to determine license tax due in accordance with KRS 136.070.

(12) Revenue Form 41A720S1, "1998 Kentucky Corporation Income and License Tax Forms and Instructions Packet", provides in a single packet Form 720, Kentucky Corporation Income and License Tax Return, other forms commonly used by corporations in conjunction with Form 720 and instructions for filing these forms. The packet also contains Revenue Form 62A376, Kentucky Intangible Property Tax Return, and a brochure entitled "Your Rights as a

Kentucky Taxpayer".

(13) Revenue Form 41A720S2, "1998 Kentucky S Corporation Income and License Tax Forms and Instructions Packet", provides in a single packet Form 720S, Kentucky S Corporation Income and License Tax Return, other forms commonly used by S corporations in conjunction with Form 720S and instructions for filing these forms. The packet also contains Revenue Form 62A376, Kentucky Intangible Property Tax Return, and a brochure entitled "Your Rights as a Kentucky Taxpayer".

(14) Revenue Form 41A720-S4, "Instructions for Filing Corporation Estimated Income Tax Voucher", are instructions used by corporations to determine the amount of estimated corporation income tax that is required to be paid in accordance with KRS 141.044.

(15) Revenue Form 41A720-S16, "Schedule KREDA, Tax Credit Computation Schedule (for A KREDA Project of C Corporations)", shall be used by corporations which have a Kentucky Rural Economic Development Act (KREDA) project to determine the credit allowed against the Kentucky corporation income tax liability in accordance with KRS 141.347. Instructions are included on the back of the form.

(16) Revenue Form 41A720-S17, "Schedule KREDA-T, Tracking Schedule for A KREDA Project", shall be used by corporations which have a Kentucky Rural Economic Development Act (KREDA) project to maintain a record of the debt service payments, wage assessment fees and income tax credits for the duration of the project. Instructions are included on the back of the form.

(17) Revenue Form 41A720-S18, "Schedule KREDA-SP, Tax Computation Schedule (for A KREDA Project of S Corporations or Partnerships)", shall be used by S corporations and partnerships which have a Kentucky Rural Economic Development Act (KREDA) project to determine the credit allowed against the Kentucky income tax liability in accordance with KRS 141.347. Instructions are included on the back of the form.

(18) Revenue Form 41A720-S20, "Schedule KIDA, Tax Credit Computation Schedule (for A KIDA Project of C Corporations)", shall be used by corporations which have a Kentucky Industrial Development Act (KIDA) project to determine the credit allowed against the Kentucky corporation income tax liability in accordance with KRS 141.400. Instructions are included on the back of the form.

(19) Revenue Form 41A720-S21, "Schedule KIDA-T, Tracking Schedule for A KIDA Project", shall be used by corporations which have a Kentucky Industrial Development Act (KIDA) project to maintain a record of the debt service payments and income tax credits for the duration of the project. Instructions are included on the back of the form.

(20) Revenue Form 41A720-S22, "Schedule KIDA-SP, Tax Computation Schedule (for A KIDA Project of S Corporations or Partnerships)", shall be used by S corporations and partnerships which have a Kentucky Industrial Development Act (KIDA) project to determine the credit allowed against the Kentucky income tax liability in accordance with KRS 141.400. Instructions are included on the back of the form.

(21) Revenue Form 41A720-S24, "Schedule KIRA, Tax Credit Computation Schedule (for A KIRA Project of C Corporations)", shall be used by corporations which have a Kentucky Industrial Revitalization Act (KIRA) project to determine the credit allowed against the Kentucky corporation income tax liability in accordance with KRS 141.403. Instructions are included on the back of the form.

(22) Revenue Form 41A720-S25, "Schedule KIRA-T, Tracking Schedule for A KIRA Project", shall be used by corporations which have a Kentucky Industrial Revitalization Act (KIRA) project to maintain a record of the approved costs, wage assessment fees and income tax credits for the duration of the project. Instructions are included on the back of the form.

(23) Revenue Form 41A720-S26, "Schedule KIRA-SP, Tax Computation Schedule (for A KIRA Project of S Corporations or Partnerships)", shall be used by S corporations and partnerships which have a Kentucky Industrial Revitalization Act (KIRA) project to determine the credit allowed against the Kentucky income tax liability in accordance with KRS 141.403. Instructions are included on the back of the form.

(24) Revenue Form 41A720-S27, "Schedule KJDA, Tax Credit Computation Schedule (for A KJDA Project of C Corporations)",

shall be used by corporations which have a Kentucky Jobs Development Act (KJDA) project to determine the credit allowed against the Kentucky corporation income tax liability in accordance with KRS 141.407. Instructions are included on the back of the form.

(25) Revenue Form 41A720-S28, "Schedule KJDA-T, Tracking Schedule for A KJDA Project", shall be used by corporations which have a Kentucky Jobs Development Act (KJDA) project to maintain a record of the approved costs, wage assessment fees, in-lieu-of credits and income tax credits for the duration of the project. Instructions are included on the back of the form.

(26) Revenue Form 41A720-S29, "Schedule KJDA-SP, Tax Computation Schedule (for A KJDA Project of S Corporations or Partnerships)", shall be used by S corporations and partnerships which have a Kentucky Jobs Development Act (KJDA) project to determine the credit allowed against the Kentucky income tax liability in accordance with KRS 141.407. Instructions are included on the back of the form.

(27) Revenue Form 41A720-S30, "Schedule TCS, Tax Credit Summary Schedule (for C Corporations with More than One (1) Economic Development Project)", shall be used by corporations which have more than one (1) economic development project to reflect the amount of credit claimed for each project for the taxable year. Instructions are included on the back of the form.

(28) Revenue Form 41A720-S31, "1998 Kentucky Schedule K for S Corporations with Economic Development Project(s)", shall be used by S corporations which have one or more economic development projects to determine total shareholders' share of income, credits, deductions, etc., excluding the amount of each item of income, credit, deduction, etc., attributable to the projects. Instructions are included on the back of the form.

(29) Revenue Form 41A720-S32, "1998 Kentucky Schedule K for Partnerships with Economic Development Project(s)", shall be used by partnerships which have one (1) or more economic development projects to determine total partners' share of income, credits, deductions, etc., excluding the amount of each item of income, credit, deduction, etc., attributable to the projects. Instructions are included on the back of the form.

(30) Revenue Form 41A720SI, "Instructions for 1998 Kentucky S Corporation Income and License Tax Return", are instructions used by S corporations to file the 1998 Kentucky S Corporation Income and License Tax Return and related schedules.

(31) Revenue Form 41A720S (K-1), "Schedule K-1 (Form 720S), 1998 Kentucky Shareholder's Share of Income, Credits, Deductions, Etc.", shall be used by S corporations to report to their shareholders the amount of income, credit, deduction, etc., that the shareholder should report for Kentucky income tax purposes. Instructions are included on the back of the form to assist the shareholder in preparing their Kentucky individual income tax return.

(32) Revenue Form 41A720SL, "Application for Six (6) Month Extension of Time to File Kentucky Corporation Income and License Tax Return", shall be used by corporations to request a six (6) month extension of time to file the Kentucky Corporation Income and License Tax Return. Instructions are included on the back of the form.

(33) Revenue Form 41A720X, "Form 720X, Amended Kentucky Corporation Income Tax and Corporation License Tax Return", shall be used by corporations to report changes to the Kentucky Corporation Income and License Tax Return, as previously filed.

(34) Revenue Form 41A722, "Form 722, Election to File Consolidated Kentucky Corporation Income Tax Return" shall be used by corporations to elect to file a consolidated Kentucky income tax return in accordance with KRS 141.200.

(35) Revenue Form 41A750, "Business Development Corporation Tax Return", shall be used by corporations organized under the provisions of KRS Chapter 155 to determine the excise tax due in accordance with KRS 155.170.

(36) Revenue Form 41A851K, "Form 851-K, Kentucky Affiliations and Payment Schedule", shall be used by corporations which are filing a consolidated Kentucky income tax return to identify the members of the affiliated group which are subject to the Kentucky corporation license tax and to list the amount of tax being paid for each corporation when payment is being submitted by a single check.

(37) Revenue Form 42A799, "Kentucky Information Return for Calendar Year ____", shall be used by corporations, in accordance with KRS 141.150 and 103 KAR 19:030, to report distributions of assets as a result of dissolution or liquidation. A separate form is to be prepared for each payee and filed with the Revenue Cabinet and a copy provided to the payee.

(38) Revenue Form 42A799-S1, "Form 796, Annual Income Information Return, shall be used by corporations, in accordance with KRS 141.150 and 103 KAR 19:030, to summarize the reports of distributions of assets as a result of dissolution or liquidation.

Section 6. Health Care Provider Tax. (1) Revenue Form 73A060, "Health Care Provider Tax Return" shall be used by taxpayers to file the gross revenues and compute the tax for the health care provider tax.

(2) Revenue Form 73A060(A), "Health Care Provider Tax Return-Keep this Copy" shall be used by the taxpayers to compute the tax on the gross revenues.

(3) Revenue Form 73A060(I), "Instructions-Kentucky Health Care Provider Tax Return" shall be used by the taxpayers to determine if the service they provide is taxable, what tax rate is applicable, and which line to use for reporting.

(4) Revenue Form 73A061, "Kentucky Health Care Provider Application for Certificate of Registration" shall be completed by the taxpayer to register for the health care provider tax.

Section 7. Individual Income and Withholding Taxes. (1) Revenue Form 12A200, "Kentucky Individual Income Tax Installment Agreement Request" shall be submitted to the Revenue Cabinet to request an installment agreement to pay tax due.

(2) Revenue Form 40A100, "Application for Refund of Income Taxes" shall be presented to the Revenue Cabinet to request a refund of income taxes paid.

(3) Revenue Form 40A102, "Application for Extension of Time to File Individual, Partnership and Fiduciary Income Tax Returns for Kentucky" shall be submitted to the Revenue Cabinet by individuals, partnerships, and fiduciaries prior to the date prescribed by law for filing a return to request as six (6) months extension to file the return or to remit payment of tax prior to the date the return is due.

(4) Revenue Form 40A727, "Kentucky Income Tax Forms Requirement" shall be used to order income tax forms.

(5) Revenue Form 42A680, "Kentucky Individual Income Tax Return Audit Report" is used by the Revenue Cabinet to advise an individual of an adjustment to income tax credits on an individual income tax return which may result in an underpayment or overpayment.

(6) Revenue Form 42A701B, "Kentucky Individual Income Tax Return Audit Report" shall be issued by the Revenue Cabinet to advise an individual of an adjustment to income tax and credits on an individual income tax return which may result in an underpayment or overpayment.

(7) Revenue Form 42A705, "Kentucky Income Tax Withholding Audit Report" is used by the Revenue Cabinet to explain an adjustment to withholding tax reported and to the credits claimed on a withholding income tax return.

(8) Revenue Form 42A740, "1998 Kentucky Individual Income Tax Return Full-Year Residents Only" shall be completed by resident individuals to report taxable income and income tax liability for taxable years beginning after December 31, 1997, and shall be filed within three and one-half (3 1/2) months after the closer of the taxable year.

(9) Revenue Form 42A740-EZ, "1998 Kentucky Individual Income Tax Return for Single Persons with No Dependents" shall be completed by resident individuals to report taxable income and income tax liability for taxable years beginning after December 31, 1997, and shall be filed within three and one-half (3 1/2) months after the closer of the taxable year.

(10) Revenue Form 42A740-L, "1998 Kentucky Income Tax Postcard" is used to mail labels and information to resident individuals.

(11) Revenue Form 42A740-S, "1998 Kentucky Individual Income Tax Return, Full-Year Residents Only" shall be completed by resident individuals to report taxable income and income tax liability

for taxable years beginning December 31, 1997, and shall be filed within three and one-half (3 1/2) months after the close of the taxable year.

(12) Revenue Form 42A740-S9, "1998 Kentucky Income Tax Return, Nonresident or Part Year Resident" shall be completed by part-year or full-year nonresident individuals to report taxable income and income tax liability for taxable years beginning December 31, 1997, and shall be filed within three and one-half (3 1/2) months after the closer of the taxable year.

(13) Revenue Form 42A740-NP-A, "Schedule A, 1998 Kentucky Schedule A Itemized Deductions" shall be completed and attached to Form 42A740-S9 by part-year or full-year nonresidents in support of itemized deductions claimed for 1998.

(14) Revenue Form 42A740-NP-ME, "Schedule ME, 1998 Moving Expense Reimbursement" shall be completed and attached to Form 42A740-S9 by part-year or full-year nonresidents in support of moving reimbursement income and expenses claimed for 1998.

(15) Revenue Form 42A740-S9-R, "1998 Kentucky Income Tax Return Nonresident-Reciprocal State" shall be completed by resident individuals of reciprocal states to request a refund of withholding for 1998.

(16) Revenue Form 42A740-S10, "1998 Kentucky Income Tax Return, Nonresident or Part-Year Resident forms and instructions" packet is mailed to nonresident and part-year resident individuals for use in determining taxable income and income tax liability for 1998.

(17) Revenue Form 42A704-S11, "1998 Kentucky Individual Income Tax Instructions for Forms 740, 740-S, and 740-EZ" is provided for use by residents in determining taxable income and income tax liability for 1998.

(18) Revenue Form 42A740-ES, "1999 Individual Income Tax Kentucky Estimated Tax Voucher" shall be submitted to Revenue Cabinet by individuals with payment of quarterly estimated tax.

(19) Revenue Form 42A740-S1, "2210-K, 1998 Underpayment of Estimated Tax by Individuals" shall be filed by individuals to request a waiver of estimated tax penalty or to compute and self assess an estimated tax penalty for 1998.

(20) Revenue Form 42A740-S4, "1999 Instructions for Filing Estimated Tax Vouchers" shall be used to compute the amount of estimated tax owed for 1999.

(21) Revenue Form 42A740-T, "1998 Kentucky Individual Income TeleFile Tax Record and Instructions" shall be completed by resident individuals who choose to file their individual income tax return by telephone.

(22) Revenue Form 42A740-X, "Amended Kentucky Individual Income Tax Return for Tax Year 1995, 1996, 1997, 1998" shall be completed by individuals and filed with the Revenue Cabinet to amend a previously filed return.

(23) Revenue Form 42A740-A, "Kentucky Schedule A, 1998 Itemized Deductions" shall be completed by resident individuals and attached to Form 740 in support of itemized deductions claimed for 1998.

(24) Revenue Form 42A740-P, "Schedule P, 1998 Kentucky Pension Income Exclusion" shall be completed by individuals and attached to Form 740 to compute the amount of allowable pension exclusion for 1998.

(25) Revenue Form 42A740-TC, "Schedule TC, 1998 Tax Computation Schedule" effective January 1, 1998 shall be completed by individuals and attached to Form 740 to claim credit for tax paid to another state, the hiring of an unemployed person, purchasing (installing) recycling and/or composting equipment, and to compute tax liability using five (5) or ten (10) year averaging for 1998.

(26) Revenue Form 42A740-UTC, "Schedule UTC, 1998 Unemployment Tax Credit" shall be completed by individuals and attached to Form 740, or Form 740-NP to provide Department for Employment Services Certificate Numbers in support of credit claimed for hiring an unemployed person(s).

(27) Revenue Form 42A740-S18, "8582-K, 1998 Kentucky Passive Activity Loss Limitations" shall be completed by individual taxpayers and attached to their individual tax return in support of allowable deductions and loss carryovers of a passive activity.

(28) Revenue Form 42A740-S20, "1045-K, 1998 Kentucky Net Operating Loss Application for Income Tax Refund" shall be used by individuals to compute and carry back a net operating loss deduction

tion.

(29) Revenue Form 42A740-S20(I), "Instructions - Form 1045-K" is provided to individuals to explain the purpose of Form 1045-K and provide line by line instructions on how to complete the form.

(30) Revenue Form 42A740-S21, "4972-K, 1998 Kentucky Tax on Lump-Sum Distributions" shall be completed by individuals to compute tax liability on lump sum distributions and attached to their income tax return.

(31) Revenue Form 42A740-S22, "8453-K, 1998 Kentucky Individual Income Tax Declaration for Electronic Filing" shall be completed, signed by individual taxpayer(s) and submitted to Revenue Cabinet in support of an electronically filed return.

(32) Revenue Form 42A740-S23, "740-V, 1998 Kentucky Electronic Payment Voucher" shall be used by individual taxpayers and submitted to the Revenue Cabinet with payment of additional tax due on an electronically filed return.

(33) Revenue Form 42A741, "Form 741, 1998 Kentucky Fiduciary Income Tax Return" shall be completed and filed with the Revenue Cabinet within three (3) months and fifteen (15) days after the close of the taxable year by the fiduciary of an estate or trust to report income and tax liability of the estate or trust.

(34) Revenue Form 42A741(I), "Instructions - Form 741, 1998 Kentucky Fiduciary Income Tax Return" is an instruction guide provided by the Revenue Cabinet for completing the 1998 Form 741.

(35) Revenue Form 42A741-D, "Schedule D, Form 741, 1998 Kentucky Capital Gains and Losses" shall be completed and attached to Form 741 by a fiduciary to report income from capital gains and losses.

(36) Revenue Form 42A741(K-1), "Schedule K-1 Form 741, 1998 Kentucky Beneficiary's Share of Income, Deduction, Credits, etc." shall be filed by the fiduciary with Form 741 to report each beneficiary's share of income, deductions, credits.

(37) Revenue Form 42A765, "Form 765, 1998 Kentucky Partnership Income Return" shall be completed and filed with the Revenue Cabinet within three (3) months and fifteen (15) days after the close of the taxable year by a partnership to report income, deductions and credits of a partnership for 1998.

(38) Revenue Form 42A765(I), "Instructions-Form 765, 1998 Kentucky Partnership Income Return" is provided to assist the partnership in completing a partnership return for 1998.

(39) Revenue Form 42A765(K-1), "Kentucky Schedule K-1 Form 765, 1998 Partner's Share of Income, Credits, Deductions, etc." shall be filed by the partnership with Form 765 to report each partner's share of income, deductions, credits.

(40) Revenue Form 42A800, "Withholding Kentucky Income Tax Instructions for Employers and Withholding Tax Tables" shall be used by employers to determine the amount of Kentucky tax to withhold from wages.

(41) Revenue Form 42A801, "Form K-1, Kentucky Employer's Return and Worksheet of Income Tax Withheld" shall be used by employers to report wages and taxes withheld for the filing period.

(42) Revenue Form 42A801-(A), "Form K-1A, Kentucky Employer's Return of Income Tax Withheld" shall be used by Kentucky Revenue Cabinet employees to complete a return of a delinquent filer for any filing period.

(43) Revenue Form 42A801-E, "Form K-1E, Kentucky Employer's Return and Worksheet of Income Tax Withheld - Electronic Funds Transfer" shall be used by employers who remit taxes withheld electronically to report wages and tax withheld for the filing period.

(44) Revenue Form 42A802, "W-2/ K-2, 1998 Wage and Tax Statement" shall be used by employers to report wages and Kentucky tax withheld for 1998.

(45) Revenue Form 42A803, "Form K-3, Kentucky Employer's Return and Worksheet of Income Tax Withheld" shall be used by employers to report wages and tax withheld for the filing period and annually reconcile wages and taxes reported.

(46) Revenue Form 42A803-(A), "Form K-3A Employer's Return of Income Tax Withheld" shall be used by Kentucky Revenue Cabinet employees to complete a return of a delinquent filer for any annual filing period.

(47) Revenue Form 42A803-E, "Form K-3E, Kentucky Employer's Income Tax Withheld Return and Worksheet - Electronic

Funds Transfer" shall be used by employers to report wages and tax withheld for the filing period and to annually reconcile wages and taxes reported.

(48) Revenue Form 42A804, "Form K-4, Kentucky Revenue Cabinet Employee's Withholding Exemption Certificate" shall be used by employees to inform employers of the number of exemptions used to determine the amount of Kentucky tax to withhold from wages.

(49) Revenue Form 42A804-A, "Form K-4A, Kentucky Revenue Cabinet Withholding Exemptions for Excess Itemized Deductions" shall be used by employees to determine additional withholding exemptions.

(50) Revenue Form 42A804-E, "Form K-4E, Special Withholding Exemption Certificate" shall be used by employees to inform employers of special tax exempt status.

(51) Revenue Form 42A806, "Transmitter Report for Filing Kentucky Wage Statements" shall be used by employers to annually submit Forms W-2/K-2 Wages and Tax Statements.

(52) Revenue Form 42A807, "Form K-4FC, Fort Campbell Exemption Certificate" shall be completed by nonresident employees working at Fort Campbell Kentucky to inform employers of special tax exempt status.

(53) Revenue Form 42A809, "Certificate of Nonresidence" shall be used by employees to inform employers of special tax exempt status.

(54) Revenue Form 42A810, "Nonresident's Affidavit - Kentucky Individual Income Tax" shall be used by individuals to submit sworn statement concerning residency status.

(55) Revenue Form 42F010, "Should I Be Making Estimated Tax Payments" is a brochure provided to individuals to answer common questions about estimated tax filing requirements in Kentucky.

Section 8. Inheritance Tax - Required Forms. (1) Revenue Form 92A101, "Kentucky Nonresident Inheritance and Estate Tax Return and Instructions", shall be used by the personal representative or beneficiary of a nonresident estate to establish the inheritance and estate tax due the Commonwealth.

(2) Revenue Form 92A110, "Real Estate Data Report", shall be used by the personal representative or beneficiary of an estate to establish the taxable value of real estate for inheritance tax purpose.

(3) Revenue Form 92A120, "Kentucky Resident Inheritance and Estate Tax Return Packet", shall be used by the personal representative or beneficiary of a resident estate to establish the inheritance and estate tax due the Commonwealth.

(4) Revenue Form 92A120I, "Instructions 92A120 Packet", is an instruction booklet to be used by the personal representative or beneficiary of a resident estate to prepare the appropriate inheritance and estate tax return.

(5) Revenue Form 92A120S, "Inheritance and Estate Tax Short Form Packet" shall be used by the personal representative or beneficiary of a resident estate to establish the appropriate inheritance and estate tax due the Commonwealth.

(6) Revenue Form 92A120X, "Kentucky Spousal Inheritance Tax Return", shall be used by the personal representative or beneficiary of a resident estate to establish there is no inheritance and estate tax due the Commonwealth.

(7) Revenue Form 92A121, "Acceptance of Inheritance & Estate Tax Return", shall be sent by the inheritance and estate tax section to the personal representative or beneficiary of an estate to certify that all death taxes due the Commonwealth have been paid.

(8) Revenue Form 92A200, "Kentucky Inheritance and Estate Tax Return", shall be used by the personal representative or beneficiary of a resident or nonresident estate to establish the inheritance and estate tax due the Commonwealth.

(9) Revenue Form 92A201, "Kentucky Inheritance and Estate Tax Return - No Tax Due", shall be used by the personal representative or beneficiary of a resident or nonresident estate to establish that there is no inheritance and estate tax due the Commonwealth.

(10) Revenue Form 92A202, "Kentucky Estate Tax Return", shall be used by the personal representative or beneficiary of a resident or nonresident estate to establish the estate tax due the Commonwealth.

(11) Revenue Form 92A203, "Kentucky Inheritance and Estate Tax Return - Short Form", shall be used by the personal representative or beneficiary of a resident or nonresident estate to establish the inheritance and estate tax due the Commonwealth.

(12) Revenue Form 92A204, "Real Estate Valuation Information Sheet", shall be used by the personal representative or beneficiary of an estate to establish the taxable value of real estate for inheritance tax purposes.

(13) Revenue Form 92A500, "Notice of Insurance Payment", shall be used by insurance companies to notify the Revenue Cabinet when proceeds of a life insurance policy are paid following a death.

(14) Revenue Form 92A926, "Notice of Benefits Paid by Employer/Insurance Company", shall be used by insurance companies to notify the Revenue Cabinet when proceeds of a life insurance policy are paid following a death.

(15) Revenue Form 92A928, "Election to Defer the Payment of Inheritance Tax through Installments", shall be used by the beneficiary(s) of an estate to defer the payment of inheritance tax through installments.

(16) Revenue Form 92A929, "Notice of Agricultural and Horticultural Inheritance Tax Lien", shall be used to request the county clerk place a lien on a particular piece of real estate due to the personal representative, on behalf of an estate, electing the use of agricultural or horticultural value.

(17) Revenue Form 92A930, "Certificate of Release of Agricultural and Horticultural Inheritance Tax Lien", shall be used by the inheritance and estate tax section to request the county clerk release the five (5) year lien that guaranteed collection of tax if terms of agreement not met.

(18) Revenue Form 92A931, "Certificate of Partial Discharge of the Agricultural and Horticultural Inheritance Tax Lien", shall be used by the inheritance and estate tax section to request the county clerk do a partial release of the five (5) year lien that guaranteed collection of tax if terms of agreement not met.

(19) Revenue Form 92A932, "Receipt of Inheritance and Estate Taxes", is a receipt given to taxpayer when tax payment is received in the office.

(20) Revenue Form 92A936, "Election to Qualify Terminable Interest Property and/or Power of Appointment Property", shall be used by personal representative or beneficiary to elect to qualify terminable interest property and/or power of appointment property when proper criteria exists.

(21) Revenue Form 92F101, "A Guide to Kentucky Inheritance and Estate Taxes", shall be used by the general public for information purposes concerning Kentucky inheritance and estate tax.

Section 9. Insurance Tax - Required Forms. (1) Revenue Form 74A100, "Insurance Premiums Tax Return", shall be used by foreign life insurance companies, stock insurance companies other than life, and foreign mutual companies other than life to report liability for foreign life insurance tax, other than life insurance tax, fire insurance tax and retaliatory taxes and fees.

(2) Revenue Form 74A101, "Insurance Tax Return - Domestic Mutual, Domestic Mutual Fire, or Cooperative and Assessment Fire Insurance Companies", shall be used by domestic mutual, domestic mutual fire or cooperative and assessment fire insurance companies to report liability for premiums tax on amounts paid to authorized and unauthorized reinsurance companies.

(3) Revenue Form 74A105, "Unauthorized Insurance Tax Return", shall be used by insurers not authorized to conduct business in the Commonwealth of Kentucky by the Department of Insurance to report liability for insurance premiums tax.

(4) Revenue Form 74A110, "Kentucky Estimated Insurance Premiums Tax", shall be used by insurance companies to remit estimated premiums tax payments.

(5) Revenue Form 74A116, "Tax Election for Domestic Life Insurance Companies", shall be used by domestic life insurance companies to make an irrevocable election to pay state capital and reserves tax, premiums tax, and the county and city capital and reserves tax or to pay state premiums tax and local government premiums tax.

(6) Revenue Form 74A117, "Monthly Insurance Surcharge Re-

port - Domestic Mutual, Cooperative and Assessment Fire Insurer", shall be used by domestic mutual, cooperative and assessment fire insurers to report liability for insurance premium surcharge.

(7) Revenue Form 74A118, "Monthly Insurance Surcharge Report", shall be used by domestic, foreign and alien insurers, other than life and health insurers, to report liability for insurance premium surcharge.

Section 10. Legal Process - Required Forms. Revenue Form 73A200, "County Clerk's Monthly Report of Legal Process Tax Receipts", shall be used by the county clerks to report the county's liability for the legal process tax and spouse abuse shelter fund.

Section 11. Marijuana and Controlled Substance - Required Forms. (1) Revenue Form 73A701, "Instructions for Affixing Marijuana and Controlled Substance Tax Evidence (Stamp)", shall be used by the Kentucky Revenue Cabinet to provide persons ordering marijuana and controlled substance tax stamps with the appropriate instructions on affixing the stamps.

(2) Revenue Form 73A702, "Notice of Seizure and Tax Lien KRS 138.870 Marijuana and Controlled Substance Tax", shall be used by law enforcement officials to notify the Kentucky Revenue Cabinet and county clerk of the seizure of marijuana and other controlled substances.

(3) Revenue Form 73A703, "Marijuana or Controlled Substance Stamps Order Form", shall be used by taxpayers to order stamps for marijuana or controlled substances.

Section 12. Motor Fuels - Required Forms. (1) Revenue Form 72A004, "Motor Fuels Tax Watercraft Refund Bond", shall be used by an approved surety to establish surety obligation upon the payment to the Commonwealth of any refunds to which the public boat dock refund applicant was not entitled.

(2) Revenue Form 72A005, "Application for Approval to Sell Watercraft Refund Motor Fuels - Public Boat Dock", shall be used by a public boat dock to make application.

(3) Revenue Form 72A006, "Motor Fuel Tax Refund Application - Public Boat Dock", shall be used by public boat dock refund applicant to make application for refund of liquid fuel tax on purchases of liquid fuel delivered directly to the fuel tanks attached to the watercraft and used exclusively in watercraft motors.

(4) Revenue Form 72A010, "Motor Fuel Tax Refund Permit Holder's Bond", shall be used by an approved surety to establish surety obligation upon the payment of all taxes, penalties, and fines for which designated refund applicant may become liable under KRS 138.344 to 138.355.

(5) Revenue Form 72A011, "Petroleum Storage Tank Environmental Assurance Fee Monthly Report", shall be used by licensed gasoline and/or special fuels dealers to report and remit monthly petroleum storage tank environmental assurance fee amounts due.

(6) Revenue Form 72A052, "Kentucky Motor Fuels Tax Refund Permit", shall be used by the KRC to issue Kentucky Motor Fuels Tax Refund Permits.

(7) Revenue Form 72A053-A, "Application for Refund of Kentucky Motor Fuel Tax Paid on Nonhighway Motor Fuels", shall be used by Kentucky Motor Fuels Tax Refund Permit holders to apply for refund of Kentucky motor fuel tax paid on nonhighway motor fuel.

(8) Revenue Form 72A054-A, "Kentucky Motor Fuels Tax Refund Invoice", shall be used by licensed Kentucky gasoline and/or special fuels Dealers to authorize purchases of nonhighway agricultural use and/or nonhighway special fuels for refund of Kentucky motor fuel tax paid.

(9) Revenue Form 72A065, "Aviation Gasoline Tax Refund Bond", shall be used by an approved surety to establish surety obligation upon the payment to the Commonwealth of any refunds to which the aviation gasoline refund applicant was not entitled.

(10) Revenue Form 72A066, "Application for Refund of Kentucky Tax Paid on Gasoline Used in Operation of Aircraft", shall be used by aviation gasoline refund applicant to make application for refund of Kentucky tax paid on gasoline used in operation of aircraft.

(11) Revenue Form 72A067, "Application for Approval to Receive a Refund of Aviation Motor Fuels", shall be used by aviation gasoline tax refund applicants seeking approval to receive a refund

of aviation gasoline tax.

(12) Revenue Form 72A071, "Motor Fuels Tax Refund Bond - City and Suburban Bus, Nonprofit Bus, Senior Citizen Transportation, or Taxicabs", shall be used by a surety company authorized to do business in Kentucky to establish surety obligation upon the payment to the Commonwealth of any refunds to which a city and suburban bus, nonprofit bus, senior citizen transportation or taxicab refund applicant was not entitled.

(13) Revenue Form 72A072, "Application for Motor Fuel Refund - City and Suburban Bus Companies, Nonprofit Bus Companies, Senior Citizen Transportation and Taxicab Companies", shall be used by refund applicants to make application for refund of Kentucky tax paid on fuel used in the operation of city and suburban bus companies, nonprofit bus companies, senior citizen transportation and taxicab companies.

(14) Revenue Form 72A073, "Application for Approval to Receive a Refund of Tax on Motor Fuels Consumed by City and Suburban Buses, Nonprofit Buses, Senior Citizen Transportation and Taxicabs", shall be used by qualifying applicants to make application for approval to receive a refund of tax on motor fuels consumed by city and suburban buses, nonprofit buses, senior citizen transportation and taxicabs.

(15) Revenue Form 72A077, "Licensed Gasoline Dealer's Monthly Report of Gasoline Sales to U.S. Government", shall be used by licensed gasoline dealers to report gasoline sales to U.S. government on their monthly reports.

(16) Revenue Form 72A078, "Statement of Claim for Accountable Loss of Motor Fuel", shall be used by licensed gasoline and/or special fuels dealers to make claim for accountable loss of motor fuel.

(17) Revenue Form 72A080, "Report of Gasoline Received from Licensed Kentucky Dealers", shall be used by licensed gasoline dealers to report receipt of tax free gasoline from licensed Kentucky dealers on the gasoline dealer's monthly report.

(18) Revenue Form 72A081, "Report of Gasoline Imported from Other States" shall be used by licensed gasoline dealers to report gasoline imported from other states, on the gasoline dealer's monthly report.

(19) Revenue Form 72A081-P, "Purchaser's Report Gasoline Imported into Kentucky - Kentucky Tax Paid to Suppliers", shall be used by licensed gasoline dealers to report gasoline imported into Kentucky where the Kentucky tax was paid to the supplier, on the gasoline dealer's monthly report.

(20) Revenue Form 72A081-S, "Supplier's Report Gasoline Imported into Kentucky - Kentucky Tax Paid by Supplier", shall be used by licensed gasoline dealers to report gasoline imported into Kentucky where the Kentucky tax was paid by the supplier, on the gasoline dealer's monthly report.

(21) Revenue Form 72A082, "Report of Gasoline Imported", shall be used by licensed gasoline dealers to report gasoline imported, on the gasoline dealer's monthly report.

(22) Revenue Form 72A083, "Report of Gasoline Received from Terminal or Refinery", shall be used by licensed gasoline dealers to report gasoline received from terminal or refinery, on the licensed gasoline dealer's monthly report.

(23) Revenue Form 72A084, "Report of Gasoline Exported", shall be used by licensed gasoline dealers to report gasoline exported, on the gasoline dealer's monthly report.

(24) Revenue Form 72A085, "Report of Gasoline Sold to Licensed Kentucky Dealers", shall be used by licensed gasoline dealers to report gasoline sold to licensed Kentucky dealers, on the gasoline dealer's monthly report.

(25) Revenue Form 72A086, "Report of Gasoline Withdrawals from Terminal Storage", shall be used by licensed gasoline dealers to report gasoline withdrawals from terminal storage, on the gasoline dealer's monthly report.

(26) Revenue Form 72A087, "Report of Gasoline Withdrawals to Licensed Kentucky Dealers", shall be used by licensed gasoline dealers to report withdrawals of gasoline to licensed Kentucky dealers, on the gasoline dealer's monthly report.

(27) Revenue Form 72A088, "Report of Gasoline Withdrawals Exported or Sold for Export", shall be used by licensed gasoline dealers to report withdrawals of gasoline exported or sold for export,

on the gasoline dealer's monthly report.

(28) Revenue Form 72A089, "Licensed Gasoline Dealers Monthly Report", shall be used by licensed gasoline dealers to report and remit monthly gasoline tax.

(29) Revenue Form 72A090, "Gasoline Dealers Monthly Terminal Storage Report", shall be used by licensed gasoline dealers to report monthly terminal storage activity, on the gasoline dealer's monthly report.

(30) Revenue Form 72A098, "Transporter's Report of Motor Fuel Delivered", shall be used by licensed transporters to report monthly motor fuel deliveries.

(31) Revenue Form 72A103, "Licensed Gasoline Dealer's Estimated Tax Payment", shall be used by licensed gasoline dealers to report and remit estimated gasoline tax monthly payments.

(32) Revenue Form 72A107, "Licensed Special Fuels Dealer's Monthly Report of Special Fuels Sales to U.S. Government", shall be used by licensed special fuels dealers to report special fuels sales to U.S. government, on the special fuels dealer's monthly report.

(33) Revenue Form 72A110, "Certification of Special Fuels Nonhighway Use", shall be used by qualifying entities to certify the nonhighway use of special fuels. The certification is maintained by the licensed special fuels dealer.

(34) Revenue Form 72A124, "Report of Kerosene Received and Blended", shall be used by licensed special fuels dealers to report kerosene received and blended, on the licensed special fuels dealer's monthly report.

(35) Revenue form 72A127, "Special Fuels Dealer's Schedule of Sales Qualifying for State or Local Government Agency Credit", shall be used by a licensed special fuels dealer to list sales of special fuels to state or local government agencies for nonhighway special fuels use for a specific monthly period.

(36) Revenue form 72A128, "Special Fuels Dealer's Schedule of Sales Qualifying for Nonprofit Religious, Charitable or Educational Organization Credit", shall be used by a licensed special fuels dealer to list sales of special fuels to nonprofit religious, charitable or education organizations for nonhighway special fuels use for a specific monthly period.

(37) Revenue form 72A131, "Special Fuels Dealer's Schedule of Sales Qualifying for Agricultural Tax Credit", shall be used by a licensed special fuels dealer to list sales of special fuels to motor fuels tax refund permit holders for agricultural special fuels use for a specific monthly period.

(38) Revenue form 72A132, "Special Fuels Dealer's Schedule of Sales Qualifying for Residential Heating Tax Credit", shall be used by a licensed special fuels dealer to list sales of special fuels to consumers for heating a personal residence for a specific monthly period.

(39) Revenue form 72A135, "Application for Kentucky Motor Fuels Tax Refund Permit", shall be used by a person desiring to qualify for a refund of motor fuel excise tax paid for nonhighway use.

(40) Revenue form 72A138, "Licensed Special Fuels Dealer's Monthly Report", shall be used by a licensed special fuels dealer to report the total special fuels gallons received and distributed for a specific monthly period.

(41) Revenue form 72A153, "Report of Special Fuels Received from Licensed Kentucky Dealers", shall be used by a licensed special fuels dealer to list every special fuels shipment originating in Kentucky from another licensed special fuels dealer for a specific monthly period.

(42) Revenue form 72A154, "Report of Special Fuels Imported from Other States", shall be used by a licensed special fuels dealer to list every special fuels shipment imported into Kentucky from other state sources on which the Kentucky special fuels excise tax was not precollected by the supplier for a specific monthly period.

(43) Revenue form 72A154-P, "Purchaser's Report Special Fuels Imported-Kentucky Tax Paid to Supplier", shall be used by a licensed special fuels dealer to list every special fuels shipment imported into Kentucky from other state terminals on which the Kentucky special fuels excise tax was paid to the supplier for a specific monthly period.

(44) Revenue form 72A154-S, "Supplier's Report Special Fuels Imported-Kentucky Tax Paid by Supplier", shall be used by a li-

censed special fuels dealer to list every special fuels shipment imported into Kentucky from other state terminals on which the Kentucky special fuels excise tax was charged to the dealer's customer for a specific monthly period.

(45) Revenue form 72A155, "Report of Special Fuels Exported or Sold for Export", shall be used by a licensed special fuels dealer to list of every shipment exported to another state for a specific monthly period.

(46) Revenue form 72A156, "Report of Special Fuels Sold to Licensed Kentucky Dealers", shall be used by a licensed special fuels dealer to report all special fuels shipments sold to other licensed special fuels dealers for a specific monthly period.

(47) Revenue form 72A159, "Report of Special Fuels Sold for Exclusive Use by Railroad Companies for Nonhighway Purposes", shall be used by a licensed special fuels dealer to report all special fuels shipments sold to a valid Motor Fuels Tax Refund Permit holder for exclusive use by railroad companies for nonhighway purposes for a specific monthly period.

(48) Revenue form 72A160, "Licensed Special Fuels Dealer's Estimated Tax Payment", shall be used by a licensed special fuels dealer to report the special fuels tax liability for a specific monthly period and calculate ninety-five (95) percent of the applicable tax due for remittance by the due date.

(49) Revenue form 72A161, "Monthly Report Liquefied Petroleum Gas Dealer", shall be used by a licensed liquefied petroleum gas dealer to report all gallons of liquefied petroleum gas dispensed into the fuel tanks of licensed motor vehicles for a specific monthly period.

(50) Revenue form 72A162, "Report of Liquefied Petroleum Gas Motor Fuels", shall be used by a licensed liquefied petroleum gas dealer to list every shipment of liquefied petroleum gas placed into the fuel tank of a licensed motor vehicle for a specific monthly period.

(51) Revenue form 72A163, "Application for Liquefied Petroleum Gas Motor Fuels Tax Exemption Permit", shall be used by any entity desiring to obtain an exemption from the motor fuels excise tax on liquefied petroleum gas to provide data regarding his carburetion system to insure compliance with the standards established by the Natural Resources and Environmental Protection Cabinet.

(52) Revenue form 72A170, "Special Fuels Dealer's Monthly Terminal Storage Report", shall be used by a licensed special fuels dealer to summarize all Kentucky terminal receipt and disbursement activity for a specific monthly period.

(53) Revenue form 72A171, "Report of Special Fuels Imported", shall be used by a licensed special fuels dealer to list all shipments imported into Kentucky from other states and placed into Kentucky terminal storage for a specific monthly period.

(54) Revenue form 72A172, "Report of Special Fuels Received from Terminal or Refinery", shall be used by a licensed special fuels dealer to list all shipments received from other Kentucky terminals and placed into Kentucky terminal storage for a specific monthly period.

(55) Revenue form 72A173, "Report of Special Fuels Withdrawals to Licensed Kentucky Dealers", shall be used by a licensed special fuels dealer to list all shipments withdrawn to other licensed special fuels dealers for a specific monthly period.

(56) Revenue form 72A174, "Report of Special Fuels Withdrawals Exported or Sold for Export", shall be used by a licensed special fuels dealer to provide a list of every shipment withdrawn from terminal storage and exported to another state for a specific monthly period.

(57) Revenue form 72A175, "Report of Special Fuels Withdrawals from Terminal Storage", shall be used by a licensed special fuels dealer to provide total gallon withdrawals from his terminal storage facility(ies) for a specific monthly period.

(58) Revenue form 72A300, "Tax Registration Application for Motor Fuels License", shall be used by an applicant to register for a gasoline dealer's, special fuels dealer's, liquefied petroleum gas dealer's or motor fuel transporter's license.

(59) Revenue Form 72A301, "Motor Fuels License Bond", shall be executed by a corporation authorized to transact surety business in Kentucky on behalf of a licensee to insure payment of taxes, penalties, and interest for which a dealer or transporter may become

liable.

(60) Revenue Form 72A302, "Motor Fuels License", shall be used by the Revenue Cabinet to issue a license to the qualified applicant in gasoline, special fuels, motor fuels transporter, or liquefied petroleum gas dealer.

Section 13. Motor Vehicle Usage Tax - Required Forms. (1) Revenue Form 71A100, "Affidavit of Total Consideration Given for a Motor Vehicle", shall be presented to the county clerk to establish taxable value upon the first registration or transfer of a motor vehicle for motor vehicle usage tax purposes.

(2) Revenue Form 71A151, "Enterprise Zone Motor Vehicle Usage Tax Exemption Certification" shall be presented to the county clerk by a certified resident of an enterprise zone to claim exemption from the motor vehicle usage tax upon the first registration or transfer of a motor vehicle.

(3) Revenue Form 71A163, "Affidavits to Support Interstate Motor Carrier Motor Vehicle Usage Tax Exemption", shall:

(a) Be used by the nonresident owner of a motor vehicle which is:

1. Based in a state other than Kentucky; and
2. Required to be registered in Kentucky pursuant to KRS 186.145; and

(b) State that the vehicle:

1. Will be used primarily in interstate commerce; and
2. Pursuant to KRS 138.470(5), is exempt from the motor vehicle usage tax.

(4) Revenue Form 71A165, "Nonresident Military Personnel Motor Vehicle Usage Tax Exemption" shall be presented to the county clerk by nonresident military personnel stationed in Kentucky to claim exemption from motor vehicle usage tax on the registration of a motor vehicle purchased from a Kentucky dealer.

(5) Revenue Form 71A174, "County Clerk's Recapitulation of Motor Vehicle Usage Tax - Weekly Report", shall be submitted to the Revenue Cabinet by a county clerk as a recapitulation form to list all motor vehicle usage tax receipts, adjusted for corrections and commissions for a given week.

(6) Revenue Form 71A174-A, "County Clerk's Recapitulation of Motor Vehicle Usage Tax - Interim Report", shall be submitted to the Revenue Cabinet by a county clerk to report motor vehicle usage tax collections if an extension of time to file the computer generated weekly recapitulation report is requested.

(7) Revenue Form 71A235, "Added Equipment/Purchase Price Certification", shall be submitted to the county clerk to:

(a) Attest to the purchase price of a motor vehicle with added equipment if an affidavit signed by both the buyer and seller or a reference manual value is not available; or

(b) Claim a reduction in taxable value for a portion of the vehicle value attributable to equipment or an adaptive device placed on a new motor vehicle to facilitate or accommodate a person with a physical disability.

(8) Revenue Form 71A245, "Exemption Transfer Affidavit", shall be presented to the county clerk to claim exemption from the motor vehicle usage tax for a vehicle transferred between:

- (a) A parent and a child;
- (b) A husband and a wife; or
- (c) A grandparent and a grandchild.

(9) Revenue Form 71B161, "Correction Notice - Motor Vehicle Usage Tax", shall be issued by the Revenue Cabinet to advise the county clerk of an error or omission discovered on the weekly recapitulation report and review of attached documents, which may result in an underpayment or overpayment.

Section 14. Property Tax - Required Forms. (1) Revenue Form 61A200, "Public Service Company Property Tax Return and Instructions", shall be filed by public service companies with the Revenue Cabinet reporting company name, location and other pertinent filing information.

(2) Revenue form 61A200(G), "Report of Capital Stocks", shall be filed by public service companies with the Revenue Cabinet, reporting an analysis of their capital stocks as of the end of the taxable year.

(3) Revenue Form 61A200(H), "Report of Funded Debt", shall

be filed by public service companies with the Revenue Cabinet reporting an analysis of their debt as of the end of the taxable year.

(4) Revenue Form 61A200(I), "Business Summary by Taxing District", shall be filed by public service companies with the Revenue Cabinet, reporting a summary of the business activity within each taxing district.

(5) Revenue Form 61A200(J), "Property Summary by Taxing Districts", shall be filed by public service companies with the Revenue Cabinet reporting a summary of the amount of operating and nonoperating property owned and/or leased in this state, by each county, city and special district.

(6) Revenue Form 61A200(K), "Operating Property Listing by Taxing District", shall be filed by public service companies with the Revenue Cabinet, reporting an inventory of the amount and kind of operating property, owned and/or leased, located in this state, for each county, city and special taxing district.

(7) Revenue Form 61A200(K2), "Nonoperating Property Listing by Taxing District", shall be filed by public service companies with the Revenue Cabinet reporting an inventory of the amount and kind of nonoperating property owned and/or leased, located in this state, for each county, city and special taxing district.

(8) Revenue Form 61A200(L), "Report of Property and Business Factors for All Interstate Companies", shall be filed by interstate, noncarrier, public service companies with the Revenue Cabinet, reporting property and business factors in total and for the state of Kentucky.

(9) Revenue Form 61A200(L2), "Report of Property and Business Factors for Commercial Passenger and Cargo Airlines", shall be filed by interstate commercial passenger and cargo airlines with the Revenue Cabinet, reporting property and business factors in total and for the state of Kentucky.

(10) Revenue Form 61A200(M), "Report of Property and Business Factors for Interstate Railroad and Sleeping Car Companies", shall be filed by interstate railroad and sleeping car companies with the Revenue Cabinet, reporting property and business factors in total and for the state of Kentucky.

(11) Revenue Form 61A200(N), "Report of Leased Real and Personal Property System and Kentucky Operating Leases", shall be filed by public service companies with the Revenue Cabinet, reporting all leased property and the terms of the lease.

(12) Revenue Form 61A200(O), "Railroad Private Car Mileage Report", shall be filed by railroad car line companies with the Revenue Cabinet, reporting name and address of the company and the mileage in Kentucky.

(13) Revenue Form 61A200(P), "Report of Kentucky Operations", shall be filed by public service companies with the Revenue Cabinet, reporting their Kentucky property investment.

(14) Revenue Form 61A200P2, "Balance Sheet Information", shall be filed by public service companies with the Revenue Cabinet, reporting their unit, balance sheet account balances as of the end of the year.

(15) Revenue Form 61A200P3, "Results of Operations", shall be filed by public service companies with the Revenue Cabinet, reporting their unit, income statement account balances as of the end of the year.

(16) Revenue Form 61A200P4, "Supplemental Accounting Information" shall be filed by public service companies with the Revenue Cabinet, reporting method of amortization for certain intangible accounts, capitalized interest and method of allocating overhead costs.

(17) Revenue Form 61A200P5, "Cable Television Revenue and Expenses", shall be filed by cable television companies with the Revenue Cabinet, reporting the balances in their income statement accounts as of the end of the year.

(18) Revenue Form 61A200P6, "Cable Television Reporting Form", shall be filed by cable television companies with the Revenue Cabinet, reporting system and head-end information

(19) Revenue Form 61A200P7, "Cable Television Investment Report Form", shall be filed by cable television companies with the Revenue Cabinet, reporting information on the plant distribution system, electronics/head-end equipment, towers and satellite dishes.

(20) Revenue Form 61A200Q, "Supplemental Report of Opera-

tions for Contained and Residential Landfills", shall be filed by landfills with the Revenue Cabinet, reporting historic, current and projected operational information.

(21) Revenue Form 61A200R, "Report of Property Subject to the Pollution Control Tax Exemption", shall be filed by public service companies with the Revenue Cabinet, reporting certified pollution control equipment, the original cost and the net book value.

(22) Revenue Form 61A200S, "Report of System Mobile Flight Property", shall be filed by passenger and cargo airline companies with the Revenue Cabinet, reporting statistical information about all owned and leased aircraft.

(23) Revenue Form 61A200T, "Report of Reseller Leasing Form", shall be filed by cable television and telephone companies leasing access to or from other providers, with the Revenue Cabinet, reporting company name and address.

(24) Revenue Form 61A202, "1999 Public Service Company Property Tax Return for Railroad Car Line" shall be filed by railroad car line companies with the Revenue Cabinet, classifying the railcars by type and reporting cost, age and mileage for each railcar.

(25) Revenue Form 61A203, "1998 Apportioned Vehicle Property Tax Return and Instructions" shall be completed by motor vehicle carriers engaged in interstate commerce and operating partially in Kentucky to report ad valorem tax liabilities.

(26) Revenue Form 61A207, "Watercraft Property Tax Return", shall be filed by nonresident watercraft owners which do not fall under the filing requirements of KRS 136.120, with the Revenue Cabinet, reporting the watercraft's book value, original cost and total and Kentucky mileage.

(27) Revenue Form 61A207I, "Instructions - 61A207", is available to assist taxpayers who are required to file revenue form 61A207.

(28) Revenue Form 61A208, "Public Service Company Property Tax Return Coin Operated Telephones", shall be filed by owners of coin-operated telephones with the Revenue Cabinet, reporting an activity summary and copies of the annual report to stockholder's and Kentucky financial statements.

(29) Revenue Form 61A209, "Public Service Company Sale Form", shall be filed by a taxpayer, which has sold or bought a public service company, with the Revenue Cabinet in order to assist in the determination of fair cash value for ad valorem tax purposes.

(30) Revenue Form 61A210, "Cable Television Company Sale Form", shall be filed by a taxpayer, which has sold or bought a cable television company, with the Revenue Cabinet in order to assist in the determination of fair cash value for ad valorem tax purposes.

(31) Revenue Form 61A211, "Public Service Company Schedule of Owned and/or Leased 1999 Motor Vehicles with Kentucky Situs" shall be filed by public service companies with the Revenue Cabinet to assure proper credit for previously assessed motor vehicles.

(32) Revenue Form 61A230, "Notice of Assessment for Public Service Company", shall be sent by the Revenue Cabinet to the taxpayer notifying him of the final assessment of the public service company property.

(33) Revenue Form 61A240, "Notice of Assessment for Public Service Company", shall be sent by the Revenue Cabinet notifying him of a tentative assessment of the public service company property. This notice also informs the taxpayer of the protest period.

(34) Revenue Form 61A250, "Notice of Assessment for Public Service Company on the Taxpayer's Claim of Value", shall be sent by the Revenue Cabinet notifying the taxpayer of his claim of assessed value on public service company property.

(35) Revenue Form 61A255, "Public Service Company Property Tax Statement", shall be used by the counties, schools and special districts to bill public service companies for local property taxes.

(36) Revenue Form 61A507, "Distilled Spirits or Nonresident Watercraft Property Tax Statement", shall be used by counties, schools and special districts to bill for local property taxes.

(37) Revenue Form 61A508, "Annual Report of Distilled Spirits in Bonded Warehouse", shall be filed by distilleries with the Revenue Cabinet to report inventory as of January 1.

(38) Revenue Form 61A508-S1, "Schedule 1 Department of Property Valuation Cost of Production Schedule", shall be filed by distilleries with the Revenue Cabinet, reporting the average cost per

gallon of production.

(39) Revenue Form 61A508-S2, "Schedule 2 Department of Property Valuation Storage of Cost Schedule", shall be filed by distilleries with the Revenue Cabinet, reporting average per barrel storage cost.

(40) Revenue Form 61A508-S3, "Schedule 3 Schedule of Bulk Sales", shall be filed by distilleries with the Revenue Cabinet, reporting the date of the sale or purchase, the number of barrels, age and the price.

(41) Revenue Form 61A508-S4, "Schedule 4", shall be filed by distilleries with the Revenue Cabinet, reporting the fair cash value for case goods and other inventory reported on form 61A508.

(42) Revenue Form 61F003, "Facts You Should Know About Public Service Companies", is an informational brochure on the assessment and taxation of public service companies for ad valorem tax.

(43) Revenue Form 62A006, "Motor-Boat Tax and/or Registration Renewal Notice" shall be issued by the Revenue Cabinet to notify motor boat owners of their ad valorem property tax liabilities and registration renewal.

(44) Revenue Form 62A007, "Motor Vehicle Tax and/or Registration Renewal Notice" shall be issued by the Revenue Cabinet to notify motor vehicle owners of their ad valorem property tax liabilities and registration renewal deadline.

(45) Revenue Form 62A007S, "Delinquent Motor Vehicle/Boat Property Tax - Second Notice" shall be issued by the Revenue Cabinet to notify motor vehicle and boat owners of their delinquent ad valorem property tax liabilities.

(46) Revenue Form 62A008, "Motor Vehicle Tax Notice" shall be issued by the Revenue Cabinet to notify motor vehicle owners of their ad valorem property tax liabilities.

(47) Revenue Form 62A010, "Notice for Boat Transfer", shall be issued to January 1 owners of boats transferred during the calendar year informing them of the ad valorem tax due on the transferred boat.

(48) Revenue Form 62A013, "Application for Assessment Moratorium Certificate", shall be filed by property owners seeking an assessment moratorium on qualifying existing property undergoing repair, rehabilitation or restoration. The form shall be filed with the proper administering agency of the county in which the property is located, thirty (30) days prior to restoration or repair.

(49) Revenue Form 62A015, "1999 Motor Vehicle and Watercraft Property Tax Rate Certification", shall be submitted annually to the Revenue Cabinet by motor vehicle and watercraft taxing jurisdictions to certify the rates established by the taxing jurisdiction for motor vehicles and watercraft.

(50) Revenue Form 62A016, "Quietus" shall be issued by the Revenue Cabinet to certify that a county clerk is in good standing with regard to the conduct of ad valorem property tax collection duties.

(51) Revenue Form 62A017, "County Clerk's Claim for Calculation of Motor Vehicle and Boat Bills" shall be completed by the Revenue Cabinet and county clerk to certify the total number of motor vehicle and boat accounts for a given county and determine the county clerk's compensation for making tax bills.

(52) Revenue Form 62A018, "School Taxing Jurisdiction - Motor Vehicle and Watercraft Property Tax Rate" shall be completed by the Revenue Cabinet to list the motor vehicle and watercraft property tax rates for each school taxing jurisdiction.

(53) Revenue Form 62A019, "Distributions of Ad Valorem Tax to the Fiscal Courts" shall be completed by the Revenue Cabinet to list the fiscal year ad valorem property tax distributions to the various county fiscal courts.

(54) Revenue Form 62A020, "Intercounty Property Tax Collections", shall be completed by the Revenue Cabinet to list distributions of ad valorem property tax made to individual taxing jurisdictions.

(55) Revenue Form 62A023, "Application for Exemption from Property Taxation" shall be filed by organizations, other than institutions of religion seeking a property tax exemption under Section 170 of the Kentucky Constitution. This form shall be filed with the Revenue Cabinet.

(56) Revenue Form 62A023-R, "Application for Exemption from

Property Taxation for Religious Organizations" shall be filed by institutions of religion seeking a property tax exemption under Section 170 of the Kentucky Constitution. This form shall be filed with the Revenue Cabinet.

(57) Revenue Form 62A024, "Undeveloped Oil and Gas Property Tax Return", shall be filed by owners and/or lessees of undeveloped oil and gas property with the Revenue Cabinet, reporting property by county, including a map for each property location and lessee information for leased property.

(58) Revenue Form 62A037, "Mail Back Card Department of Property Valuation", shall be filed by property owners, other than the owners of mobile homes, to report information regarding their property to the Revenue Cabinet in order to ensure assessment quality.

(59) Revenue Form 62A039, "Mail Back Card Department of Property Valuation for Mobile Manufactured Home", shall be filed by owners of mobile homes to report information regarding their property to the Revenue Cabinet in order to ensure assessment quality.

(60) Revenue Form 62A044, "Affidavit for Correction/Exoneration of Motor Vehicle/Boat Property Tax", shall be completed by the owner of a vehicle or boat, at the property valuation administrator's office in order to correct owner or vehicle/boat information in the ad valorem tax computer system. The PVA will present the form to the county clerk when a tax refund is authorized.

(61) Revenue Form 62A050, "Application for Property Tax Refund", shall be filed by taxpayers seeking a refund of taxes.

(62) Revenue Form 62A200, "1999 Unmined Coal Property Tax Information Return", shall be filed by owners and/or lessees of unmined minerals with the Revenue Cabinet, reporting filer information.

(63) Revenue Form 62A200A, "Schedule A Fee Property Ownership", shall be filed by owners and/or lessees of unmined minerals with the Revenue Cabinet, reporting ownership information for each parcel and/or royalty information for each leased parcel.

(64) Revenue Form 62A200B, "Schedule B Mineral Property Ownership (Coal Only)", shall be filed by owners and/or lessees of unmined coal with the Revenue Cabinet, reporting ownership information for each parcel and/or royalty information for each leased parcel.

(65) Revenue Form 62A200C, "Schedule C Leased Property", shall be filed by all lessees and sublessees with the Revenue Cabinet, reporting a property schedule for each parcel leased from another party and outlined on the lessee map.

(66) Revenue Form 62A200D, "Schedule D Property Transfers" shall be filed by both purchasers and sellers of unmined mineral property, with the Revenue Cabinet, reporting details of the transaction.

(67) Revenue Form 62A200E, "Schedule E Lease Terminations", shall be filed by lessors and/or lessees of unmined minerals, with the Revenue Cabinet, reporting the parcel number, date lease was terminated and the reason for termination.

(68) Revenue Form 62A200F, "Schedule F Geological Information by County", shall be filed by owners and/or lessees of unmined minerals, with the Revenue Cabinet, reporting exploration and analytical information.

(69) Revenue Form 62A200G, "Schedule G", shall be filed by owners and/or lessees of unmined minerals, with the Revenue Cabinet, reporting properties with no changed from the previous tax year.

(70) Revenue Form 62A302, "Property Information Request Regarding Assessment Appeal", shall be filed by taxpayers with the property valuation administrator, when appealing their assessment on real property.

(71) Revenue Form 62A307, "Property Owner Conference Record", shall be used by the property valuation administrator to document a property owners appeal conference. The property owner or his representative is asked to sign the record and is given a copy of the record.

(72) Revenue Form 62A310, "Corporation Report of Securities Held by Kentucky Resident - Cover Letter", shall be filed with the by Kentucky corporations with the Revenue Cabinet, reporting their taxable securities held by Kentucky residents.

(73) Revenue Form 62A310-S1, "Corporation Report of Securities Held by Kentucky Residents", shall be filed by Kentucky corpo-

rations with the Revenue Cabinet, reporting their taxable securities held by Kentucky residents.

(74) Revenue Form 62A311, "Life Insurance Proceeds Report Kentucky Property Tax - Cover Letter", shall be filed by life insurance companies doing business in Kentucky, with the Revenue Cabinet, reporting those Kentucky residents entitled to proceeds of life insurance policies left on deposit with the insurance company and subject to withdrawal as of January 1.

(75) Revenue Form 62A311-S1, "Life Insurance Proceeds Report", shall be filed by life insurance companies doing business in Kentucky, with the Revenue Cabinet, reporting those Kentucky residents entitled to proceeds of life insurance policies left on deposit with the insurance company and subject to withdrawal as of January 1.

(76) Revenue Form 62A329, "Annual Report of Domestic Life Insurance Companies", shall be filed by life insurance companies doing business in Kentucky, with the Revenue Cabinet, reporting the fair cash value of the company's intangible property, both taxable and exempt, and the aggregate amount.

(77) Revenue Form 62A350, "Application for Exemption Under the Homestead/Disability Amendment", shall be filed by property owners seeking an exemption from property taxes under Section 170 of the Kentucky Constitution. This application shall be filed with the property valuation administrator of the county in which the residential unit is located.

(78) Revenue Form 62A352, "Notice to Real Property Owner of Assessment by Property Valuation Administrator", shall be mailed to the property owner by the property valuation administrator notifying him of the assessment amount and of his appeal rights.

(79) Revenue Form 62A353, "Notice of Listing of Omitted Real Property", shall be mailed by the property valuation administrator to the property owner. This document notifies the property owner that his omitted property has been listed and assessed and of his appeal rights.

(80) Revenue Form 62A354, "Notice to Property Owner of Final Decision of Board of Assessment Appeals", shall be sent from the Board of Assessment Appeals to the property owner to inform him of their ruling.

(81) Revenue Form 62A365, "Nonresidency Affidavit", shall be filed as proof of nonresidency in Kentucky as of January 1, for ad valorem tax purposes.

(82) Revenue Form 62A366, "Order Correcting Erroneous Assessment", shall be filed by the property valuation administrator with the sheriff, to correct an error made in an assessment of property.

(83) Revenue Form 62A366-D, "Order Correcting Erroneous Delinquent Assessment", shall be filed by the property valuation administrator with the sheriff, to correct an error made in a delinquent assessment of property.

(84) Revenue Form 62A376, "Intangible Property Tax Return", shall be filed by owners of taxable intangible property, with either the property valuation administrator in the county of taxable situs or the Revenue Cabinet, reporting all taxable intangible at fair cash value as of January 1 of the year of the return.

(85) Revenue Form 62A376I, "Instructions Intangible Property Tax Return", is available to taxpayers who are required to file 62A376.

(86) Revenue Form 62A378, "Report of Location of Mobile Homes", shall be filed by every person providing rental space for mobile homes and house trailers. This form shall be filed with the property valuation administrator of the county in which the park is located.

(87) Revenue Form 62A379, "Listing of Omitted Real Property", shall be used by a taxpayer to voluntarily list any property previously omitted from the tax roll or shall be used by property valuation administrator to list any involuntary omitted property.

(88) Revenue Form 62A384, "Oil Property Tax Return", shall be filed with the Revenue Cabinet by persons owning or leasing developed oil property in Kentucky, reporting the lease, purchaser and operator's name, as well as production information.

(89) Revenue Form 62A384C, "Clay Property Tax Return", shall be filed with the Revenue Cabinet by persons owning or leasing clay property, reporting owner's name and address, percent ownership, product tons and royalty rate.

(90) Revenue Form 62A384F, "Flourspar Property Tax Return", shall be filed with the Revenue Cabinet by persons owning flourspar property, reporting percent ownership, type of mineral owned, estimated tons of mineable reserves and estimated value of mineral reserves.

(91) Revenue Form 62A384G, "Natural Gas Property Tax Return", shall be filed with the Revenue Cabinet by persons owning or leasing developed natural gas properties, reporting the location of the property, total yearly gas production, number of producing wells and the total dollar value of production.

(92) Revenue Form 62A384L, "Limestone and Sand and Gravel Property Tax Return", shall be filed with the Revenue Cabinet by persons owning or leasing limestone, sand or gravel properties reporting mineral location, type of mining and production in the last three (3) years.

(93) Revenue Form 62A394-MV, "County Clerk's Monthly Report of Motor Vehicle Property Tax Collections" shall be submitted by the county clerk to the Revenue Cabinet and local taxing jurisdictions to report ad valorem property tax collections for the month.

(94) Revenue Form 62A399, "Notice To Appear in Circuit Court", shall be served to a person who is indebted to another person who has a delinquent tax liability.

(95) Revenue Form 62A400, "Notice of Distrain", shall be sent by the sheriff to notify persons in possession of personal property belonging to a delinquent taxpayer that this property is subject to distraint in order to settle the tax liability.

(96) Revenue Form 62A401, "Final Notice Before Distrain", shall be sent by the sheriff to the owner of real and personal property omitted from the tax roll.

(97) Revenue Form 62A405, "Notice of Sale of Tax Bill", shall be sent by the county attorney to the owner of real property to notify that a certificate of delinquency has been issued against the property.

(98) Revenue Form 62A500, "1999 Tangible Personal Property Tax Return", shall be filed by owners or lessees of tangible personal property, with either the property valuation administrator of the county of taxable situs or with the Revenue Cabinet, reporting taxpayer information, original cost of tangible property and reported value of tangible property.

(99) Revenue Form 62A500A, "1999 Tangible Personal Property Tax Return for Aircraft", shall be filed by owners or lessees of aircraft not used for commercial purposes, with either the property valuation administrator of the county of taxable situs or with the Revenue Cabinet, reporting the federal registration number, make and model, and taxpayer's value for each aircraft.

(100) Revenue Form 62A500C, "Consignee Tangible Personal Property Tax Return", shall be filed by persons in possession of consigned inventory, that has not been reported on revenue form 62A500, with either the property valuation administrator of the county of taxable situs or with the Revenue Cabinet, reporting consignor information and consigned inventory information.

(101) Revenue Form 62A500L, "Lessee Tangible Personal Property Tax Return" shall be filed by lessees of tangible personal property who did not list the property on revenue form 62A500, with either the property valuation administrator of the county of taxable situs or with the Revenue Cabinet, reporting lessor information and equipment information.

(102) Revenue Form 62A500W, "1999 Tangible Personal Property Tax Return for Non-Kentucky Registered Watercraft and Documented Vessel", shall be filed by owners or lessees of documented vessels not used for commercial purposes, with either the property valuation administrator of the county of taxable situs or with the Revenue Cabinet, reporting the coast guard number, make and model and taxpayer's value for each watercraft.

(103) Revenue Form 62A600, "Savings and Loan Tax Return", shall be filed with the Revenue Cabinet by savings and loans operating solely in Kentucky, reporting the balances in their capital accounts.

(104) Revenue Form 62A601, "Foreign Savings and Loan Tax Return", shall be filed with the Revenue Cabinet by foreign savings and loans authorized to do business in this state, reporting the balances in their capital accounts.

(105) Revenue Form 62A601-S1, "Schedule A Computation of

Apportionment Factor for Foreign Savings and Loans", shall be filed with the Revenue Cabinet, by taxpayers filing revenue form 62A601, reporting the amount of Kentucky receipts, loans and payrolls.

(106) Revenue Form 62A601-S2, "Influence Amount Schedule B", shall be filed with the Revenue Cabinet, by taxpayers filing revenue form 62A600 or 62A601, reporting the market value of U. S. government securities.

(107) Revenue Form 62A850, "Bank Deposits Tax Return" shall be filed with the Revenue Cabinet by financial institutions, reporting the amount of its deposits as of the preceding January 1.

(108) Revenue Form 62A861, "Schedule 1 Summary of Deposits" shall be filed with the Revenue Cabinet, by taxpayers filing revenue form 62A600 or 62A601, listing deposits located in each county and city.

(109) Revenue Form 62A862, "Certification of Tax Rates for Bank Deposits Franchise Tax", shall be filed by the local taxing district with the Revenue Cabinet to notify us of the rate set on bank deposits.

(110) Revenue Form 62A863, "Financial Institutions Local Deposits Summary Report", shall be filed with the Revenue Cabinet, by financial institutions, reporting all deposits located within the state as of the preceding June 30, along with a copy of the most recent summary of deposits filed with the Federal Deposit Insurance Corporation.

(111) Revenue Form 62A864, "Trust Questionnaire", shall be sent by the Revenue Cabinet to a taxable trust to request additional information for ad valorem tax purposes.

(112) Revenue Form 62A865, "Kentucky Intangible Property Tax - 1998 Margin Accounts" shall be sent by the cabinet to the brokers maintaining an office in Kentucky notifying them of their intangible assessment.

(113) Revenue Form 62A872, "Intangible Property Assessment Notice for Prepayment of Estates", shall be sent by the Revenue Cabinet to the taxpayer notifying him of the assessed value of intangible property in the settlement of an estate.

(114) Revenue Form 62A875, "Tangible Business Situs for Kentucky Intangible Tax Purposes", shall be filed by intangible property owners with the Revenue Cabinet in order to determine if the property has a Kentucky taxable business situs.

(115) Revenue Form 62A876-A, "Omitted Intangible Property List", shall be filed by the owner of intangible property with the Revenue Cabinet in order to report for taxation previously omitted property.

(116) Revenue Form 62A878, "Omitted Intangible Worksheet", shall be used by the Revenue Cabinet to list and assess omitted intangible property. This worksheet is sent to the property owner.

(117) Revenue Form 62A880, "Omitted Personal Property Assessment", shall be sent by the Revenue Cabinet to the owner of omitted personal property notifying him of the value assessed by the cabinet as well as all applicable penalties and interest.

(118) Revenue Form 62B001, "1999 Unmined Coal Tax Notice (Sublessee)", shall be sent by the Revenue Cabinet to the taxpayer notifying him of the value of his interest in unmined coal property.

(119) Revenue Form 62B002, "1999 Unmined Coal Tax Notice (Lessee)", shall be sent by the Revenue Cabinet to the taxpayer notifying him of the value of his interest in unmined coal property.

(120) Revenue Form 62B003, "1999 Unmined Coal Tax Notice (Owner)", shall be sent by the Revenue Cabinet to the taxpayer notifying him of the value of his interest in unmined coal property.

(121) Revenue Form 62B010, "Omitted Notice of Assessment on Unmined Coal", shall be sent by the Revenue Cabinet notifying the taxpayer of the value of his interest in omitted unmined coal property.

(122) Revenue Form 62B011, "1999 Limestone, Sand, and Gravel Tax Notice", shall be sent by the Revenue Cabinet to the taxpayer notifying him of the value of his interest in limestone, sand or gravel property.

(123) Revenue Form 62B012, "1999 Oil Assessment Notice", shall be sent by the Revenue Cabinet to the taxpayer notifying him of the value of his interest in oil property.

(124) Revenue Form 62B013, "1999 Clay Property Assessment Notice", shall be sent by the Revenue Cabinet to the taxpayer notifying him of the value of his interest in clay property.

(125) Revenue Form 62B014, "1999 Undeveloped Oil and Gas Assessment Notice", shall be sent by the Revenue Cabinet to the taxpayer notifying him of the value of his interest in undeveloped oil and gas property.

(126) Revenue Form 62B015, "1999 Gas Assessment Notice", shall be sent by the Revenue Cabinet to the taxpayer notifying him of the value of his interest in gas property.

(127) Revenue Form 62B016, "1999 Flourspar Property Assessment Notice", shall be sent by the Revenue Cabinet to the taxpayer notifying him of the value of his interest in gas property.

(128) Revenue Form 62B080, "Omitted Intangible Property Listing Request Letter", shall be sent by the Revenue Cabinet to the owner of intangible property in which the cabinet has reason to believe has been omitted or undervalued on the tax rolls.

(129) Revenue Form 62F002, "Appeals Process for Personal Property Assessments", is an informational brochure on the procedure to follow to appeal an assessment on personal property.

(130) Revenue Form 62F003, "Appeals Process for Real Property Assessments", is an informational brochure on the procedure to follow to appeal an assessment on real property.

(131) Revenue Form 62F020, "Deeds/Transfers and Property Taxes", is an informational brochure on Kentucky's property tax system, sales and transfers of property and the requirements for preparing a deed.

(132) Revenue Form 62F031, "Appeal to Local Board of Assessment Appeals", shall be filed with the county clerk by any taxpayer wished to appeal his assessment on real property.

(133) Revenue Form 62F500, "The Assessment of Tangible Personal Property", is an informational brochure on the taxation of tangible personal property.

(134) Revenue Form 62F1341, "Exemptions Allowed for Savings and Loans, Agricultural Credit Associations and Banks for Cooperatives for Intangible Property Tax Purposes", informs taxpayers, subject to intangible property tax on the value of their capital stock, of those institutions which issue obligations that are exempt from state ad valorem taxation.

Section 15. Racing Taxes - Required Forms. Revenue Form 73A100, "Race Track Pari-Mutuel and Admissions Report", shall be used by race tracks licensed by the Kentucky Racing Commission to report liability for the pari-mutuel tax and to report admissions to the race track.

Section 16. Sales and Use Tax - Required Forms. (1) Revenue Form 51A101, "Sales and Use Tax Permit", shall be conspicuously displaced by the sales and use tax permit holder at the location for which the permit was issued.

(2) Revenue Form 51A102, "Kentucky Sales and Use Tax Return and Worksheet", shall be submitted to the Revenue Cabinet by a Kentucky sales and use tax permit holder to report total receipts, itemized deductions, amount subject to Kentucky use tax and total amount of Kentucky sales and use tax due for a particular reporting period.

(3) Revenue Form 51A102E, "Kentucky Sales and Use Tax Return and Worksheet - Electronic Funds Transfer", shall be submitted to the Revenue Cabinet by a Kentucky sales and use tax permit holder who remits payment via electronic funds transfer to report total receipts, itemized deductions, amount subject to Kentucky use tax and total amount of Kentucky sales and use tax due for particular reporting period.

(4) Revenue Form 51A103, "Kentucky Accelerated Sales and Use Tax Return and Worksheet", shall be completed by a Kentucky sales and use tax permit holder who has been designated as an accelerated filer to report total receipts, itemized deductions, amount subject to use tax, and total amount of sales and use tax due.

(5) Revenue Form 51A103E, "Sales and Use Tax Return and Worksheet - Electronic Funds Transfer", shall be submitted on a monthly basis by a Kentucky sales and use tax permit holder to report total receipts, itemized deductions, amount subject to use tax, and total amount of sales and use tax due remitted via electronic funds transfer.

(6) Revenue Form 51A104, "Six (6) Percent Sales Tax Collection Bracket" shall be used by a Kentucky sales and use tax permit

holder to compute the correct amount of sales and use tax due on the amount of sales.

(7) Revenue Form 51A105, "Resale Certificate", shall be presented to a seller by a Kentucky sales and use tax permit holder to claim that the tangible personal property purchased from the seller will be:

- (a) Resold in the regular course of business;
- (b) Leased or rented; or
- (c) Used as raw material, industrial supply or industrial tool.

(8) Revenue Form 51A109, "Application for Energy Direct Pay Authorization" shall be filed with the Revenue Cabinet by a manufacturer; processor, miner or refiner to apply for an energy direct pay authorization.

(9) Revenue Form 51A110, "Direct Pay Authorization", shall be presented to a Kentucky sales and use tax permit holder by a company authorized to report and pay directly to the Revenue Cabinet the sales or use tax on all purchases of tangible personal property, excluding energy and energy-producing fuels.

(10) Revenue Form 51A111, "Certificate of Exemption Machinery for New and Expanded Industry", shall be presented to a Kentucky sales and use tax permit holder by a manufacturer or production processor to claim exemption from sales and use tax.

(11) Revenue Form 51A112, "Application for Direct Pay Authorization", shall be submitted by a registered sales and use tax permit holder wishing to obtain a direct pay authorization.

(12) Revenue Form 51A113, "Kentucky Consumer's Use Tax Return and Worksheet", shall be completed by a registered consumer's use tax permit holder and submitted to the Revenue Cabinet on a regular basis to report the amount of purchases subject to Kentucky use tax.

(13) Revenue Form 51A113(0), "Consumer's Use Tax Return - Nonregistered Filer" shall be completed by a person storing, using, or otherwise consuming tangible personal property in Kentucky who is not registered for a consumer's use tax permit number.

(14) Revenue Form 51A115, "Order for Selected Sales and Use Tax Publications", shall be presented to the Revenue Cabinet by anyone who wishes to order sales selected sales and use tax forms, regulations and informational circulars.

(15) Revenue Form 51A125, "Application for Purchase Exemption Sales and Use Tax", shall be presented to the Revenue Cabinet by a resident 501C(3) charitable, educational, or religious institution; historical sites; and units of federal, state or local governments to apply for a sales and use tax exemption on purchases of tangible personal property and certain services to be utilized in the exempt entity's function.

(16) Revenue Form 51A126, "Purchase Exemption Certificate", shall be presented to a retailer by a resident charitable, educational or religious institution or Kentucky historical site to claim exemption from sales and use tax on purchases of tangible personal property or services.

(17) Revenue Form 51A127, "Out-of-State Exemption Certificate", shall be presented to a retailer by an out-of-state agency or institution that has previously qualified for exemption in their state or residence and previously provided proof of such exemption to the Sales and Use Tax Section, Kentucky Revenue Cabinet to claim exemption from sales and use tax on its purchases of tangible personal property.

(18) Revenue Form 51A128, "Solid Waste Recycling Machinery Exemption Certificate" shall be presented to a retailer by a business or organization that claims exemption from sales and use tax on the purchase, lease or rental of machinery or equipment to be primarily used for recycling purposes to collect, source separate, compress, bale, shred or otherwise handle waste material.

(19) Revenue Form, 51A129, "Kentucky Sales and Use Tax Energy Exemption Annual Return", shall be submitted to the Revenue Cabinet by an energy direct pay holder to reconcile the actual amount of sales and use tax due on purchases of energy and energy-producing fuels to the total amount sales and use tax paid based upon previous estimates of tax due.

(20) Revenue Form 51A130, "Kentucky Sales and Use Tax Monthly Aviation Fuel Tax Credit Schedule of Qualified Certificated Air Carrier", must be completed by a qualified certificated air carrier on a monthly basis to claim an aviation fuel tax credit against the

company's sales and use tax liability for the month.

(21) Revenue Form 51A131, "Kentucky Sales and Use Tax Annual Reconciliation of Aviation Fuel Tax Credit Claimed by Certificated Air Carrier", must be completed by a certificated air carrier and filed with Revenue Cabinet on or before the 15th day of the fourth month following the end of each annual period for which the aviation fuel tax credit was claimed.

(22) Revenue Form 51A143, "Purchase Exemption Certificate - Watercraft Industry", shall be presented to a retailer by a purchaser to claim exemption from sales and use tax on the purchase of tangible personal property that will be used in the activity of transporting property or in conveying persons for hire.

(23) Revenue Form 51A149, "Certificate of Exemption for Pollution Control Facilities", shall be presented to a retailer by a holder of a pollution control tax exemption certificate or jointly by a contractor and the holder of a pollution control tax exemption certificate to claim exemption from sales and use tax on the purchase of materials and equipment that will become part of a certified pollution control facility.

(24) Revenue Form 51A150, "Aircraft Exemption Certificate" shall be presented to a retailer by a purchaser to claim exemption from sales and use tax on the purchase of aircraft, repair and replacement parts for the aircraft, and supplies that will be used for the direct operation of aircraft in interstate commerce and used exclusively for the conveyance of property or passengers for hire.

(25) Revenue Form 51A151, "Enterprise Zone Sales and Use Tax Exemption Certificate for Qualified Businesses Machinery and Equipment", must be presented in duplicate to a retailer by an enterprise zone qualified business to claim exemption from sales and use tax on the purchase of machinery and equipment that will be used in a designated enterprise zone.

(26) Revenue Form 51A152, "Enterprise Zone Sales and Use Tax Exemption Certificate for Building Materials", must be presented to a retailer by a purchaser to claim exemption from sales and use tax on the purchase of building materials to be used in remodeling, rehabilitation, or new construction in an enterprise zone.

(27) Revenue Form 51A154, "Certificate of Exemption Out-of-State Delivery for Aircraft, Mobile/Manufactured Homes, Campers, Boats, Motors or Trailers", must be completed in triplicate by the seller and buyer at the time of the sale of the tangible personal property and in addition the person making delivery of the tangible personal property must complete the affidavit portion of the form within two (2) days of the time of delivery to claim that the property was purchased exempt from sales tax and delivered immediately out of state not to return to Kentucky for use.

(28) Revenue Form 51A157, "Certificate of Exemption - Water Used in Raising Equine", must be presented to a retailer by a person regularly engaged in raising equine as a business to claim exemption for the purchase of water used to raise equine.

(29) Revenue Form 51A158, "Farm Exemption Certificate", must be presented to a retailer by a person regularly engaged in the occupation of tilling and cultivating the soil for the production of crops, raising and feeding livestock or poultry; or raising and feeding llamas, alpacas, ratites, buffalo or aquatic organisms to claim exemption from sales and use tax on the purchase of certain tangible personal property.

(30) Revenue Form 51A159, "On-Farm Facilities Certificate of Exemption for Materials, Machinery and Equipment", must be presented to a retailer by a farmer or jointly by a farmer and a contractor to claim exemption from sales and use tax on the purchase of materials, machinery and equipment which will be incorporated into the initial construction of on-farm facilities exempt under the provisions of KRS 139.480.

(31) Revenue Form 51A209, "Sales and Use Tax Refund Application", must be completed by a Kentucky sales and use tax permit holder and submitted to the Revenue Cabinet within four (4) years from the to apply for a refund of sales and use tax previously paid by the permit holder.

(32) Revenue Form 51A216, "Application for Pollution Control Tax Exemption Certificate", shall be completed by a business, governmental unit or institution to apply for a sales and use tax exemption on purchases of tangible personal property used to control or abate pollution.

(33) Revenue Form 51A222, "Certificate of Exemption for Alcohol Production Facilities", must be presented to a retailer by a holder of an alcohol production tax exemption certificate or jointly by a contractor and the holder of an alcohol production tax exemption certificate to claim exemption from sales and use tax on materials and equipment that will become a part of an alcohol production facility as provided by KRS Chapter 247.

(34) Revenue Form 51A223, "Application for Alcohol Production Facility Tax Exemption Certificate", must be completed by a business seeking exemption from sales and use tax on the purchase of materials and equipment that will become a part of an alcohol production facility as provided by KRS Chapter 247.

(35) Revenue Form 51A226, "Pollution Control Tax Exemption Certificate", is issued by the Revenue Cabinet to a business who has qualified for certain sales and use tax, corporation income, corporation license, and property tax benefits.

(36) Revenue Form 51A227, "Certificate of Resale (Schools)", shall be issued to a retailer by an exempt nonprofit elementary or secondary school or the organizations they sponsor or that are affiliated with them to claim an exemption from sales and use tax on the purchase of tangible personal property that will be resold provided the proceeds from the resale of the property is used solely for the benefit of the elementary or secondary schools or their students.

(37) Revenue Form 51A228, "Application for Fluidized Bed Combustion Technology Tax Exemption Certificate", must be completed by a business, governmental unit or organization and submitted to the Revenue Cabinet to apply for a sales and use tax exemption on the purchase of equipment and materials used in fluidized bed combustion technology.

(38) Revenue Form 51A229, "Fluidized Bed Combustion Technology Tax Exemption Certificate", is issued by the Revenue Cabinet to a business, governmental unit or organization to advise that they qualify for corporation license tax, property tax, and sales and use tax benefits.

(39) Revenue Form 51A241, "Registration for the Kentucky Sales and Use Tax Refund for Motion Picture and Television Production Companies", must be completed by a motion picture production company and submitted to the Revenue Cabinet to register for a sales and use tax refund.

(40) Revenue Form 51A242, "Application for Sales and Use Tax Refund for Motion Picture Production Company", must be completed by a registered motion picture production company and submitted to the Revenue Cabinet within sixty (60) days after completion of the filming or production of the motion picture in Kentucky to request a refund of the Kentucky sales and use tax paid on purchases of tangible personal property made in connection with filming and producing motion pictures in Kentucky.

(41) Revenue Form 51A250, "Application for Transient Merchant Permit", must be completed by a transient merchant and filed with the clerk in the county in which the business is to be conducted or in the case of urban county government with the officer of the government who has responsibility for the issuance of business permits and licenses to obtain a permit before conducting any business in Kentucky.

(42) Revenue Form 51B105A, "Sales and Use Tax Return Inquiry", is a form that is completed by the Revenue Cabinet to request additional information from a Kentucky sales and use tax permit holder regarding a sales and use tax return.

(43) Revenue Form 51F008, "Federal Government Exemption from Kentucky Sales and Use Tax: Notification", is issued by the Revenue Cabinet to a federal government unit which in turn is presented to a retailer by the federal government unit to claim exemption from sales and use tax on purchases of tangible personal property to be used in the exempt governmental function.

(44) Revenue Form 51F009, "Purchase Exemption Notification", is issued by the Revenue Cabinet to a resident nonprofit charitable, educational or religious institution to advise the entity of the assigned purchase exemption number additional information concerning the exemption from sales and use tax.

(45) Revenue Form 51F010, "Energy Direct Pay Authorization: Notification", is issued by the Revenue Cabinet to advise a Kentucky sales and use tax permit holder that it has been authorized to purchase energy and energy-producing fuels without paying or reim-

bursing the vendor for the sales and use tax and that they are required to report and pay directly to the Revenue Cabinet the sales and use tax on that portion of the cost price which is subject to tax pursuant to KRS 139.480(3).

Section 16. Severance Taxes - Required Forms. (1) Revenue Form 55A003, "Certificate of Registration-Severance Taxes", shall be used by the Revenue Cabinet to register coal severance taxpayers.

(2) Revenue Form 55A004, "Coal Severance Tax Seller's Certificate", shall be filed by the taxpayer to verify purchase coal deductions.

(3) Revenue Form 55A100, "Coal Tax Return", shall be filed monthly by the taxpayer to report production and tax due.

(4) Revenue Form 55A100, "Part IV - Schedule of Coal Sales (Continuation)", shall be used by the taxpayer to report additional coal sales if there is not room on the return.

(5) Revenue Form 55A100D, "Coal Tax Return - Keep This Copy", a replica of the Coal Tax Return shall be completed by the taxpayer and retained in his files for informational purposes.

(6) Revenue Form 55A100D, "Part IV - Schedule of Coal Sales - Keep This Copy (continuation)", a replica of the Schedule of Coal Sales (Continuation) shall be completed by the taxpayer and retained in his files for informational purposes.

(7) Revenue Form 55A101, "Coal Tax Return Instructions", shall be included with the coal tax return mailed to the taxpayer to assist in the completion of his return.

(8) Revenue Form 55A131, "Credit Memorandum", shall be used by the cabinet to issue a credit to the taxpayer for an overpayment rather than a refund.

(9) Revenue Form 55A209, "Severance Tax Refund Application", shall be used by the taxpayer for the purpose of requesting a refund of tax overpaid.

(10) Revenue Form 56A001, "Application for Certificate of Registration Minerals and Natural Gas Tax", shall be used by persons dealing in minerals, natural gas or natural gas liquids who wish to register with the Revenue Cabinet to acquire an account number.

(11) Revenue Form 56A100, "Natural Gas and Natural Gas Liquids Tax Return", shall be used by registered natural gas and natural gas liquids taxpayers monthly to report production and tax due.

(12) Revenue Form 56A101, "Minerals Tax Return", shall be used by registered mineral taxpayers monthly to report production and tax due.

(13) Revenue Form 56A106, "Minerals Tax Certificate of Exemption", shall be used by mineral taxpayers to claim exemptions from minerals tax for minerals purchased for the maintenance of a privately maintained but publicly dedicated road.

(14) Revenue Form 56A107, "Schedule A, Gross Value of Minerals Severed in Kentucky Allocation and Schedule B, Minerals Purchased from Others for Processing by Taxpayer", shall be used by mineral taxpayers to compute gross value of minerals to be allocated and to show the allocation by county of the gross value of minerals severed in Kentucky and also shall be used by taxpayer for showing minerals that are purchased from others for processing by the taxpayer.

(15) Revenue Form 56A108, "Schedule A, Gross Value of Natural Gas Sold to Nonconsumers and Schedule B, Taxable Gross Value of Natural Gas and Natural Gas Liquids Extracted in Kentucky by Taxpayer - Allocation", shall be used by natural gas taxpayers to show details of all natural gas extracted in Kentucky and sold to nonconsumers and also shall be used by natural gas taxpayers to allocate the natural gas to the county or counties where the natural gas or natural gas liquids were located prior to extraction.

(16) Revenue Form 56A109, "Schedule C, Natural Gas First Purchased by Taxpayer From Kentucky Producers", shall be used by natural gas taxpayers who are first purchasers of natural gas to show gross value by county or counties from which the natural gas was extracted.

(17) Revenue Form 56A110, "Schedule C, Minerals Tax Return, Computation of Tax on Clay Severed and Processed in Kentucky and Allocation of Tax Attributable to Clay", shall be used by mineral taxpayers that sever clay to compute tax due.

(18) Revenue Form 56A112, "Crude Petroleum Transporter's Monthly Report, Kentucky Oil Production Tax", shall be used by registered crude petroleum transporter's for reporting gross value and tax

due.

(19) Revenue Form 56A113, "Minerals Tax Credit for Limestone Sold in Interstate Commerce", shall be used by mineral taxpayers for the purpose of determining the eligibility for the minerals tax credit.

(20) Revenue Form 56A114, "Crude Petroleum Transporter's Application for Registration", shall be used by crude petroleum transporter's who wish to acquire an account number with the Kentucky Revenue Cabinet.

Section 17. Waste Tire Tax - Required Form. Revenue Form 73A051, "Motor Vehicle Tire Fee Report", shall be used by businesses making retail sales of new motor vehicle tires to report liability for motor vehicle tire fee and to report the number of waste tires received from customers.

Section 18. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Administrative - referenced material:

1. Revenue Form KY-1345, "Handbook for Electronic Filers of Individual Income Tax Returns, Tax Year 1998", November, 1998;
2. Revenue Form 10A001, "Request to Inspect Public Records", February, 1997;
3. Revenue Form 10A070, "Authorization Agreement for EFT", June 1997;
4. Revenue Form 10A100, "Kentucky Tax Registration Application for Withholding, Corporation, Coal, Sales and Use Tax", October, 1994;
5. Revenue Form 10A100-I, "Instructions for Kentucky Tax Registration Application for Withholding, Corporation, Coal, Sales and Use Taxes", January, 1997;
6. Revenue Form 10A101, "Kentucky General Business Application", October, 1994;
7. Revenue Form 10F100, "Your Rights As A Kentucky Taxpayer", September, 1997;
8. Revenue Form 12A012, "Receipt of Seized Property", November, 1989;
9. Revenue Form 12A018, "Kentucky Revenue Cabinet Offer in Settlement", April, 1995;
10. Revenue Form 12A104, "Notice of Seizure", October, 1982;
11. Revenue Form 12A107, "Notice of Sale", October, 1996;
12. Revenue Form 12A109, "Release of Levy", October, 1996;
13. Revenue Form 12A110, "Release of Levy on Wages, Salary, and Other Income", October, 1996;
14. Revenue Form 12A200, "Kentucky Individual Income Tax Installment Agreement Request", October, 1998;
15. Revenue Form 12A500, "Certificate of Partial Discharge of Tax Lien", October, 1996;
16. Revenue Form 12A501, "Certificate of Subordination of Kentucky Revenue Tax Lien", October, 1996;
17. Revenue Form 12A502, "Application for Certificate of Subordination of Kentucky Revenue Lien", October, 1996;
18. Revenue Form 12A503, "Application for Specific Lien Release", October, 1996;
19. Revenue Form 12A504, "Personal Assessment of Corporate Officer", August, 1996;
20. Revenue Form 12A505, "Waiver Extending Statutory Period for Assessment of Corporate Officer", August, 1996;
21. Revenue Form 12A506, "Waiver Extending Statutory Period for Collections", August, 1996;
22. Revenue Form 12A507, "Table for Figuring the Amount Exempt From Levy On Wages, Salary, and Other Income", August, 1996;
23. Revenue Form 12A508-1, "Notice of Assessment", October, 1996;
24. Revenue Form 12A509, "Notification of Delinquent Taxpayer", October, 1996;
25. Revenue Form 12A510, "Guidelines for Wage Levy Processing", August, 1996;
26. Revenue Form 12A511, "Guidelines for Bank Levy Processing", August, 1996;
27. Revenue Form 12A512, "Confidential Agent Appointment", October, 1996;
28. Revenue Form 12A513, "Nexus Questionnaire", October,

1996;

29. Revenue Form 12A514, "Questionnaires for Persons Relative to a Notice of Assessment", August, 1996;
 30. Revenue Form 12A516, "Requirements for Agreed Judgments", October, 1996;
 31. Revenue Form 12A517, "Notice of State Tax Lien", October, 1996;
 32. Revenue Form 12A518, "Certificate of Release of Tax Lien", October, 1996;
 33. Revenue Form 12A519, "Proof of Claim", October, 1996;
 34. Revenue Form 12A638, "Statement of Financial Condition for Individuals", January, 1997;
 35. Revenue Form 12A638(I), "Instructions for Completing Statement of Financial Condition for Individuals", January, 1997;
 36. Revenue Form 12A639, "Statement of Financial Condition for Businesses", January, 1997;
 37. Revenue Form 12A639(I), "Instructions for Completing Statement of Financial Condition for Businesses", January, 1997;
 38. Revenue Form 12B019, "Notice of Levy on Wages, Salary, and Other Income", October, 1996;
 39. Revenue Form 12B020, "Notice of Levy", October, 1996;
 40. Revenue Form 12F020, "Understanding the Kentucky Revenue Cabinet Collection Process", September, 1998;
 41. Revenue Form 12F030, "Voluntary Disclosure Program", September, 1998;
 42. Revenue Form 21A020, "Request for Copy of Tax Refund Check", June, 1988;
 43. Revenue Form 21A050, "Business Account Numbers", January, 1997;
 44. Revenue Form 31A001, "Vendor Contact Authorization", March, 1989;
 45. Revenue Form 31A012, "Interstate Sales/Income Tax Questionnaire", March, 1990;
 46. Revenue Form 31A014, "SEATA - Southeastern Association of Tax Administrators Nexus Questionnaire", April, 1983;
 47. Revenue Form 31A149, "Agreement Fixing Period of Limitation Upon Assessment of Sales, Use or Severance Tax", November, 1992;
 48. Revenue Form 31A685, "Authorization to Examine Bank Records", May, 1985;
 49. Revenue Form 31A725, "Statute of Limitations Agreement", April, 1985;
 50. Revenue Form 42F102, "Large Employer Program Electronic File Fact Sheet", August, 1996;
- (b) Alcoholic beverage - referenced material:
1. Revenue Form 73A504, "Acknowledgment of Tax Liability on Imported Alcoholic Beverages", March, 1992;
 2. Revenue Form 73A525, "Monthly Report of Distillers, Rectifiers or Bottlers", February, 1985;
 3. Revenue Form 73A526, "Wholesaler's Monthly Distilled Spirits Tax Report", December, 1986;
 4. Revenue Form 73A527, "Wholesaler's List of Individual Spirits Shipments Acquired", October, 1986;
 5. Revenue Form 73A530, "Consignor's Report of Alcoholic Beverages Shipped", August, 1996;
 6. Revenue Form 73A531, "Transporter's Report of Alcoholic Beverages Delivered", July, 1986;
 7. Revenue Form 73A535, "Report on Destruction of Alcoholic Beverages", January, 1991;
 8. Revenue Form 73A575, "Wholesaler's Monthly Wine Tax Report", January, 1995;
 9. Revenue Form 73A576, "Vintner's Wine Report", June, 1998;
 10. Revenue Form 73A577, "Wholesaler's List of Individual Wine Shipments Acquired", June, 1998;
 11. Revenue Form 73A626, "Brewer's Monthly Report Schedule", July, 1985;
 12. Revenue Form 73A627, "Beer Distributor's Monthly Report", January, 1989;
 13. Revenue Form 73A628, "Distributor's Monthly Malt Beverage Excise Tax and Wholesale Sales Tax Report", June, 1992;
 14. Revenue Form 73A629, "Beer Distributor's Sales to Federal Agencies", June, 1992;
- (c) Bank franchise - referenced material:

1. Revenue Form 73A800, "Kentucky Registration Application for Bank Franchise Tax", October 1998;
2. Revenue Form 73A801, "1998 Bank Franchise Tax Return", October 1998;
3. Revenue Form 73A801I, "1998 Kentucky Bank Franchise Tax Forms and Instructions Packet", October 1999;
4. Revenue Form 73A802, "Application for Ninety (90) Day Extension of Time to File Kentucky Bank Franchise Tax Return", October 1998;
- (d) Cigarettes - referenced material:
 1. Revenue Form 73A181, "Application for Cigarette Wholesaler License", January, 1995;
 2. Revenue Form 73A182, "Application for Cigarette Subjobber License", January, 1995;
 3. Revenue Form 73A183, "Application for Cigarette Vending Machine Operator License", January, 1995;
 4. Revenue Form 73A184, "Application for Cigarette Transporter License", January, 1995;
 5. Revenue Form 73A185, "Application for Cigarette Unclassified Acquirer License", January, 1995;
 6. Revenue Form 73A190, "Cigarette License", April, 1988;
7. Revenue Form 73A404, "Cigarette Tax Stamps or Meter Units Order Form", August, 1992;
8. Revenue Form 73A406, "Cigarette Tax Credit Certificate", November, 1990;
9. Revenue Form 73A420, "Monthly Report of Cigarette Wholesaler", March, 1995;
- (e) Corporation income and license - referenced material:
 1. Revenue Form 41A720, "Form 720, 1998 Kentucky Corporation Income and License Tax Return", October 1998;
 2. Revenue Form 41A720A, "Schedule A, Apportionment and Allocation", October 1998;
 3. Revenue Form 41A720CC, "Schedule CC, Coal Conversion Tax Credit", October 1998;
 4. Revenue Form 41A720ES, "Form 720ES, 1999 Kentucky Corporation Income Tax Estimated Tax Voucher", January 1999;
 5. Revenue Form 41A720Ezc, "Schedule EZC, Enterprise Zone Tax Credit", October 1998;
 6. Revenue Form 41A720HH, "Schedule HH, Kentucky Housing for Homeless Families Deduction", October 1998;
 7. Revenue Form 41A720I, "Instructions, 1998 Kentucky Corporation Income and License Tax Return", October 1998;
 8. Revenue Form 41A720RC, "Schedule RC, "Application for Income Tax Credit for Recycling and/or Composting Equipment", October 1998;
 9. Revenue Form 41A720RC(C), "Schedule RC - Part I Continuation", October 1994;
 10. Revenue Form 41A720RC (K-1), "Schedule RC (K-1), "Pro Rata/Distributive Share of Approved Recycling and/or Composting Equipment Tax Credit", October 1997;
 11. Revenue Form 41A720S, "Form 720S, 1998 Kentucky S Corporation Income and License Tax Return", October 1998;
 12. Revenue Form 41A720S1, "1998 Kentucky Corporation Income and License Tax Forms and Instructions Packet", October 1998;
 13. Revenue Form 41A720S2, "1998 Kentucky S Corporation Income and License Tax Forms and Instructions Packet", October 1998;
 14. Revenue Form 41A720-S4, "Instructions for Filling Corporation Estimated Income Tax Voucher", October 1998;
 15. Revenue Form 41A720-S16, "Schedule KREDA, Tax Credit Computation Schedule (for a KREDA Project of C Corporations)", December 1998;
 16. Revenue Form 41A720-S17, "Schedule KREDA-T, Tracking Schedule for a KREDA Project", December 1998;
 17. Revenue Form 41A720-S18, "Schedule KREDA-SP, Tax Computation Schedule (for a KREDA Project of S Corporations or Partnerships)", December 1998;
 18. Revenue Form 41A720-S20, "Schedule KIDA, Tax Credit Computation Schedule (for a KIDA Project of C Corporations)", December 1998;
 19. Revenue Form 41A720-S21, "Schedule KIDA-T, Tracking Schedule for a KIDA Project", December 1998;

20. Revenue Form 41A720-S22, "Schedule KIDA-SP, Tax Computation Schedule (for a KIDA Project of S Corporations or Partnerships)", December 1998;
21. Revenue Form 41A720-S24, "Schedule KIRA, Tax Credit Computation Schedule (for a KIRA Project of C Corporations)", December 1998;—
22. Revenue Form 41A720-S25, "Schedule KIRA-T, Tracking Schedule for a KIRA Project", December 1998;
23. Revenue Form 41A720-S26, "Schedule KIRA-SP, Tax Credit Computation Schedule (for a KIRA Project of S Corporations or Partnerships)", December 1998;
24. Revenue Form 41A720-S27, "Schedule KJDA, Tax Credit Computation Schedule (for a KJDA Project of C Corporations)", February 1999;
25. Revenue Form 41A720-S28, "Schedule KJDA-T, Tracking Schedule for a KJDA Project", December 1998;
26. Revenue Form 41A720-S29, "Schedule KJDA-SP, Tax Computation Schedule (for a KJDA Project of S Corporations or Partnerships)", December 1998;
27. Revenue Form 41A720-S30, "Schedule TCS, Tax Credit Summary Schedule (for C Corporations with More Than One (1) Economic Development Project)", October 1998;
28. Revenue Form 41A720-S31, "1998 Kentucky Schedule K for S Corporations with Economic Development Project(s)", February 1999;
29. Revenue Form 41A720-S32, "1998 Kentucky Schedule K for Partnerships with Economic Development Project(s)", February 1999;
30. Revenue Form 41A720SI, "Instructions for 1998 Kentucky S Corporation Income and License Tax Return", October 1998;
31. Revenue Form 41A720S (K-1), "Schedule K-1 (Form 720S), 1998 Kentucky Shareholder's Share of Income, Credits, Deductions, Etc.", October 1998;
32. Revenue Form 41A720SL, "Application for Six (6) Month Extension of Time to File Kentucky Corporation Income and License Tax Return", October 1998;
33. Revenue Form 41A720X, "Form 720X, Amended Kentucky Corporation Income Tax and Corporation License Tax Return", November 1998;
34. Revenue Form 41A722, "Form 722, Election to File Consolidated Kentucky Corporation Income Tax Return" October 1998;
35. Revenue Form 41A750, "Business Development Corporation Tax Return", August 1975;
36. Revenue Form 41A851K, "Form 851-K, Kentucky Affiliations and Payment Schedule", October 1998;
37. Revenue Form 42A799, "Kentucky Information Return", February 1985;
38. Revenue Form 42A799-S1, "Form 796, Annual Income Information Return", June 1984;
- (f) Health care provider - referenced material:
 1. Revenue Form 73A060, "Health Care Provider Tax Return", August, 1996;
 2. Revenue Form 73A060(A), "Kentucky Health Care Provider Tax Return - Keep This Copy", July, 1996;
 3. Revenue Form 73A060(I), "Instructions - Kentucky Health Care Provider Tax Return", July, 1997;
 4. Revenue Form 73A061, "Kentucky Health Care Provider Application for Certificate of Registration", June, 1994;
- (g) Individual income and withholding - referenced material:
 1. Revenue Form 12A200, "Kentucky Individual Income Tax Installment Agreement Request", October, 1998;
 2. Revenue Form 15F001, "740 Facts", 1998;
 3. Revenue Form 15F002, "Who.. What.. When.. Where?", 1998;
 4. Revenue Form 40A100, "Application for Refund of Income Taxes", November, 1990;
 5. Revenue Form 40A102, "Application for Extension of Time to File Individual, Partnership and Fiduciary Income Tax Returns for Kentucky", October, 1998;
 6. Revenue Form 40A727, "Kentucky Income Tax Forms Requisition", October 1998;
 7. Revenue Form 42A680, "Kentucky Individual Income Tax Return Audit Report", May, 1995;

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8. Revenue Form 42A701B, "Kentucky Individual Income Tax Return Audit Report", May, 1995;
9. Revenue Form 42A705, "Kentucky Income Tax Withholding Audit Report", August, 1992;
10. Revenue Form 42A740, "1998 Kentucky Individual Income Tax Return, Full-Year Residents Only", 1998;
11. Revenue Form 42A740-EZ, "1998 Kentucky Individual Income Tax Return for Single Persons with No Dependents", 1998;
12. Revenue Form 42A740-L, "1998 Kentucky Income Tax Postcard", 1998;
13. Revenue Form 42A740-S, "1998 Kentucky Individual Income Tax Return, Full-Year Residents Only", 1998;
14. Revenue Form 42A740-S9, "1998 Kentucky Income Tax Return, Nonresident or Part-Year Resident", 1998;
15. Revenue Form 42A740-NP-A, "Kentucky Schedule A, 1998 Itemized Deductions", December, 1998;
16. Revenue Form 42A740-NP-ME, "Schedule ME, 1998 Moving Expense Reimbursement", 1998;
17. Revenue Form 42A740-S9-R, "1998 Kentucky Income Tax Return Nonresident - Reciprocal State", 1998;
18. Revenue Form 42A740-S10, "1998 Kentucky Income Tax Return, Nonresident or Part-Year Resident Forms and Instructions", 1998;
19. Revenue Form 42A740-S11, "1998 Kentucky Individual Income Tax Instructions for Forms 740, 740-S, and 740-EZ", 1998;
20. Revenue Form 42A740-ES, "1999 Individual Income Tax Kentucky Estimated Tax Voucher", March, 1999;
21. Revenue Form 42A740-S1, "2210-K, 1998 Underpayment of Estimated Tax by Individuals", 1998;
22. Revenue Form 42A740-S4, "1999 Instructions for Filing Estimated Tax Vouchers", October, 1998;
23. Revenue Form 42A740-T, "1998 Kentucky Individual Income TeleFile Tax Record and Instructions", 1998;
24. Revenue Form 42A740-X, "Amended Kentucky Individual Income Tax Return for Tax Year 1995, 1996, 1997, 1998", November, 1998;
25. Revenue Form 42A740-A, "Kentucky Schedule A, 1998 Itemized Deductions", 1998;
26. Revenue Form 42A740-P, "Schedule P, 1998 Kentucky Pension Income Exclusion", 1998;
27. Revenue Form 42A740-TC, "Schedule TC, 1998 Tax Computation Schedule", 1998;
28. Revenue Form 42A740-UTC, "Schedule UTC, 1998 Unemployment Tax Credit", 1998;
29. Revenue Form 42A740-S18, "8582-K, 1998 Kentucky Passive Activity Loss Limitations", 1998;
30. Revenue Form 42A740-S20, "1045-K, 1998 Kentucky Net Operating Loss Application for Income Tax Refund", 1998;
31. Revenue Form 42A740-S20(I), "Instructions - Form 1045-K", October, 1998;
32. Revenue Form 42A740-S21, "4972-K, 1998 Kentucky Tax on Lump-Sum Distributions", 1998;
33. Revenue Form 42A740-S22, "8453-K, 1998 Kentucky Individual Income Tax Declaration for Electronic Filing", 1998;
34. Revenue Form 42A740-S23, "740-V, 1998 Kentucky Electronic Payment Voucher", 1998;
35. Revenue Form 42A741, "Form 741, 1998 Kentucky Fiduciary Income Tax Return", 1998;
36. Revenue Form 42A741(I), "Instructions - Form 741, 1998 Kentucky Fiduciary Income Tax Return", October, 1998;
37. Revenue Form 42A741-D, "Schedule D, Form 741, 1998 Kentucky Capital Gains and Losses", December, 1998;
38. Revenue Form 42A741(K-1), "Schedule K-1 Form 741, 1998 Kentucky Beneficiary's Share of Income, Deduction, Credits, etc.", 1998;
39. Revenue Form 42A765, "Form 765, 1998 Kentucky Partnership Income Return", 1998;
40. Revenue Form 42A765(I), "Instructions - Form 765, 1998 Kentucky Partnership Income Return", October, 1998;
41. Revenue Form 42A765(K-1), "Kentucky Schedule K-1 Form 765, 1998 Partner's Share of Income, Deductions, Credits, etc.", 1998;
42. Revenue Form 42A800, "Withholding Kentucky Income Tax

Instructions for Employers and Withholding Tax Tables", September, 1998;

43. Revenue Form 42A801, "Form K-1, Kentucky Employer's Return of Income Tax Withheld and Worksheet", March, 1999;
44. Revenue Form 42A801-(A), "Form K-1A, Kentucky Employer's Return of Income Tax Withheld", October, 1991;
45. Revenue Form 42A801-E, "Form K-1E, Kentucky Employer's Return and Worksheet of Income Tax Withheld - Electronic Funds Transfer", March, 1999;
46. Revenue Form 42A802, "W-2/ K-2, 1998 Wage and Tax Statement", 1998;
47. Revenue Form 42A803, "Form K-3, Kentucky Employer's Return and Worksheet of Income Tax Withheld", March, 1999;
48. Revenue Form 42A803-(A), "Form K-3A, Employer's Return of Income Tax Withheld", October, 1991;
49. Revenue Form 42A803-E, "Form K-3E, Kentucky Employer's Income Tax Withheld Return and Worksheet - Electronic Funds Transfer", March, 1999;
50. Revenue Form 42A804, "Form K-4, Kentucky Revenue Cabinet Employee's Withholding Exemption Certificate", January, 1993;
51. Revenue Form 42A804-A, "Form K-4A, Kentucky Revenue Cabinet Withholding Exemptions for Excess Itemized Deductions", August, 1998;
52. Revenue Form 42A804-E, "Form K-4E, Special Withholding Exemption Certificate", July 1990;
53. Revenue Form 42A806, "Transmitter Report for Filing Kentucky Wage Statements", November 1998;
54. Revenue Form 42A807, "Form K-4FC, Fort Campbell Exemption Certificate", October, 1998;
55. Revenue Form 42A809, "Certificate of Nonresidence", January, 1984;
56. Revenue Form 42A810, "Nonresident's Affidavit - Kentucky Individual Income Tax", April, 1989;
57. Revenue Form 42F010, "Should I Be Making Estimated Tax Payments", February, 1999;

(h) Inheritance - referenced material:

1. Revenue Form 92A101, "Kentucky Nonresident Inheritance and Estate Tax Return and Instructions", May, 1995;
2. Revenue Form 92A110, "Real Estate Data Report", May, 1995;
3. Revenue Form 92A120, "Kentucky Resident Inheritance and Estate Tax Return Packet", May, 1995;
4. Revenue Form 92A120I, "Instructions 92A120 Packet", May, 1995;
5. Revenue Form 92A120S, "Inheritance and Estate Tax Return Short Form Packet", May, 1995;
6. Revenue Form 92A120X, "Kentucky Spousal Inheritance Tax Return", October, 1992;
7. Revenue Form 92A121, "Acceptance of Inheritance and Estate Tax Return", March, 1986;
8. Revenue Form 92A200, "Kentucky Inheritance and Estate Tax Return", December, 1998;
9. Revenue Form 92A201, "Kentucky Inheritance and Estate Tax Return No Tax Due", December, 1998;
10. Revenue Form 92A202, "Kentucky Estate Tax Return", December, 1998;
11. Revenue Form 92A203, "Kentucky Inheritance and Estate Tax Return - Short Form", December, 1998;
12. Revenue Form 92A204, "Real Estate Valuation Information Sheet", December, 1998;
13. Revenue Form 92A500, "Notice of Insurance Payment", June, 1984;
14. Revenue Form 92A926, "Notice of Benefits Paid by Employer/Insurance Company", May, 1990;
15. Revenue Form 92A928, "Election to Defer the Payment of Inheritance Tax Through Installments", May, 1996;
16. Revenue Form 92A929, "Notice of Agricultural and Horticultural Inheritance Tax Lien", March, 1991;
17. Revenue Form 92A930, "Certificate of Release of Agricultural and Horticultural Inheritance Tax Lien", March, 1990;
18. Revenue Form 92A931, "Certificate of Partial Discharge of the Agricultural and Horticultural Inheritance Tax Lien", July, 1983;

19. Revenue Form 92A932, "Receipt of Inheritance and Estate Taxes", December, 1984;

20. Revenue Form 92A936, "Election to Qualify Terminable Interest Property and/or Power of Appointment Property", May, 1995;

21. Revenue Form 92F101, "A Guide to Kentucky Inheritance and Estate Taxes", January, 1998;

(i) Insurance - referenced material:

1. Revenue Form 74A100, "Insurance Premiums Tax Return", December, 1998;

2. Revenue Form 74A101, "Insurance Tax Return - Domestic Mutual, Domestic Mutual Fire, or Cooperative and Assessment Fire Insurance Companies", September, 1986;

3. Revenue Form 74A105, "Unauthorized Insurance Tax Return", October, 1991;

4. Revenue Form 74A110, "Kentucky Estimated Insurance Premiums Tax", December, 1998;

5. Revenue Form 74A116, "Tax Election for Domestic Life Insurance Companies", December, 1998;

6. Revenue Form 74A117, "Monthly Insurance Surcharge Report - Domestic Mutual, Cooperative and Assessment Fire Insurer", November, 1998;

7. Revenue Form 74A118, "Monthly Insurance Surcharge Report", October, 1998;

(j) Legal process - referenced material: Revenue Form 73A200, "County Clerk's Monthly Report of Legal Process Tax Receipts", January, 1995;

(k) Marijuana and controlled substance - referenced material:

1. Revenue Form 73A701, "Instructions for Affixing Marijuana and Controlled Substance Tax Evidence (Stamp)", July, 1994;

2. Revenue Form 73A702, "Notice of Seizure and Tax Lien KRS 138.870 Marijuana and Controlled Substance Tax", October, 1994;

3. Revenue Form 73A703, "Marijuana or Controlled Substance Stamps Order Form", October, 1994;

(l) Motor fuels - referenced material:

1. Revenue Form 72A004, "Motor Fuels Tax Watercraft Refund Bond", November, 1990;

2. Revenue Form 72A005, "Application for Approval to Sell Watercraft Refund Motor Fuels - Public Boat Dock";

3. Revenue Form 72A006, "Motor Fuels Tax Refund Application - Public Boat Dock", February, 1991;

4. Revenue Form 72A010, "Motor Fuel Tax Refund Permit Holder's Bond", July, 1989;

5. Revenue Form 72A011, "Petroleum Storage Tank Environmental Assurance Fee Monthly Report", December, 1994;

6. Revenue Form 72A052, "Kentucky Motor Fuels Tax Refund Permit", May, 1995;

7. Revenue Form 72A053-A, "Application for Refund of Kentucky Motor Fuel Tax Paid on Nonhighway Motor Fuels", November, 1996;

8. Revenue Form 72A054-A, "Kentucky Motor Fuels Tax Refund Invoice", June, 1988;

9. Revenue Form 72A065, "Aviation Gasoline Tax Refund Bond", March, 1985;

10. Revenue Form 72A066, "Application for Refund of Kentucky Tax Paid on Gasoline Used in Operation of Aircraft", May, 1991;

11. Revenue Form 72A067, "Application for Approval to Receive a Refund of Aviation Motor Fuels", December, 1998;

12. Revenue Form 72A071, "Motor Fuels Tax Refund Bond - City and Suburban Bus, Nonprofit Bus, Senior Citizen Transportation, or Taxicabs", July, 1984;

13. Revenue Form 72A072, "Application for Motor Fuel Refund - City and Suburban Bus Companies, Nonprofit Bus Companies, Senior Citizen Transportation and Taxicab Companies", May, 1991;

14. Revenue Form 72A073, "Application for Approval to Receive a Refund of Tax on Motor Fuels Consumed by City and Suburban Buses, Nonprofit Buses, Senior Citizen Transportation and Taxicabs", February, 1990;

15. Revenue Form 72A077, "Licensed Gasoline Dealer's Monthly Report of Gasoline Sales to U.S. Government", May, 1990;

16. Revenue Form 72A078, "Statement of Claim for Accountable Loss of Motor Fuel", March, 1994;

17. Revenue Form 72A080, "Report of Gasoline Received From

Licensed Kentucky Dealers", June, 1988;

18. Revenue Form 72A081, "Report of Gasoline Imported from Other States", January, 1999;

19. Revenue Form 72A081-P, "Purchaser's Report Gasoline Imported into Kentucky - Kentucky Tax Paid to Suppliers", January, 1999;

20. Revenue Form 72A081-S, "Supplier's Report Gasoline Imported into Kentucky - Kentucky Tax Paid by Supplier", January, 1999;

21. Revenue Form 72A082, "Report of Gasoline Imported", June, 1988;

22. Revenue Form 72A083, "Report of Gasoline Received from Terminal or Refinery", June, 1988;

23. Revenue Form 72A084, "Report of Gasoline Exported", December, 1992;

24. Revenue Form 72A085, "Report of Gasoline Sold to Licensed Kentucky Dealers", June, 1988;

25. Revenue Form 72A086, "Report of Gasoline Withdrawals from Terminal Storage", June, 1988;

26. Revenue Form 72A087, "Report of Gasoline Withdrawals to Licensed Kentucky Dealers", June, 1988;

27. Revenue Form 72A088, "Report of Gasoline Withdrawals Exported or Sold for Export", June, 1988;

28. Revenue Form 72A089, "Licensed Gasoline Dealers Monthly Report", January, 1999;

29. Revenue Form 72A090, "Gasoline Dealers Monthly Terminal Storage Report", December, 1992;

30. Revenue Form 72A098, "Transporter's Report of Motor Fuel Delivered", January, 1997;

31. Revenue Form 72A103, "Licensed Gasoline Dealer's Estimated Tax Payment", May, 1990;

32. Revenue Form 72A107, "Licensed Special Fuels Dealer's Monthly Report of Special Fuels Sales to U.S. Government", July, 1990;

33. Revenue Form 72A110, "Certification of Special Fuels Non-highway Use", December, 1998;

34. Revenue Form 72A124, "Report of Kerosene Received and Blended", May, 1990;

35. Revenue Form 72A127, "Special Fuels Dealer's Schedule of Sales Qualifying for State or Local Government Agency Credit", June, 1990;

36. Revenue Form 72A128, "Special Fuels Dealer's Schedule of Sales Qualifying for Nonprofit Religious, Charitable or Educational Organization Credit", June, 1990;

37. Revenue Form 72A131, "Special Fuels Dealer's Schedules of Sales Qualifying for Agricultural Tax Credit", May, 1990;

38. Revenue Form 72A132, "Special Fuels Dealer's Schedule of Sales Qualifying for Residential Heating Tax Credit", May, 1990;

39. Revenue Form 72A135, "Application for Kentucky Motor Fuels Tax Refund Permit", June, 1995;

40. Revenue Form 72A138, "Licensed Special Fuels Dealer's Monthly Report", January, 1999;

41. Revenue Form 72A153, "Report of Special Fuels Received from Licensed Kentucky Dealers", June, 1988;

42. Revenue Form 72A154, "Report of Special Fuels Imported from Other States", January, 1999;

43. Revenue Form 72A154-P, "Purchaser's Report Special Fuels Imported - Kentucky Tax Paid to Supplier", January, 1999;

44. Revenue Form 72A154-S, "Supplier's Report Special Fuels Imported - Kentucky Tax Paid by Supplier", January, 1999;

45. Revenue Form 72A155, "Report of Special Fuels Exported or Sold for Export", June, 1988;

46. Revenue Form 72A156, "Report of Special Fuels Sold to Licensed Kentucky Dealers", June, 1988;

47. Revenue Form 72A159, "Report of Special Fuels Sold for Exclusive Use by Railroad Companies for Nonhighway Purposes", June, 1988;

48. Revenue Form 72A160, "Licensed Special Fuels Dealer's Estimated Tax Payment", May, 1990;

49. Revenue Form 72A161, "Monthly Report Liquefied Petroleum Gas Dealer", July, 1997;

50. Revenue Form 72A162, "Report of Liquefied Petroleum Gas Motor Fuels", July, 1997;

51. Revenue Form 72A163, "Application for Liquefied Petroleum Gas Motor Fuels Tax Exemption Permit", May, 1991;
 52. Revenue Form 72A170, "Special Fuels Dealer's Monthly Terminal Storage Report", May, 1990;
 53. Revenue Form 72A171, "Report of Special Fuels Imported", June, 1988;
 54. Revenue Form 72A172, "Report of Special Fuels Received from Terminal or Refinery", June, 1988;
 55. Revenue Form 72A173, "Report of Special Fuels Withdrawals to Licensed Kentucky Dealers", June, 1988;
 56. Revenue Form 72A174, "Report of Special Fuels Withdrawals Exported or Sold for Export", June, 1988;
 57. Revenue Form 72A175, "Report of Special Fuels Withdrawals from Terminal Storage", June, 1988;
 58. Revenue Form 72A300, "Tax Registration Application for Motor Fuels License", February, 1997;
 59. Revenue Form 72A301, "Motor Fuels License Bond", January, 1997;
 60. Revenue Form 72A302, "Motor Fuels License", August, 1998;
- (m) Motor vehicle usage - referenced material:
1. Revenue Form 71A100, "Affidavit of Total Consideration Given for a Motor Vehicle", October, 1998;
 2. Revenue Form 71A151, "Enterprise Zone Motor Vehicle Usage Tax Exemption Certification", June, 1992;
 3. Revenue Form 71A163, "Affidavits to Support Interstate Motor Carrier Motor Vehicle Usage Tax Exemption", June, 1985;
 4. Revenue Form 71A165, "Nonresident Military Personnel Motor Vehicle Usage Tax Exemption", June, 1992;
 5. Revenue Form 71A174, "County Clerk's Recapitulation of Motor Vehicle Usage Tax - Weekly Report", September, 1983;
 6. Revenue Form 71A174-A, "County Clerk's Recapitulation of Motor Vehicle Usage Tax - Interim Report", June, 1991;
 7. Revenue Form 71A235, "Added Equipment/Purchase Price Certification", May, 1993;
 8. Revenue Form 71A245, "Exemption Transfer Affidavit", May, 1994;
 9. Revenue Form 71B161, "Correction Notice - Motor Vehicle Usage Tax", October 1986;
- (n) Property - referenced material:
1. Revenue Form 61A200, "Public Service Company Property Tax Return and Instructions", January, 1999;
 2. Revenue Form 61A200(G), "Report of Capital Stocks", January, 1999;
 3. Revenue Form 61A200(H), "Report of Funded Debt", January, 1999;
 4. Revenue Form 61A200(I), "Business Summary by Taxing District", January, 1999;
 5. Revenue Form 61A200(J), "Property Summary by Taxing Districts", January, 1999;
 6. Revenue Form 61A200(K), "Operating Property Listing by Taxing District", January, 1999;
 7. Revenue Form 61A200(K2), "Nonoperating Property Listing by Taxing District", January, 1999;
 8. Revenue Form 61A200(L), "Report of Property and Business Factors for all Interstate Companies", January, 1999;
 9. Revenue Form 61A200(L2), "Report of Property and Business Factors for Commercial Passenger and Cargo Airlines", January, 1999;
 10. Revenue Form 61A200(M), "Report of Property and Business Factors for Interstate Railroad and Sleeping Car Companies", January, 1999;
 11. Revenue Form 61A200(N), "Report of Leased Real and Personal Property System and Kentucky Operating Leases", January, 1999;
 12. Revenue Form 61A200(O), "Railroad Private Car Mileage Report", January, 1999;
 13. Revenue Form 61A200(P), "Report of Kentucky Operations", January, 1999;
 14. Revenue Form 61A200P2, "Balance Sheet Information", January, 1999;
 15. Revenue Form 61A200P3, "Results of Operations", January, 1999;

16. Revenue Form 61A200P4, "Supplemental Accounting Information" January, 1999;
17. Revenue Form 61A200P5, "Cable Television Revenue and Expenses", January, 1999;
18. Revenue Form 61A200P6, "Cable Television Reporting Form", January, 1999;
19. Revenue Form 61A200P7, "Cable Television Investment Report Form", January, 1999;
20. Revenue Form 61A200Q, "Supplemental Report of Operations for Contained and Residential Landfills", January, 1999;
21. Revenue Form 61A200R, "Report of Property Subject to the Pollution Control Tax Exemption", January, 1999;
22. Revenue Form 61A200S, "Report of System Mobile Flight Property", January, 1999;
23. Revenue Form 61A200T, "Report of Reseller Leasing Form", January, 1999;
24. Revenue Form 61A202, "1999 Public Service Company Property Tax Return for Railroad Car Line" January, 1999;
25. Revenue Form 61A203, "1998 Apportioned Vehicle Property Tax Return and Instructions", January, 1999;
26. Revenue Form 61A207, "Watercraft Property Tax Return", January, 1999;
27. Revenue Form 61A207I, "Instructions - 61A207", January, 1999;
28. Revenue Form 61A208, "Public Service Company Property Tax Return Coin Operated Telephones", November, 1998;
29. Revenue Form 61A209, "Public Service Company Sale Form", February, 1999;
30. Revenue Form 61A210, "Cable Television Company Sales", February, 1999;
31. Revenue Form 61A211, "Public Service Company Schedule of Owned and/or Leased 1999 Motor Vehicles with Kentucky Situs", February, 1999;
32. Revenue Form 61A230, "Notice of Final Assessment for Public Service Company", March, 1999;
33. Revenue Form 61A240, "Notice of Assessment for Public Service Company", March, 1999;
34. Revenue Form 61A250, "Notice of Assessment for Public Service Company on the Taxpayer's Claim of Value", March, 1999;
35. Revenue Form 61A255, "Public Service Company Property Tax Statement", July, 1997;
36. Revenue Form 61A507, "Distilled Spirits or Nonresident Watercraft", April, 1994;
37. Revenue Form 61A508, "Annual Report of Distilled Spirits in Bonded Warehouse", December, 1998;
38. Revenue Form 61A508-S1, "Schedule 1 Department of Property Valuation Cost of Production Schedule", December, 1998;
39. Revenue Form 61A508-S2, "Schedule 2 Department of Property Valuation Storage of Cost Schedule", December, 1998;
40. Revenue Form 61A508-S3, "Schedule 3 Schedule of Bulk Sales", December, 1998;
41. Revenue Form 61A508-S4, "Schedule 4", December, 1998;
42. Revenue Form 61F003, "Facts You Should Know About Public Service Companies", February, 1999;
43. Revenue Form 62A006, "Motor Boat Tax and/or Registration Renewal Notice";
44. Revenue Form 62A007, "Motor Vehicle Tax and/or Registration Renewal Notice";
45. Revenue Form 62A007S, "Motor Vehicle/Boat Property Tax - Second Notice";
46. Revenue Form 62A008, "Motor Vehicle Tax Notice - Delinquent";
47. Revenue Form 62A010, "Notice for Boat Transfer";
48. Revenue Form 62A013, "Application for Assessment Moratorium Certificate", September, 1982;
49. Revenue Form 62A015, "1999 Motor Vehicle and Watercraft Property Tax Rate Certification";
50. Revenue Form 62A016, "Quietus";
51. Revenue Form 62A017, "County Clerk's Claim for Calculation of Motor Vehicle and Boat Bills";
52. Revenue Form 62A018, "School Taxing Jurisdiction - Motor Vehicle and Watercraft Property Tax Rate";
53. Revenue Form 62A019, "Distributions of Ad Valorem Tax to

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the Fiscal Courts";

54. Revenue Form 62A020, "Intercounty Property Tax Collections";

55. Revenue Form 62A023, "Application for Exemption from Property Taxation", April, 1991;

56. Revenue Form 62A023-R, "Application for Exemption from Property Taxation for Religious Organizations", April, 1991;

57. Revenue Form 62A024, "Undeveloped Oil and Gas Property Tax Return", January, 1996;

58. Revenue Form 62A037, "Mail Back Card Department of Property Valuation", April, 1998;

59. Revenue Form 62A039, "Mail Back Card Department of Property Valuation for Mobile Manufactured Home", September, 1990;

60. Revenue Form 62A044, "Affidavit for Correction/Exoneration of Motor Vehicle/Boat Property Tax";

61. Revenue Form 62A050, "Application for Property Tax Refund", April, 1993;

62. Revenue Form 62A200, "1999 Unmined Coal Property Tax Information Return", December, 1998;

63. Revenue Form 62A200A, "Schedule A Fee Property Ownership", December, 1998;

64. Revenue Form 62A200B, "Schedule B Mineral Property Ownership (Coal Only)", December, 1998;

65. Revenue Form 62A200C, "Schedule C Leased Property", December, 1998;

66. Revenue Form 62A200D, "Schedule D Property Transfers", December, 1998;

67. Revenue Form 62A200E, "Schedule E Lease Terminations", December, 1998;

68. Revenue Form 62A200F, "Schedule F Geological Information by County", December, 1998;

69. Revenue Form 62A200G, "Schedule G", December, 1998;

70. Revenue Form 62A302, "Property Information Request Regarding Assessment Appeal", May, 1994;

71. Revenue Form 62A307, "Property Owner Conference Record", May, 1992;

72. Revenue Form 62A310, "Corporation Report of Securities Held by a Kentucky Resident - Cover Letter", March, 1999;

73. Revenue Form 62A310-S1, "Corporation Report of Securities Held by Kentucky Residents", March, 1999;

74. Revenue Form 62A311, "Life Insurance Proceeds Report Kentucky Property Tax - Cover Letter", March, 1999;

75. Revenue Form 62A311-S1, "Life Insurance Proceeds Report", March, 1999;

76. Revenue Form 62A329, "Annual Report of Domestic Life Insurance Companies", March, 1999;

77. Revenue Form 62A350, "Application for Exemption Under the Homestead/Disability Amendment", December, 1998;

78. Revenue Form 62A352, "Notice to Real Property Owner of Assessment by Property Valuation Administrator", January, 1993;

79. Revenue Form 62A353, "Notice of Listing of Omitted Real Property", December, 1989;

80. Revenue Form 62A354, "Notice to Property Owner of Final Decision of Board of Assessment Appeals", March, 1998;

81. Revenue Form 62A365, "Nonresidency Affidavit", March, 1999;

82. Revenue Form 62A366, "Order Correcting Erroneous Assessment", August, 1992;

83. Revenue Form 62A366-D, "Order Correcting Erroneous Delinquent Assessment", August, 1992;

84. Revenue Form 62A376, "Intangible Property Tax Return", October, 1998;

85. Revenue Form 62A376I, "Instructions Intangible Property Tax Return", March, 1999;

86. Revenue Form 62A378, "Report of Location of Mobile Homes", December, 1992;

87. Revenue Form 62A379, "Listing of Omitted Real Property", January, 1998;

88. Revenue Form 62A384, "Oil Property Tax Return", January, 1998;

89. Revenue Form 62A384C, "Clay Property Tax Return", January, 1996;

90. Revenue Form 62A384F, "Flourspar Property Tax Return", January, 1998;

91. Revenue Form 62A384G, "Natural Gas Property Tax Return", January, 1998;

92. Revenue Form 62A384L, "Limestone and Sand and Gravel Property Tax Return", January, 1999;

93. Revenue Form 62A394-MV, "County Clerk's Monthly Report of Motor Vehicle Property Tax Collections";

94. Revenue Form 62A399, "Notice to Appear in Circuit Court", August, 1983;

95. Revenue Form 62A400, "Notice of Distrain", August, 1983;

96. Revenue Form 62A401, "Final Notice Before Distrain", August, 1983;

97. Revenue Form 62A405, "Notice of Sale of Tax Bill", October, 1991;

98. Revenue Form 62A500, "1999 Tangible Personal Property Tax Return", October, 1998;

99. Revenue Form 62A500A, "1999 Tangible Personal Property Tax Return for Aircraft", October, 1998;

100. Revenue Form 62A500C, "Consignee Tangible Personal Property Tax Return", October, 1998;

101. Revenue Form 62A500L, "Lessee Tangible Personal Property Tax Return", October, 1998;

102. Revenue Form 62A500W, "1999 Tangible Personal Property Tax Return for Non-Kentucky Registered Watercraft and Documented Watercraft", October, 1998;

103. Revenue Form 62A600, "Savings and Loan Tax Return", March, 1999;

104. Revenue Form 62A601, "Foreign Savings and Loan Tax Return", March, 1999;

105. Revenue Form 62A601-S1, "Schedule A Computation of Apportionment Factor for Foreign Savings and Loans", March, 1999;

106. Revenue Form 62A601-S2, "Influence Amount Schedule B Computation of Exempt Securities", March, 1999;

107. Revenue Form 62A850, "Bank Deposits Tax Return", March, 1999;

108. Revenue Form 62A861, "Schedule 1 Summary of Deposits", March, 1999;

109. Revenue Form 62A862, "Certification of Tax Rate for Bank Deposits Franchise Tax", March, 1999;

110. Revenue Form 62A863, "Financial Institutions Local Deposits Summary Report", March, 1999;

111. Revenue Form 62A864, "Trust Questionnaire", March, 1999;

112. Revenue Form 62A865, "Kentucky Intangible Property Tax - 1998 Margin Accounts", March, 1999;

113. Revenue Form 62A872, "Intangible Property Assessment Notice for Prepayment of Estates", March, 1999;

114. Revenue Form 62A875, "Tangible Business Situs for Kentucky Intangible Tax Purposes", March, 1999;

115. Revenue Form 62A876-A, "Omitted Intangible Property List", March, 1999;

116. Revenue Form 62A878, "Omitted Intangible Worksheet", March, 1999;

117. Revenue Form 62A880, "Omitted Personal Property Assessment", March, 1999;

118. Revenue Form 62B001, "1999 Unmined Coal Tax Notice (Sublessee)", March, 1999;

119. Revenue Form 62B002, "1999 Unmined Coal Tax Notice (Lessee)", March, 1999;

120. Revenue Form 62B003, "1999 Unmined Coal Tax Notice (Owner)", March, 1999;

121. Revenue Form 62B010, "Omitted Notice of Assessment on Unmined Coal", March, 1999;

122. Revenue Form 62B011, "1999 Limestone, Sand, or Gravel Tax Notice", March, 1999;

123. Revenue Form 62B012, "1999 Oil Assessment Notice", March, 1999;

124. Revenue Form 62B013, "1999 Clay Property Assessment Notice", March, 1999;

125. Revenue Form 62B014, "1999 Undeveloped Oil and Gas Assessment Notice", March, 1999;

126. Revenue Form 62B015, "1999 Gas Assessment Notice",

March, 1999;

127. Revenue Form 62B016, "1999 Flourspar Property Assessment Notice", March, 1999;

128. Revenue Form 62B808, "Omitted Intangible Property Listing Request Letter", March, 1999;

129. Revenue Form 62F002, "Appeals Process for Personal Property Assessments";

130. Revenue Form 62F003, "Appeals Process for Real Property Assessments";

131. Revenue Form 62F020, "Deeds/Transfers and Property Taxes";

132. Revenue Form 62F031, "Appeal to Local Board of Assessment Appeals";

133. Revenue Form 62F500, "The Assessment of Tangible Personal Property";

134. Revenue Form 62F1341, "Exemptions Allowed for Savings and Loans, Agricultural Credit Associations and Banks for Cooperatives for Intangible Property Tax Purposes";

(o) Racing - referenced material: Revenue Form 73A100, "Race Track Pari-Mutuel and Admissions Report", June, 1998;

(p) Sales and use - referenced material:

1. Revenue Form 51A101, "Sales and Use Tax Permit", January, 1989;

2. Revenue Form 51A102, "Kentucky Sales and Use Tax Return and Worksheet", June, 1999;

3. Revenue Form 51A102E, "Kentucky Sales and Use Tax Return and Worksheet - Electronic Funds Transfer", June, 1999;

4. Revenue Form 51A103, "Kentucky Accelerated Sales and Use Tax Return and Worksheet", February, 1996;

5. Revenue Form 51A103E, "Kentucky Accelerated Sales and Use Tax Return and Worksheet - Electronic Funds Transfer", June, 1999;

6. Revenue Form 51A104, "Six (6) Percent Sales Tax Collection Bracket", July, 1990;

7. Revenue Form 51A105, "Resale Certificate", September, 1990;

8. Revenue Form 51A109, "Application for Energy Direct Pay Authorization", July, 1982;

9. Revenue Form 51A110, "Direct Pay Authorization", August, 1997;

10. Revenue Form 51A111, "Certificate of Exemption Machinery for New and Expanded Industry", March, 1996;

11. Revenue Form 51A112, "Application for Direct Pay Authorization", December, 1997;

12. Revenue Form 51A113, "Kentucky Consumer's Use Tax Return and Worksheet", June, 1999;

13. Revenue Form 51A113(O), "Consumer's Use Tax Return - Nonregistered Filer", July, 1992;

14. Revenue Form 51A115, "Order for Selected Sales and Use Tax Publications", August, 1998;

15. Revenue Form 51A125, "Application for Purchase Exemption Sales and Use Tax", February, 1993;

16. Revenue Form 51A126, "Purchase Exemption Certificate", June, 1992;

17. Revenue Form 51A127, "Out-of-State Exemption Certificate", June, 1988;

18. Revenue Form 51A128, "Solid Waste Recycling Machinery Exemption Certificate", March, 1991;

19. Revenue Form 51A129, "Kentucky Sales and Use Tax Energy Exemption Annual Return", May, 1992;

20. Revenue Form 51A130, "Kentucky Sales and Use Tax Monthly Aviation Fuel Tax Credit Schedule for Qualified Certificated Air Carrier", August, 1991;

21. Revenue Form 51A131, "Kentucky Sales and Use Tax Annual Reconciliation of Aviation Fuel Tax Credit Claimed by Certificated Air Carrier", August, 1991;

22. Revenue Form 51A143, "Purchase Exemption Certificate - Watercraft Industry", February, 1983;

23. Revenue Form 51A149, "Certificate of Exemption for Pollution Control Facilities", December, 1994;

24. Revenue Form 51A150, "Aircraft Exemption Certificate", August, 1986;

25. Revenue Form 51A151, "Enterprise Zone Sales and Use

Tax Exemption Certificate for Qualified Businesses Machinery and Equipment", July, 1992;

26. Revenue Form 51A152, "Enterprise Zone Sales and Use Tax Exemption Certificate for Building Materials", January, 1994;

27. Revenue Form 51A154, "Certificate of Exemption Out-of-State Delivery for Aircraft, Mobile/Manufactured Homes, Campers, Boats, Motors or Trailers", February, 1997;

28. Revenue Form 51A157, "Certificate of Exemption - Water Used in Raising Equine", April, 1998;

29. Revenue Form 51A158, "Farm Exemption Certificate", June, 1998;

30. Revenue Form 51A159, "On-Farm Facilities Certificate of Exemption for Materials, Machinery and Equipment", June, 1998;

31. Revenue Form 51A209, "Sales and Use Tax Refund Application", September, 1990;

32. Revenue Form 51A216, "Application for Pollution Control Tax Exemption Certificate", September, 1983;

33. Revenue Form 51A222, "Certificate of Exemption for Alcohol Production Facilities", June, 1980;

34. Revenue Form 51A223, "Application for Alcohol Production Facility Tax Exemption Certificate", July, 1980;

35. Revenue Form 51A226, "Pollution Control Tax Exemption Certificate", October, 1984;

36. Revenue Form 51A227, "Certificate of Resale (Schools)", August, 1984;

37. Revenue Form 51A228, "Application for Fluidized Bed Combustion Technology Tax Exemption Certificate", January, 1987;

38. Revenue Form 51A229, "Fluidized Bed Combustion Technology Tax Exemption Certificate", January, 1987;

39. Revenue Form 51A241, "Registration for the Kentucky Sales and Use Tax Refund for Motion Picture and Television Production Companies", January, 1987;

40. Revenue Form 51A242, "Application for Sales and Use Tax Refund for Motion Picture Production Company", January, 1987;

41. Revenue Form 51A250, "Application for Transient Merchant Permit", August, 1998;

42. Revenue Form 51B105A, "Sales and Use Tax Return Inquiry", November, 1990;

43. Revenue Form 51F008, "Federal Government Exemption From Kentucky Sales and Use Tax Notification", December, 1998;

44. Revenue Form 51F009, "Purchase Exemption Notification", December, 1998;

45. Revenue Form 51F010, "Energy Direct Pay Authorization: Notification", December, 1998;

(q) Severance - referenced material:

1. Revenue Form 55A003, "Certificate of Registration - Severance Taxes", August, 1996;

2. Revenue Form 55A004, "Coal Severance Tax Seller's Certificate", August, 1997;

3. Revenue Form 55A100, "Coal Tax Return", May, 1996;

4. Revenue Form 55A100, "Schedule of Coal Sales (Continuation)", July, 1988;

5. Revenue Form 55A100D, "Coal Tax Return Keep This Copy", August, 1988;

6. Revenue Form 55A100D, "Part IV - Schedule of Coal Sales - Keep This Copy (Continuation)";

7. Revenue Form 55A101, "Coal Tax Return Instructions", July, 1994;

8. Revenue Form 55A131, "Credit Memorandum", May, 1997;

9. Revenue Form 55A209, "Severance Tax Refund Application", May, 1997;

10. Revenue Form 56A001, "Application for Certificate of Registration Minerals and Natural Gas Tax", October, 1984;

11. Revenue Form 56A100, "Natural Gas and Natural Gas Liquids Tax Return", September, 1996;

12. Revenue Form 56A101, "Minerals Tax Return", September, 1996;

13. Revenue Form 56A106, "Minerals Tax Certificate of Exemption", April, 1997;

14. Revenue Form 56A107, "Schedule A, Gross Value of Minerals Severed in Kentucky Allocation and Schedule B, Minerals Purchased from Others for Processing by Taxpayer", July, 1997;

15. Revenue Form 56A108, "Schedule A, Gross Value of Natural

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Gas Sold to Nonconsumers and Schedule B, Taxable Gross Value of Natural Gas and Natural Gas Liquids Extracted in Kentucky by Taxpayer - Allocation", September, 1994;

16. Revenue Form 56A109, "Schedule C, Natural Gas First Purchased by Taxpayer from Kentucky Producers", August, 1985;

17. Revenue Form 56A110, "Schedule C, Minerals Tax Return, Computation of Tax on Clay Severed and Processed in Kentucky and Allocation of Tax Attributable to Clay", March, 1991;

18. Revenue Form 56A112, "Crude Petroleum Transporter's Monthly Report, Kentucky Oil Production Tax", June, 1998;

19. Revenue Form 56A113, "Minerals Tax Credit for Limestone Sold in Interstate Commerce", November, 1997;

20. Revenue Form 56A114, "Crude Petroleum Transporter's Application for Registration", May, 1997;

(r) Waste tire - referenced material: Revenue Form 73A051, "Motor Vehicle Tire Fee Report", May, 1998;

(2) These documents 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
DANA B. MAYTON, Commissioner

APPROVED BY AGENCY: March 29, 1999

FILED WITH LRC: March 30, 1999 at noon

PUBLIC HEARING: A public hearing on this proposed regulation shall be held on May 28, 1999 at 10 a.m. in Training Room A, 200 Fair Oaks Lane, Frankfort, Kentucky, 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 21, 1999 of their intent to attend. If no notification of intent to attend the hearing is received by May 21, 1999, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Edward A. Mattingly, Tax Consultant, Division of Tax Policy, Revenue Cabinet, Third Floor, 200 Fair Oaks Lane, Frankfort, Kentucky, 40601, (502) 564-6843, extension 4431, FAX (502) 564-9565, EMAIL emattingly@mail.state.ky.us.

REGULATORY IMPACT ANALYSIS

Contact Person: Edward A. Mattingly

(1) Type and number of entities affected: All Kentucky taxpayers and their representatives will be affected by the listing of all forms administered by the Revenue Cabinet in an 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: There should be no impact on the cost of living or employment in the affected area.

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion) 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: The Revenue Cabinet will not incur additional costs as the result of this regulation.

2. Continuing costs or savings: The Revenue Cabinet will not incur additional costs as the result of this regulation.

3. Additional factors increasing or decreasing costs: There are no additional factors which would affect costs.

(b) Reporting and paperwork requirements: There are no additional requirements.

(4) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on state or local revenue.

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

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

(a) Geographical area in which administrative regulation will be implemented: No economic impact is anticipated.

(b) the economic impact, including effects of economic activities arising from administrative regulation. No economic impact is anticipated.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 131.190(3) authorizes the cabinet to promulgate a forms 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: There should be no effects on public health or the environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Not implementing this regulation would not effect public health or the environmental welfare.

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

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

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

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was not applied. The requirements of this regulation apply to every taxpayer.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect: No unit, part or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates: No aspect or service of local government will be affected.

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. This administrative regulation will not have an effect on revenues of local government.

Expenditures (0)

Revenues (0)

FINANCE AND ADMINISTRATION CABINET

Office of the Secretary
(New Administrative Regulation)

200 KAR 5:340. Process for evaluating information for use in determining whether to approve privatization of a government service.

RELATES TO: KRS 45A.550 to 45A.554

STATUTORY AUTHORITY: KRS 45A.552

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 492, sec. 3 requires the Finance and Administration Cabinet to develop an objective and systematic process for evaluating the information required to be submitted by state agencies for use in determining whether to approve privatization of a government service and to adopt the process by promulgation of an administrative

regulation.

Section 1. An agency desiring to enter into a privatization contract, as defined in KRS 45A.550, shall, after issuance of a competitive solicitation document and review of responses, submit a request, signed by the agency head, and accompanied by the written documentation described in KRS 45A.551(2) and (3), and a copy of the proposed contract, to the Secretary of the Finance and Administration Cabinet. The secretary shall issue a written determination approving or rejecting the proposed privatization based upon the analyses provided by the agency and the criteria set out in Section 2 of this administrative regulation. The agency shall not proceed with award and execution of the contract until review is completed and approval is given by the Secretary of the Finance and Administration Cabinet.

Section 2. In determining whether to approve or reject a proposed privatization contract, the Secretary of the Finance and Administration Cabinet shall consider:

- (1) Whether the funds or revenues presently available would continue to be available if the private sector performs the activity;
- (2) Whether the privatization of the activity will affect other programs and responsibilities;
- (3) Whether privatization will transfer functions to a non-governmental entity that require either the exercise of discretion in applying government authority or the making of value judgments in making decisions for the government;
- (4) Whether the quality of the services to be privatized will be equal to or exceed the quality of services which could be provided by the government agency or the proposed contract will result in overall cost savings to the state which estimated savings will not be eliminated by contractor rate increases during the term of the contract;
- (5) Whether the solicitation required the submittal of third-party references;
- (6) Whether the proposed contract includes provisions for periodic evaluations to continually measure performance;
- (7) Whether the proposed minimum qualifications required of the contractor and staff meet or exceed the state's qualifications for similar work performed in the personnel system;
- (8) Whether the proposed contract contains provisions for termination by the state for breach of the contract by the contractor;
- (9) Whether responses to the solicitation indicate the availability of multiple qualified and competitive private vendors.

Section 3. In comparing costs, there shall be included in the cost of a contractor providing a service any continuing state costs that would be directly associated with the contracted function, including, but not limited to inspection, supervision, and monitoring costs.

(1) Cost comparison shall determine what it costs government to perform the activity and what future costs can be avoided by transferring the activity to the private sector.

(2) Estimated costs of the government activity shall be provided for the base contract plus all option years.

JOHN MCCARTY, Secretary

ANGELA C. ROBINSON, Assistant General Counsel

APPROVED BY AGENCY: April 14, 1999

FILED WITH LRC: April 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on May 25, 1999, at 10 a.m. in Room 386, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 18, 1999, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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: Mark

Board, Principal Assistant, Finance and Administration Cabinet, Office of the Secretary, Room 383 Capitol Annex, Frankfort, Kentucky 40601, (502) 564-4240, FAX (502) 564-6785.

REGULATORY IMPACT ANALYSIS

Contact Person: Mark Board

- (1) Type and number of entities affected: All state agencies.
- (2) Direct and indirect costs or savings on the:
 - (a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No direct or indirect costs or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation.
 - (b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No direct or indirect costs or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation.
 - (c) Compliance, reporting and paperwork requirements of those affected, including factors increasing or decreasing costs (note any effects upon competition) for the:
 1. First year following implementation: Agencies will be required to submit to the Finance and Administration Cabinet documentation supporting their requests to enter into privatization contracts.
 2. Second and subsequent years: Same as for first year.
- (3) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings:
 1. First year: There will be no cost to the Finance and Administration Cabinet. Savings cannot be determined at this time. A cost analysis must be submitted with each request for privatization. This analysis will set out the amount of savings that will result from privatization.
 2. Continuing costs or savings: Same as first year.
 3. Additional factors increasing or decreasing costs: None
 - (b) Reporting and paperwork requirements: The Secretary of the Finance and Administration shall issue a written determination either approving or rejecting privatization requests.
- (4) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues is anticipated.
- (5) Source of revenue to be used for implementation and enforcement of administrative regulation: Agency funds.
- (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
 - (a) Geographical area in which administrative regulation will be implemented: No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation. However, no impact is expected.
 - (b) Kentucky: No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation. However, no impact is expected.
- (7) Assessment of alternative methods; reasons why alternatives were rejected: Statutes and regulations from other states and cities were assessed and relevant matter incorporated into this regulation to meet the particular needs of the Commonwealth.
- (8) Assessment of expected benefits:
 - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects on public health and environmental welfare are expected in the geographical area in which the regulation will be implemented or in Kentucky.
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on the environment and public health would result if the regulation was not implemented.
 - (c) If detrimental effect would result, explain detrimental effect: Does not apply.

(9) Identify any statute, rule, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, administrative regulations or government policies which are in conflict, overlap, or duplicate the proposed 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. This regulation outlines an objective process to be used in reviewing all requests for approval of privatization contracts.

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(New Administrative Regulation)

301 KAR 6:060. Safe boating certification.

RELATES TO: KRS 235.280, 235.285(7)

STATUTORY AUTHORITY: KRS 235.280, 235.285(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 235.280 authorizes the department to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 235. KRS 235.285(7) requires that a person twelve (12) through seventeen (17) years of age operating a personal watercraft or motorboat of over ten (10) horsepower have a safe boating certificate. This administrative regulation is necessary to establish the procedures for acquiring a safe boating certificate.

Section 1. To obtain a safe boating certificate, a person shall:

(1) Answer correctly at least eighty (80) percent of the questions on an examination approved by the department; and

(2) Take the examination in the presence of a person authorized by the department to provide instruction in safe boating and administer the examination.

Section 2. There shall not be a:

(1) Mandatory waiting period before retaking the examination; or
(2) Limit on the number of times a person may retake the exam.

Section 3. Examination questions shall be taken from the publication, "Kentucky Boating Basics, A Guide to Responsible Boating."

Section 4. Incorporation by Reference. (1) "Kentucky Boating Basics, A Guide to Responsible Boating" 1999 edition, is incorporated by reference.

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

C. THOMAS BENNETT, Commissioner

MIKE BOATWRIGHT, Chairman

ANN R. LATTA, Secretary

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: April 14, 1999

FILED WITH LRC: April 15, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 28, 1999, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, # 1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 21, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed

administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4338, FAX (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: There are an estimated 33,000 persons between the ages of 12 and 17 in boating families in Kentucky. All would have to obtain a safe boating certificate if they are to operate a personal watercraft or motorboat of over 10 horsepower without an adult on board.

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

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

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

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

1. First year following implementation: Applicants will have to obtain a study guide, take an examination and carry a safe boating card while operating a boat.

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: Additional costs will be incurred in setting up the program, printing study guides, designing and printing certificates and developing computer programs to implement the program.

2. Continuing costs or savings: Continuing costs will consist of printing additional study guides and certificates, as well as administering the examinations and recordkeeping.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Applicants must successfully complete a 50-question examination to obtain a safe boating certificate.

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

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

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

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

(b) Kentucky: No impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 235.285 mandates that boat operators between the ages of 12 and 17 possess a boating safety certificate. Requiring an examination is the only alternative for a person to demonstrate the basic knowledge of boating safety required to be certified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Young people have been involved in an increasing number of boating accidents, particularly when they are operating personal watercraft. Implementation of this program should increase awareness of boating safety and contribute to increased public safety.

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

(c) If detrimental effect would result, explain detrimental effect: Possible continued increase in boating accidents.

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

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

(b) If in conflict, was effort made to harmonize the proposed

administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments:

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

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(New Administrative Regulation)**

401 KAR 51:100. General provisions for regional NOx requirements.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7410, 7661, 63 Fed. Reg. 57356 (October 27, 1998)

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7410, 7661, 63 Fed. Reg. 57356 (October 27, 1998)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The federal regulation incorporated by reference in this administrative regulation establishes provisions for individual sources to opt into the NOx Budget Trading Program. This administrative regulation is not more stringent nor otherwise different than the provisions of the NOx SIP Call.

Section 1. For purposes of 63 Fed. Reg. 57535 to 57538, October 27, 1998 (40 CFR 96.80 to 96.88):

- (1) The administrator shall be the U.S. EPA;
- (2) The permitting authority shall be the cabinet;
- (3) The citations Subpart E, §96.4, §96.5, and §96.42, shall be 401 KAR 51:110; and
- (4) The citations §96.20, §96.21(c), §96.22, and §96.23, shall be 401 KAR 50:035.

Section 2. Applicability. Sources that opt into the NOx Budget Trading Program shall comply with the requirements of 63 Fed. Reg. 57535 to 57538, October 27, 1998 (40 CFR 96.80), which is incorporated by reference in Section 3 of this administrative regulation.

Section 3. Incorporation by Reference. (1) "63 Fed. Reg. 57535 to 57538, October 27, 1998 (40 CFR 96.80 to 96.88), Individual Unit Opt-ins", is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

- (a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;
- (b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 920-2067;
- (c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 746-7475;
- (d) Florence Regional Office, 8020 Ewing Boulevard, Suite 110, Florence, Kentucky, 41042, (606) 292-6411;
- (e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky, 41701, (606) 435-6022;
- (f) London Regional Office, 85 State Police Road, London, Kentucky, 40741, (606)-878-0157;
- (g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky, 42303, (502) 687-7304; and
- (h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

(3) Copies of the *Federal Register* (Fed. Reg.) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

JAMES E. BICKFORD, Secretary
BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: April 13, 1999

FILED WITH LRC: April 14, 1999 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on May 25, 1999, at 10 a.m. (Eastern Time) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing, by May 18, 1999, five (5) workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. A transcript of the hearing will be made. If you request a transcript, you will be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the administrative regulation. Send written notification of your intent to be heard at the hearing, or your written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Millie Ellis, Supervisor, Regulation Development Section, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, Telephone: (502) 573-3382 fax: (502) 573-3787.

REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: This administrative regulation incorporates by reference that portion of the NOx SIP Call published in 63 Fed. Reg. 57356 (October 27, 1998) which establishes an opportunity for electric generating units and industrial boilers and turbines not subject to 401 KAR 51:110 to opt into the trading and banking program for NOx allowances. Although allowed by this administrative regulation, the division knows of no eligible units that plan to opt in at this time. The division has the flexibility to expand the applicability of this administrative regulation to other source categories if interest is expressed. Please see (7) below.

(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 cost of living costs or savings beyond those which are described in the federal rulemaking.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There are no added or reduced costs of doing business beyond those which are described in the federal rulemaking.

(c) To the extent available from the public comments received, 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 costs or savings beyond those which are described in the federal rulemaking.

2. Second and subsequent years: There are no costs or savings beyond those which are described in the federal rulemaking.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Division for Air Quality conducts compliance inspections and reviews permit applications as part of its routine activities. Existing staff resources will be used to conduct inspections and to review any applications submitted pursuant to this administrative regulation.

2. Continuing costs or savings: The division will cover any continuing costs in its operating budget.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: No significant agency reporting or paperwork requirements will result from this administrative regulation.

(4) Assessment of anticipated effect on state and local reve-

nues: There are no anticipated effects on local and state revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impact beyond that described in the federal rulemaking.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky beyond that described in the federal rulemaking.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The division considered expanding the kinds of sources allowed to opt in to the trading program beyond those prescribed in the federal rulemaking. This was rejected because no specific recommendations were provided during the NOI process. However, the division remains amenable to expanding the categories if requested to do so during the public review period.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is part of the NOx SIP Call which will apply statewide and it will benefit public health and the environment by reducing NOx air pollutant emissions. NOx emission reductions are expected to decrease ozone and fine particulate pollution, improve visibility, decrease acid rain, and improve water quality.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect would result because affected sources in Kentucky would become subject to the provisions of a federal implementation plan, which will be implemented by the U.S. EPA if Kentucky fails to implement the requirements of the NOx SIP Call.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result because affected sources in Kentucky would be subject to the provisions of the federal implementation plan.

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

(a) Necessity of proposed administrative regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference 40 CFR 96.80 to 96.88 (40 CFR 96, Subpart I) so that Kentucky's State Implementation Plan will allow sources to opt into the federal trading and banking program for NOx allowances.

(11) TIERING: Is tiering applied? No. The cabinet is incorporating by reference the federal opt in program without change. There is no tiering of requirements in the federal program and, therefore, no tiering of requirements by the state.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This administrative regulation contains a portion of the federal rulemaking which is optional for states. The federal rulemaking (NOx SIP Call) was published at 63 Fed. Reg. 57356 (October 27, 1998).

2. State compliance standards. There are no state compliance standards other than those contained in this proposed administrative regulation, which incorporates the federal rulemaking by reference.

3. Minimum or uniform standards contained in the federal mandate. This portion of the federal rulemaking, which is optional for states, enables sources to opt into the trading and banking program for NOx allowances on the national level.

4. Will this administrative regulation impose stricter require-

ments, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation imposes no stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation may affect a local government if it owns an electric utility.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to electric service.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: This administrative regulation enables sources to opt into a trading and banking program for NOx allowances on the national level. The trading and banking program was designed by the U.S. EPA to help reduce the cost of complying with the NOx SIP Call as published in 63 Fed. Reg. 57356 (October 27, 1998).

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (New Administrative Regulation)

401 KAR 51:110. Regional NOx emission limits.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7410, 63 Fed. Reg. 57356 (October 27, 1998)

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7410, 63 Fed. Reg. 57356 (October 27, 1998)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the control of nitrogen oxides (NOx) emissions from large boilers and turbines used in power plants and other industrial applications, pursuant to the federal mandate published in the NOx SIP Call at 63 Fed. Reg. 57356 (October 27, 1998). This administrative regulation is not more stringent nor otherwise different than the provisions allowed under the NOx SIP Call.

Section 1. Applicability. This administrative regulation shall apply to electric generating units and industrial boilers or turbines, except as provided in Section 2 of this administrative regulation.

Section 2. Exemptions. (1) Exemptions based on potential to emit. The following units shall be exempt from this administrative regulation:

(a) A unit whose physical design prevents it from emitting more than twenty-five (25) tons of NOx during a control period; and

(b) A unit physically able to emit more than twenty-five (25) tons of NOx during a control period that:

1. Has a permit issued by the cabinet containing conditions that:

a. Limit the unit's NOx emissions during control periods to

twenty-five (25) tons or less; and

- b. Are enforceable as a practical matter under 401 KAR 50:035;
- 2. Has records that demonstrate the unit did not emit more than twenty-five (25) tons of NOx during the control period that are:
 - a. Maintained on site for five (5) years; and
 - b. Made available upon request to the cabinet or the U.S. EPA;

and

3. By November 1 each year, beginning in 2003, has filed a report to the cabinet that specifies the unit's hours of operation during the control period.

(2) Retired unit exemption.

(a) A NOx budget unit shall be exempt from this administrative regulation on the date that the unit is retired. The retired unit shall meet the following requirements:

- 1. Except as provided in paragraph (b) of this subsection, the retired unit shall not emit NOx on or after the day it is retired; and
- 2. Within thirty (30) days after the unit is retired, the NOx authorized account representative shall submit:
 - a. A letter to the cabinet describing the unit, the date of retirement, and the reason for retirement; and
 - b. An application for a permit revision that reflects the status of the retired unit pursuant to 401 KAR 50:035.
- 3. Unless the unit has been physically removed, records to demonstrate that the unit has not been operated shall be:
 - a. Maintained on-site for five (5) years from the date of retirement; and
 - b. Made available to the cabinet or the U.S. EPA upon request.
- (b) Operation of a retired unit shall not be resumed unless the owner or operator submits an application and receives a permit revision pursuant to 401 KAR 50:035.
- (c) A retired unit shall not be allowed to opt into 401 KAR 51:130, Banking and trading NOx allowances.
- (d) Allowances for a retired unit shall:
 - 1. Remain with the source, for retired units that were included in the initial allocation; and
 - 2. Expire, for an opt in unit that is retired.

Section 3. Compliance Requirements. (1) Emissions requirements. On the later date of May 1, 2003, or the date the unit commences operation, the owner or operator of a NOx budget source shall:

- (a) Hold NOx allowances available for compliance deductions in an amount at least equal to the total NOx emissions for the control period as specified in 401 KAR 51:130; and
- (b) Monitor the total NOx emissions during each control period as specified in 63 Fed. Reg. 57530 to 57535, October 27, 1998 (40 CFR 96.70 to 96.76).
- (2) Allowance provisions. NOx allowances shall be held in, deducted from, or transferred among the NOx compliance, overdraft, and general accounts as specified in 401 KAR 51:130.
- (a) NOx allowances shall not be deducted for compliance with subsection (1) of this section for a control period prior to the year for which the allowances were allocated.
- (b) If the U.S. EPA records the allocation, transfer, or deduction of allowances from the compliance or overdraft account of a NOx budget source, this action shall:
 - 1. Automatically amend and become part of the NOx budget portion of the source's permit; and
 - 2. Require no further review.
- (c) The owner or operator of a NOx budget source having excess emissions for each control period beginning in 2003, shall:
 - 1. Surrender the NOx allowances required for deduction; and
 - 2. Comply with 401 KAR 51:130.
- (3) Recordkeeping and reporting requirements.
 - (a) The owner or operator of a NOx budget source shall maintain the following records:
 - 1. The account certificate of representation for the source's NOx authorized account representative and documents validating the certificate.
 - 2. Emissions monitoring information as specified in 63 Fed. Reg. 57530 to 57535, October 27, 1998 (40 CFR 96.70 to 96.76);
 - 3. Copies of all reports, compliance certifications, and other submissions and records required by 401 KAR 51:130; and

4. Copies of documents used to complete permit revision applications or to demonstrate compliance with 401 KAR 51:130.

(b) These records shall be:

- 1. Used to demonstrate compliance with subsection (1) of this administrative regulation;
- 2. Maintained on site for a period of five (5) years, unless a longer period is required by 63 Fed. Reg. 57530 to 57535 October 27, 1998 (40 CFR 96.70 to 96.76), or the cabinet requires an extended period for cause; and
- 3. Made available for inspection on request by the cabinet or the U.S. EPA.

Section 4. Distribution of Allowances. Allowances for NOx budget units specified in Section 1 of this administrative regulation shall be distributed as follows:

- (1) Not later than one (1) month after the effective date of this administrative regulation, NOx budget sources shall submit a report to the cabinet that:
 - (a) Documents the highest average hourly heat input for their NOx budget units during the 1995, 1996, or 1997 control period; and
 - (b) Is certified by the NOx authorized account representative.
- (2) The cabinet shall determine the allowances for a NOx budget unit by:
 - (a) Dividing the NOx budget unit's reported highest average hourly heat input by the sum of the highest average hourly heat inputs for all Kentucky NOx budget units submitted pursuant to subsection (1) of this section; and
 - (c) Multiplying the quotient by the total number of allocations available for distribution.
- (3) The total number of allocations available for distribution shall be the number of allocations assigned to Kentucky by the U.S. EPA based on emissions from Kentucky's electric generation units and industrial boilers or turbines.
- (4) The cabinet shall notify the U.S. EPA and NOx budget sources of the allocations to be distributed:
 - (a) Not later than sixty (60) days after the effective date of this administrative regulation for the allocation period beginning in 2003; and
 - (b) Three (3) years prior to the beginning of each new allocation period, as provided in Section (5)(2) of this administrative regulation.
- (5) Allowances created pursuant to 401 KAR 51:140 for early reduction credits or for emergency compliance shall not be included in this allocation.

Section 5. Duration and Reallocation of Allowances. (1) The allowances distributed pursuant to Section 4 of this administrative regulation shall:

- (a) Expire at the end of an allocation period; or
- (b) Be reallocated by the cabinet if the U.S. EPA changes the number of allowances assigned to Kentucky before the end of an allocation period. If this occurs, the resulting reallocation shall:
 - 1. Be distributed in the same ratio as the allowances the original allocation for that period;
 - 2. Be distributed prior to the beginning of the next control period; and
- 3. Expire at the end of the end of the current allocation period.
- (2) Thirty-eight (38) months prior to the beginning of each new allocation period, a NOx budget source shall submit a report to the cabinet that:
 - (a) Documents the highest average hourly heat input for each NOx budget unit at the source during the three (3) most recent control periods; and
 - (b) Is certified by the NOx authorized account representative.
- (3) The cabinet shall determine the allowances for a NOx budget unit in each subsequent allocation period using the method described in Section 4 of this administrative regulation.

Section 6. NOx Budget Permit Revision. (1) The NOx authorized account representative of a NOx budget source shall submit an application to revise the source's permit pursuant to 401 KAR 50:035 and this section.

(2) The application shall include the following information:

- (a) The Office of Regulatory Information Systems (ORIS) or

facility code assigned to the source by the Energy Information Administration;

- (b) Identification of each NOx budget unit at the source;
- (c) A statement that explains if the unit is:
 1. Described in Section 1 of this administrative regulation; or
 2. An opt in unit pursuant to 401 KAR 51:100.
- (d) The applicable requirements of Section 3 of this administrative regulation; and
- (e) For opt in units, the following certification statement by the NOx authorized account representative: "I certify that each unit for which this permit application is submitted, pursuant to the opt in provisions of 401 KAR 51:100, is in operation; is not a NOx budget unit pursuant to 401 KAR 51:110, Section 1; and is not covered by a retired exemption unit that is in effect pursuant to 401 KAR 51:110, Section 2(2)."

Section 7. Compliance. (1) Compliance certification. On or before November 30 each year, beginning in 2003, the NOx authorized account representative shall submit a compliance certification report to the cabinet that contains the following information:

- (a) Identification of each NOx budget unit at the source;
- (b) The serial numbers of the NOx allowances to be deducted from each unit's compliance account;
- (c) For units that share a common stack and are not monitored separately, the percentage of allowances to be deducted from each unit; and
- (d) A certification based on reasonable inquiry of those persons having primary responsibility for operating the NOx budget units. The certification shall include a response to the following questions:
 1. Was the unit operated in compliance with the emissions limitation in Section 3(1)(a) of this administrative regulation?
 2. Was the unit monitored in accordance with 63 Fed. Reg. 57530 to 57535, October 27, 1998 (40 CFR 96.70 to 96.76)?
 3. Were the NOx emissions from each unit or group of units having a common stack monitored or accounted for through the missing data procedures, and reported in the quarterly monitoring reports required by 63 Fed. Reg. 57530 to 57535, October 27, 1998 (40 CFR 96.70 to 96.76)?
 4. Was there a change in the facts that formed the basis for certification, as specified in 63 Fed. Reg. 57530 to 57535, October 27, 1998 (40 CFR 96.70 to 96.76), of the monitors at each unit, or group of units having a common stack, or for using an approved alternative monitoring method? If yes, the following information regarding the change shall be specified:
 - a. The nature and reason for the change;
 - b. The date the change occurred;
 - c. Description of how the unit's compliance status was determined after the change; and
 - d. If the change requires recertification of the monitor, a description of the method used to determine NOx emissions.

(2) Review of compliance certifications.

(a) The cabinet or the U.S. EPA may review and conduct independent audits concerning a compliance certification or other submission required by this administrative regulation and may make appropriate adjustments to the certification or other submission based on the findings.

(b) The U.S. EPA may deduct allowances from, or transfer allowances to, a unit's compliance account or a source's overdraft account based on the information obtained and adjustments made under subsection (1) of this section.

(3) Reporting to the cabinet. Reports that are required to be submitted to the cabinet shall be mailed to:

1. Manager, Permit Review Branch, Kentucky Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601; and
2. To the appropriate Regional Office of the Division for Air Quality listed in Section 8(2) of this administrative regulation.

Section 8. Incorporation by Reference. (1) 63 Fed. Reg. 57530 to 57535, October 27, 1998 (40 CFR 96.70 to 96.76), "Monitoring and Reporting" is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

- (a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;
- (b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 920-2067;
- (c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 746-7475;
- (d) Florence Regional Office, 8020 Ewing Boulevard, Suite 110, Florence, Kentucky, 41042, (606) 292-6411;
- (e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky, 41701, (606) 435-6022;
- (f) London Regional Office, 85 State Police Road, London, Kentucky, 40741, (606)-878-0157;
- (g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky, 42303, (502) 687-7304; and
- (h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

(3) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: April 13, 1999

FILED WITH LRC: April 14, 1999 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on May 25, 1999, at 10 a.m. (Eastern Time) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing, by May 18, 1999, five (5) workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. A transcript of the hearing will be made. If you request a transcript, you will be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the administrative regulation. Send written notification of your intent to be heard at the hearing, or your written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Millie Ellis, Supervisor, Regulation Development Section, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, Telephone: (502) 573-3382 fax: (502) 573-3787.

REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: This administrative regulation responds to the NOx SIP Call issued by the U.S. EPA to reduce the contribution of transported pollutants to ozone pollution. The NOx SIP call was published at 63 Fed. Reg. 57356 (October 27, 1998). The provisions of the administrative regulation will apply to all electric utilities in Kentucky and to industries using large boilers or turbines. Besides utilities, only the Marathon-Ashland refinery, Rohm and Haas, and Westvaco are known to be affected by this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There are no costs or savings beyond those identified in the federal rulemaking, and the cabinet received no comments specifying a different cost.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There are no costs or savings beyond those identified in the federal rulemaking, and the cabinet received no comments specifying a different cost.

(c) To the extent available from the public comments received, compliance, reporting, and paperwork requirements, including fac-

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

1. First year following implementation: There are no additional compliance, reporting, or paperwork requirements beyond those described in the federal rulemaking.

2. Second and subsequent years: There are no additional compliance, reporting, or paperwork requirements beyond those described in the federal rulemaking.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division will absorb all direct and indirect costs in its operating budget.

2. Continuing costs or savings: The division will absorb all continuing direct and indirect costs in its operating budget.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: No significant agency reporting or paperwork requirements will result from this administrative regulation.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have less impact than that described in the federal rulemaking.

(b) Kentucky: This administrative regulation will have less impact than that described in the federal rulemaking.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet considered and rejected adopting the provisions of the draft Federal Implementation Plan (FIP) to reduce NOx emissions. The cabinet considered the economic impacts of the FIP on utilities and industries in Kentucky to be unnecessarily high. The cabinet also considered and rejected alternatives that would have affected more and smaller industries, or activities of individual citizens. These were rejected because they impacted sources less likely to have the technical and financial assets to comply, and because their overall costs were likely to be higher.

(8) Assessment of expected benefits:

(a) Identify effects on public health and the environmental welfare of the geographical area in which implemented and on Kentucky: The administrative regulation will apply state-wide and it will benefit public and the environment by reducing ozone pollution, fine particulate pollution, regional haze, acid precipitation, and surface water eutrophication.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect would result because the U.S. EPA will implement a Federal Implementation Plan achieving the same or similar emission reductions.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result because affected sources in Kentucky must achieve emission reductions in response either to this administrative regulation or to federal regulations.

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

(a) Necessity of proposed administrative regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation in conjunction with other administrative regulations that will reduce NOx emissions from cement kilns and large stationary internal combustion engines.

(11) TIERING: Is tiering applied? Yes. The cabinet has designed

this administrative regulation so that it is applicable only to the largest sources (i.e., units having a heat input of 250 million BTU or higher, and units serving an electric generator of 25 megawatts or greater.) Smaller units remain unaffected by this administrative regulation unless they choose to opt in to the trading program.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 63 Fed. Reg. 57356 (October 27, 1998). The Clean Air Act (42 USC 7401 to 7671q) requires each state to have an implementation plan that achieves and maintains the National Ambient Air Quality Standards (NAAQS). It also provides the U.S. EPA with authority to assess the adequacy of the State Implementation Plans (SIPs). If the U.S. EPA finds a SIP to be inadequate, it may provide an opportunity for the state to amend the plan to make it adequate or it may replace the plan with a Federal Implementation Plan (FIP). The U.S. EPA found the Kentucky SIP for achieving and maintaining the NAAQS for ozone (and the plans of twenty-one (21) other eastern states) to be inadequate. In the NOx SIP Call promulgated at 63 Fed. Reg. 57356 (October 27, 1998) the U.S. EPA has provided Kentucky and the other states an opportunity to amend their SIPs. It also has drafted a FIP to be imposed if a SIP is not adequately revised.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. The federal findings and draft FIP prescribe the overall NOx emission reduction that each state must achieve. Although the U.S. EPA has proposed a plan for reducing the emissions that it considers to be the most cost effective, each state is required only to show that its plan will reliably and demonstrably achieve the mandatory reduction, and that the plan can be enforced.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation would affect any unit, part or division of local government operating a unit that meets the applicability determination of Section 1 of this administrative regulation.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation will affect any government-owned generator with a nameplate capacity greater than 25 MWe that sells electricity; and any other unit with a maximum design heat input greater than 250 million BTU/hr.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): Although it cannot be quantified, this administrative regulation is designed to be less costly than the Federal Implementation Plan.

Other Explanation: There is no further explanation.

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(New Administrative Regulation)

401 KAR 51:120. Regional NOx controls.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7410, 63 Fed. Reg. 57356 (October 27, 1998)
STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7410, 63 Fed. Reg. 57356 (October 27, 1998)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the regional control of nitrogen oxides (NOx) emissions from stationary internal combustion engines and portland cement manufacturing plants, pursuant to the federal mandate published in NOx SIP Call at 63 Fed. Reg. 57356 (October 27, 1998). This administrative regulation is not more stringent nor otherwise different than the provisions allowed under the NOx SIP Call.

Section 1. Applicability. This administrative regulation shall apply to:

- (1) A stationary internal combustion engine whose NOx emissions, on or after January 1, 1995, averages more than one (1) ton per day during a control period; and
- (2) A portland cement manufacturing plant with process rates, on or after January 1, 1995, equal to or greater than:
 - (a) Twelve (12) tons of clinker per hour for a long dry kiln;
 - (b) Ten (10) tons of clinker per hour for a long wet kiln;
 - (c) Sixteen (16) tons of clinker per hour for a preheater kiln; or
 - (d) Twenty-two (22) tons of clinker per hour for a precalciner or preheater/precalciner kiln.

Section 2. Standard for Engines. On and after May 1, 2003, the owner or operator of an engine specified in Section 1(1) of this administrative regulation shall, during a control period:

- (1) Operate the engine using:
 - (a) LEC technology for a lean burn engine;
 - (b) NSCR technology for a rich burn engine;
 - (c) SCR technology for a dual fuel or diesel engine; or
 - (d) Another control device achieving a reduction in NOx emissions during the control period of at least ninety (90) percent of its uncontrolled emissions, if the engine is equipped with a CEMS for NOx; or
- (2) Use REC technology to operate more than one (1) engine, if:
 - (a) Each engine has uncontrolled NOx emissions of at least five-tenths (0.5) tons per day during the control period; and
 - (b) The sum of the NOx emission reductions during the control period is equal to or greater than the reduction that would be achieved if the engine specified in Section 1(1) of this administrative regulation reduced its uncontrolled NOx emissions by ninety (90) percent; or
- (3) Use other control devices to operate more than one (1) engine so that the sum of the NOx emission reductions during the control period is equal to or greater than the reduction that would be achieved by reducing the NOx emissions from the engine specified in Section 1(1) of this administrative regulation by at least ninety (90) percent of its uncontrolled emissions, if each controlled engine:
 - (a) Is equipped with CEMS for NOx;
 - (b) Has uncontrolled NOx emissions of at least five-tenths (0.5) tons per day during the control period; and
 - (c) Achieves a reduction of at least forty (40) percent of its uncontrolled emissions.

Section 3. Reporting, Monitoring, and Recordkeeping for Engines. (1) Reporting requirements. An owner or operator of an engine specified in Section 1(1) of this administrative regulation shall submit the following reports to the cabinet at the locations specified in Section 6 of this administrative regulation:

- (a) By May 1, 2003, a report that includes:
 1. The identification number and type of the engine;
 2. The name and address of the source where the engine is located; and
 3. The name and telephone number of the person responsible for demonstrating compliance for the engine.
- (b) By October 31 each year, beginning in 2003, a report that documents the total tons of NOx emissions from the engine during the control period.
- (2) Monitoring requirements.
 - (a) On and after May 1, 2003, during the control period, the engine shall be operated with a monitoring system that is:
 1. Sufficient to demonstrate compliance with the standard specified in Section 2 of this administrative regulation; and
 2. Approved by the cabinet prior to implementation.
 - (b) The monitoring system shall be operated and maintained in accordance with an on-site operating plan approved by the cabinet.
 - (3) Recordkeeping requirements. The owner or operator of the engine shall maintain all records necessary to demonstrate compliance with the standards in Section 2 of this administrative regulation for a period of two (2) years. These records shall:
 - (a) Be kept at the location where the engine is located;
 - (b) Be made available to the cabinet or the U.S. EPA upon request; and
 - (c) Contain the following information:
 1. Identification and location of the engine;
 2. The calendar date of record;
 3. The date and results of each emissions inspection;
 4. A summary of any emissions corrective maintenance taken;
 5. The results of all compliance tests;
 6. The number of hours the engine is operated during each day, including engine startups, shutdowns, and malfunctions;
 7. The type and duration of maintenance and repairs performed; and
 8. The time periods when operating conditions and emissions data were not obtained, the reason for the omission, and the corrective actions taken.

Section 4. Standard for Kilns. On and after May 1, 2003, the owner or operator of a kiln specified in Section 1(2) of this administrative regulation shall, during a control period:

- (1) Operate the kiln so that NOx emissions do not exceed five and seven-tenths (5.7) lbs per ton of clinker averaged over a thirty (30) day rolling period; or
- (2) Operate the kiln so that NOx emissions do not exceed seventy (70) percent of the uncontrolled emissions averaged over a thirty (30) day period.

Section 5. Reporting, Monitoring, and Recordkeeping for Kilns. (1) Reporting requirements. The owner or operator of a kiln specified in Section 1(2) of this administrative regulation shall submit the following reports to the cabinet at the locations specified in Section 6 of this administrative regulation:

- (a) By May 1, 2003, a report that includes:
 1. The number and type of the kiln;
 2. The name and address of the plant where the kiln is located; and
 3. The name and telephone number of the person responsible for demonstrating that the kiln is in compliance.
- (b) By October 31 each year, beginning in 2003, a report that documents the total NOx emissions from the kiln during the control period.
- (2) Monitoring requirements.
 - (a) On or before April 1 of each year, beginning in 2003, the owner or operator shall demonstrate compliance for the kiln by conducting a performance test pursuant to 40 CFR 60, Appendix A, Methods 7, 7A, 7C, 7D, or 7E.
 - (b) On and after May 1, 2003, during the control period, the kiln shall be operated with:
 1. CEMS for NOx which meets the applicable requirements of 40 CFR Part 60, Subpart A, and 40 CFR Part 60, Appendix B to; or
 2. A parametric monitoring system approved by the cabinet prior to implementation.

(c) The CEMS for NOx or parametric monitoring system shall be operated and maintained in accordance with an on-site operating plan approved by the cabinet.

(3) Recordkeeping requirements. An owner or operator of a kiln specified in Section 1(2) of this administrative regulation shall maintain all records necessary to demonstrate compliance with the standards in Section 4 of this administrative regulation for a period of two (2) years. These records shall:

- (a) Be kept at the facility where the kiln is located;
- (b) Be made available to the cabinet or the U.S. EPA upon request; and
- (c) Contain the following information:
 - 1. Emissions, in pounds of NOx per ton of clinker, from the kiln;
 - 2. The results of all performance tests;
 - 3. Daily production records; and
 - 4. The date, time, and duration of all startups, shutdowns, or malfunctions in the operation of the kiln or emissions monitoring equipment.

Section 6. Reporting to the Cabinet. Reports required to be submitted to the cabinet shall be mailed to:

- (1) Manager, Permit Review Branch, Kentucky Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601; and
- (2) To the appropriate Regional Office of the Division for Air Quality as follows:
 - (a) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 920-2067;
 - (b) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 746-7475;
 - (c) Florence Regional Office, 8020 Ewing Boulevard, Suite 110, Florence, Kentucky, 41042, (606) 292-6411;
 - (d) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky, 41701, (606) 435-6022;
 - (e) London Regional Office, 85 State Police Road, London, Kentucky, 40741, (606) 878-0157;
 - (f) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky, 42303, (502) 687-7304; and
 - (g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: April 13, 1999

FILED WITH LRC: April 14, 1999 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on May 25, 1999, at 10 a.m. (Eastern Time) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing, by May 18, 1999, five (5) workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. A transcript of the hearing will be made. If you request a transcript, you will be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the administrative regulation. Send written notification of your intent to be heard at the hearing, or your written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Millie Ellis, Supervisor, Regulation Development Section, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, Telephone: (502) 573-3382 fax: (502) 573-3787.

REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: This administrative regulation responds to the NOx SIP Call issued by the U.S. EPA to

reduce the contribution of transported pollutants to ozone pollution. This federal rulemaking was published in 63 Fed. Reg. 57356 (October 27, 1998). The provisions of this administrative regulation apply to large stationary internal combustion engines and to large cement kilns. It will impact as many as fifty engines operated by the gas transmission industry and one cement kiln.

(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 direct or indirect costs or savings in the geographical area in which the administrative regulation will be implemented.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There are no additional costs of doing business beyond those described in the federal rulemaking.

(c) To the extent available from the public comments received, 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 or costs beyond those described in the federal rulemaking.

2. Second and subsequent years: There are no compliance, reporting, and paperwork requirements or costs beyond those described in the federal rulemaking.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division will absorb any direct or indirect costs in its operating budget.

2. Continuing costs or savings: The division will absorb any continuing direct or indirect costs in its operating budget.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: No significant agency reporting or paperwork requirements will result from this administrative regulation.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have less impact than that described in the federal rulemaking.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky beyond that described in the federal rulemaking.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet considered and rejected adopting the provisions of the draft Federal Implementation Plan (FIP) because it determined the cost to industries in Kentucky to be unnecessarily high. The cabinet also considered and rejected alternatives that would have affected more and smaller industries, or activities of individual citizens. These were rejected because they impacted sources less likely to have the technical and financial assets to comply, and because their overall costs were likely to be higher.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The administrative regulation will apply state-wide and it will benefit public health and the environment by reducing ozone pollution, fine particulate pollution, regional haze, acid precipitation, and surface water eutrophication.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect would result because the U.S. EPA will implement a Federal Implementation Plan achieving the same or similar emission reductions.

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

No detrimental effect would result because affected sources in Kentucky must achieve emission reductions either in response to this administrative regulation or to the federal regulations.

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

(a) Necessity of proposed administrative regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation in conjunction with other administrative regulations that will reduce NOx emissions from electric utilities and industries operating large boilers or turbines and establish a NOx allocation trading program to reduce the program costs.

(11) TIERING: Is tiering applied? Yes. The cabinet has designed this administrative regulation so that it is applicable only to the largest sources (units emitting one ton of NOx per day or more during the ozone season). Smaller units remain unaffected by this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 63 Fed. Reg. 57356 (October 27, 1998). The Clean Air Act (42 USC 7401 to 7671q) requires each state to have an implementation plan that achieves and maintains the National Ambient Air Quality Standards (NAAQS). It also provides the U.S. EPA with authority to assess the adequacy of the State Implementation Plans (SIPs). If the U.S. EPA finds a State Implementation Plan to be inadequate, it may provide an opportunity for the state to amend the plan to make it adequate or it may replace the plan with a FIP. The U.S. EPA found the Kentucky SIP for achieving and maintaining the NAAQS for ozone (and the plans of 21 other eastern states) to be inadequate. The U.S. EPA has provided Kentucky and the other states an opportunity to amend their SIPs. It also has drafted a FIP to be imposed if SIPs are not adequately revised.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. The federal findings and draft FIP prescribe the overall NOx emission reductions that each state must achieve. Although the U.S. EPA has proposed a plan for reducing the emissions that it considers to be the most cost effective, each state is required only to show that its plan will reliably and demonstrably achieve the mandatory reduction, and that the plan can be enforced.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation does not affect any known unit, part, or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any known aspect or service of local government.

4. Estimate the effect of this administrative regulation on the

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (New Administrative Regulation)

401 KAR 51:130. Banking and trading NOx allowances.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7410, 63 Fed. Reg. 57356 (October 27, 1998)

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7410, 63 Fed. Reg. 57356 (October 27, 1998)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The administrative regulation incorporates by reference the federal regulation promulgated in the NOx SIP Call at 63 Fed. Reg. 57356 (October 27, 1998), which establishes a program for banking and trading of emission allowances to reduce nitrogen oxides emissions (NOx). This administrative regulation is not more stringent nor otherwise different than the provisions of the NOx SIP Call.

Section 1. For purposes of 63 Fed. Reg. 57521 to 57530 (October 27, 1998):

(1) The administrator shall be the U.S. EPA;

(2) The permitting authority shall be the cabinet; and

(3) The citations, Subpart E and 40 CFR 96.42(e) shall be 401 KAR 51:110, Regional NOx emission limits.

Section 2. Applicability. NOx budget sources participating in the NOx Budget Trading Program shall comply with the following requirements, which are incorporated by reference in Section 3 of this administrative regulation:

(1) 63 Fed. Reg. 57521 to 57522, October 27, 1998 (40 CFR 96.10 to 96.14);

(2) 63 Fed. Reg. 57523 to 57524, October 27, 1998 (40 CFR 96.30 to 96.31);

(3) 63 Fed. Reg. 57526 to 57530, October 27, 1998 (40 CFR 96.50 to 96.57); and

(4) 63 Fed. Reg. 57330, October 27, 1998 (40 CFR 96.60 to 96.62).

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 63 Fed. Reg. 57521 to 57522, October 27, 1998 (40 CFR 96.10 to 96.14), "NOx Authorized Account Representative for NOx Budget Sources";

(b) 63 Fed. Reg. 57523 to 57524, October 27, 1998 (40 CFR 96.30 to 96.31), "Compliance Certification";

(c) 63 Fed. Reg. 57526 to 57530, October 27, 1998 (40 CFR 96.50 to 96.57), "NOx Allowance Tracking System"; and

(d) 63 Fed. Reg. 57330, October 27, 1998 (40 CFR 96.60 to 96.62), "NOx Allowance Transfers".

(2) This material may be inspected, copied, or obtained at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue,

Bowling Green, Kentucky, 42104, (502) 746-7475;

(d) Florence Regional Office, 8020 Ewing Boulevard, Suite 110, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky, 41701, (606) 435-6022;

(f) London Regional Office, 85 State Police Road, London, Kentucky, 40741, (606)-878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky, 42303, (502) 687-7304; and

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

(3) Copies of the Federal Register (Fed. Reg.) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: April 13, 1999

FILED WITH LRC: April 14, 1999 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on May 25, 1999, at 10 a.m. (Eastern Time) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing, by May 18, 1999, five (5) workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. A transcript of the hearing will be made. If you request a transcript, you will be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the administrative regulation. Send written notification of your intent to be heard at the hearing, or your written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Millie Ellis, Supervisor, Regulation Development Section, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, Telephone: (502) 573-3382 fax: (502) 573-3787.

REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: This administrative regulation incorporates by reference that portion of 63 Fed. Reg. 57356 (October 27, 1998) which establishes a trading and banking program for nitrogen oxide (NOx) allowances. The provisions of this administrative regulation apply to sources subject to 401 KAR 51:110, Regional NOx emission limits, 401 KAR 51:100, General provisions for regional NOx requirements, or any source that would like to open a general account.

(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 additional costs or savings beyond those which are described in the federal rulemaking.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation does not affect the cost of doing business in the geographical areas where it will be implemented beyond the costs described in the federal rulemaking.

(c) To the extent available from the public comments received, 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 beyond those described in the federal rulemaking.

2. Second and subsequent years: There are no compliance, reporting, and paperwork requirements beyond those described in the federal rulemaking.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division will absorb all direct and indirect costs in its operating budget.

2. Continuing costs or savings: The division will absorb all continuing direct and indirect costs in its operating budget.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: No significant agency reporting or paperwork requirements will result from this administrative regulation.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impact beyond that described in the federal rulemaking.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky beyond that described in the federal rulemaking.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation contains a portion of the NOx SIP Call which is optional for states. No alternative methods were proposed because this method provides sources economic and flexible trading and banking at the national level.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The administrative regulation is part of the NOx SIP Call which will apply state-wide and it will benefit public health and the environment by reducing ozone and fine particulate pollution, reducing acid rain, and improving water quality.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect would result because affected sources in Kentucky would become subject to the provisions of a federal implementation plan, which will be implemented by the U.S. EPA if Kentucky fails to do so.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result because affected sources in Kentucky would be subject to the provisions of the federal implementation plan.

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

(a) Necessity of proposed administrative regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference 40 CFR 96.10 to 96.14 (40 CFR Part 96, Subpart B), 40 CFR 96.30 to 96.31 (40 CFR Part 96, Subpart D), 40 CFR 96.50 to 96.55(b), 96.56 to 96.57, and 40 CFR 96.60 to 96.62 (40 CFR 96, Subpart G) so that Kentucky's State Implementation Plan (SIP) will conform with the federal NOx SIP Call.

(11) TIERING: Is tiering applied? No. The cabinet is incorporating by reference the federal trading program without change. There is no tiering of requirements in the federal program and, therefore, no tiering of requirements by the state.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This administrative regulation contains a portion of the federal mandate which is optional for states. The federal mandate to reduce nitrogen oxides emissions (NOx SIP Call) is published in 63 Fed. Reg. 57356 (October 27, 1998).
2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.
3. Minimum or uniform standards contained in the federal mandate. This portion of the federal mandate, which is optional for states, enables sources to trade and bank nitrogen oxide allowances on the national level.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation imposes no stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation may affect a local government if it owns an electric utility.
3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to electric service.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-): The effect on current revenues is unknown.
Expenditures (+/-): The effect on current expenditures is unknown.
Other Explanation: This administrative regulation enables sources to participate in a trading and banking program for nitrogen oxide (NOx) allowances on the national level. The trading and banking program was designed by the United States Environmental Protection Agency to help reduce the cost of complying with the NOx SIP Call as published in 63 Fed. Reg. 57356 (October 27, 1998).

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(New Administrative Regulation)**

401 KAR 51:140. NOx credits for early reduction and emergency.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7410, 63 Fed. Reg. 57356 (October 27, 1998)
STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7410, 63 Fed. Reg. 57356 (October 27, 1998)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the distribution of allowances from a compliance supplement pool allocated to Kentucky by the U.S. EPA for sources that reduce nitrogen oxides (NOx) emissions before the compliance

deadline, pursuant to the federal mandate published in the NOx SIP Call at 63 Fed. Reg. 57356 (October 27, 1998). It also provides for setting aside unused credits to assist sources that are unable to meet the compliance deadline. This administrative regulation is not more stringent nor otherwise different than the provisions allowed under the NOx SIP Call.

Section 1. Applicability. This administrative regulation shall apply to a NOx budget unit in Kentucky.

Section 2. Purpose of Early Reduction Credits (ERCs). (1) ERCs may be earned for reductions in NOx emissions achieved during the 2000, 2001, and 2002 control periods.

(2) Allowances given for earned ERCs may be deducted for compliance with NOx emission standards in 401 KAR 51:110 only during the 2003 and 2004 control periods.

Section 3. Computation of Early Reduction Credits (ERCs). (1) The cabinet shall make an initial allocation from the compliance supplement pool to each NOx budget unit in proportion to the unit's required reduction under 401 KAR 51:110.

(2) The number of allowances the unit shall receive in the initial allocation shall be determined by the formula $N = [A/B \times C]$. In this formula:

- (a) N equals the number of allowances;
- (b) A equals the amount of NOx reduction in tons per control period, compared to its allowable limit, that the unit must achieve to meet the requirements of 401 KAR 51:110;
- (c) B equals the sum of A for all the NOx budget units in Kentucky; and
- (d) C equals the number of allowances in the compliance supplement pool available for distribution.

Section 4. Allocation of Early Reduction Credits (ERCs). (1) Reporting. Within thirty (30) days following the effective date of this administrative regulation, a NOx budget source shall submit a report to the cabinet containing the following information for each NOx budget unit at the source:

- (a) Identification and location of the unit;
 - (b) Rated heat input capacity of the unit;
 - (c) Applicable requirements that apply to the unit;
 - (d) Current allowable NOx emission rate of the unit expressed in lbs per MMBTU.
1. For utility boilers and turbines, this shall be the acid rain limit unless a more stringent limit is contained in the permit.
 2. For nonutility boilers and turbines this shall be:
 - a. The allowable emission rate contained in the permit; or
 - b. The uncontrolled emission rate if no applicable requirements apply to the unit; and
 - (e) The amount of NOx reduction, in tons per control period, required from the unit to meet the requirements of the NOx SIP Call, as determined by the formula $N = [(A-B) \times 1.836]$. In this formula:
 1. N equals the required reduction from the unit in tons of NOx per control period;
 2. A equals the current allowable emission limit in lbs per MMBTU; and
 3. B equals 0.15 lbs per MMBTU for utility boilers and turbines, and 0.4 times the uncontrolled emission rate for industrial boilers and turbines.

(2) Initial allocation. Within sixty (60) days following the effective date of this administrative regulation, the cabinet shall notify NOx budget sources and the U.S. EPA of the initial allocation as determined in subsection (1)(e) of this section. The initial allocation shall define the portions of the compliance supplement pool that shall be designated for electric generating units and industrial boilers or turbines.

(3) Final allocation. The final allocation shall be determined by the actual reductions from the NOx budget units that occur during the 2000, 2001, and 2002 control periods. Reductions shall be computed as the difference, in tons, between the amount of NOx a unit would have emitted at its allowable emissions rate, and the amount it actually emitted at the end of each control period. These reductions shall be multiplied by the following adjustment factors to de-

termine the allowances:

(a) Units that emit equal to or less than 0.25 lb per MMBTU during a control period shall receive one (1) allowance per ton of reduction;

(b) Units that emit greater than 0.25 lb per MMBTU during a control period shall receive one-quarter (1/4) allowance per ton of reduction.

(4)(a) NOx budget units that achieve no reduction, or that achieve less reduction than required to earn their initial allocation, shall forfeit the unearned allowances to an unused credit pool.

(b) NOx budget units that achieve more reduction than provided in the initial allocation shall share the unused credits according to the formula $N = [(D/E \times F)]$. In this formula:

1. N equals the number of unused credits allocated to the unit;

2. D equals the adjusted allowances, in tons, achieved by the unit in excess of the initial allocation for all three (3) control periods;

3. E equals the adjusted allowances, in tons, achieved by all NOx budget units in Kentucky in excess of the initial allocation for all three (3) control periods; and

4. F equals the total credits in the unused credit pool.

Section 5. NOx Credits for Emergency Use. Credits that remain in the unused credit pool after the final allocation shall be used by the cabinet, at its discretion, to assist sources that are unable to meet the compliance deadline in 401 KAR 51:110.

Section 6. Monitoring Requirements. (1) Monitoring shall be performed on a NOx budget unit for which credit is requested during the control period in which reductions occur.

(2) Units shall be monitored in accordance with 63 Fed. Reg. 57530 to 57535, October 27, 1998 (40 CFR 96.70 to 96.76).

Section 7. Reporting Requirements. (1) A NOx budget source that plans to achieve early reductions shall submit a report to the cabinet within thirty (30) days following the effective date of this administrative regulation. The report shall include the following:

(a) The identification and location of each NOx budget unit at the source;

(b) The maximum design heat input for the unit, expressed in MMBTU per hr;

(c) The maximum allowable emission rate for the unit, based on the most stringent applicable requirement and expressed in pounds of NOx per MMBTU;

(d) The maximum allowable emission rate for the unit under the NOx SIP Call, expressed in pounds of NOx per MMBTU; and

(e) The resulting reduction, in tons of NOx per control period, required for the unit.

(2) The report required in subsection (1) of this section shall be signed by the owner or operator of the NOx budget source and submitted to:

(a) Manager, Permit Review Branch, Kentucky Division for Air Quality, 803 Schenkel Lane, Frankfort, KY 40601; and

(b) The appropriate regional office of the Division for Air Quality as follows:

1. Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 920-2067;

2. Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 746-7475;

3. Florence Regional Office, 8020 Ewing Boulevard, Suite 110, Florence, Kentucky, 41042, (606) 292-6411;

4. Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky, 41701, (606) 435-6022;

5. London Regional Office, 85 State Police Road, London, Kentucky, 40741, (606) 878-0157;

6. Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky, 42303, (502) 687-7304; and

7. Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: April 13, 1999

FILED WITH LRC: April 14, 1999 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on May 25, 1999, at 10 a.m. (Eastern Time) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing, by May 18, 1999, five (5) workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. A transcript of the hearing will be made. If you request a transcript, you will be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the administrative regulation. Send written notification of your intent to be heard at the hearing, or your written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Millie Ellis, Supervisor, Regulation Development Section, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, Telephone: (502) 573-3382 fax: (502) 573-3787.

REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: This administrative regulation responds to the NOx SIP Call issued by the U.S. EPA to reduce the contribution of transported pollutants to ozone pollution. The NOx SIP Call was published in 63 Fed. Reg. 57356, (October 27, 1998). The provisions of the administrative regulation will affect more than 50 electric generating units across Kentucky and 9 or more units at 2 industries in Kentucky. Some units at a third industry may be affected.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There are no costs or savings in the cost of living beyond those identified in the federal rulemaking.

(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 added costs or savings in the cost of doing business beyond those that were identified in the federal rulemaking.

(c) To the extent available from the public comments received, 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 beyond those described in the federal rulemaking.

2. Second and subsequent years: There are no compliance, reporting, and paperwork requirements beyond those described in the federal rulemaking.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: All first year direct and indirect costs will be absorbed in the division's operating budget.

2. Continuing costs or savings: All continuing direct and indirect costs will be absorbed in the division's operating budget.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Agency reporting and paperwork requirements are nominal and will not add to costs.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

(6) To the extent available from the public comments received,

economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impact where implemented beyond that described in the federal rulemaking.

(b) Kentucky: This administrative regulation will have no economic impact in Kentucky beyond that described in the federal rulemaking.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet considered but rejected setting aside some or all of the early reduction/emergency compliance supplement pool for emergency compliance purposes. Both industry and utility comments discouraged such provisions. They indicated that distributing all of the credits for early reduction would make them available sooner and with more certainty, thus allow them to be considered in corporate planning. Distributing all of the credits for early reduction also encourages sources to achieve NOx emission reductions in 2000, 2001, and 2002 rather than waiting until mandated to do so in 2003. This represents a significant benefit to the environment. For those reasons, none of the early reduction/emergency compliance credits are proposed to be reserved for emergency compliance.

(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 provides economic incentives for sources to reduce NOx emissions before mandatory deadlines in 2003. Early reductions of NOx emissions will cause earlier improvements in ozone and fine particulate matter concentrations, visibility, and water quality.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Failing to implement this administrative regulation would discourage early NOx emission reductions, losing the benefits described in (a) above.

(c) If detrimental effect would result, explain detrimental effect: Failing to implement this administrative regulation would discourage early NOx emission reductions, losing the benefits described in (a) above.

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

(a) Necessity of proposed administrative regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet has no additional information or comments.

(11) TIERING: Is tiering applied? Yes. This administrative regulation applies only to sources subject to another proposed administrative regulation, 401 KAR 51:120, for which tiering is applied. Therefore, tiering is applied in this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 63 Fed. Reg. 57356 (October 27, 1998). The 42 USC 7401 to 7671q (the Clean Air Act) requires each state to have an implementation plan that achieves and maintains the National Ambient Air Quality Standards (NAAQS). It also provides the U.S. EPA with authority to assess the adequacy of the state implementation plans (SIPs). If the U.S. EPA finds a SIP to be inadequate, it may provide an opportunity for the state to amend the plan to make it adequate or it may replace the plan with a federal implementation plan (FIP). The U.S. EPA found the Kentucky SIP for achieving and maintaining the NAAQS for ozone (and the plans of 21 other eastern states) to be inadequate.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. The federal findings and draft FIP prescribe the overall NOx emission reduction that each state must achieve. Although the U.S. EPA has proposed a plan for reducing the emissions that it considers to be the most cost effective, each state is required only to show that its plan will reliably and demonstrably achieve the mandatory reduction, and that the plan can be enforced.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation will impose no more stringent requirements than those required by the federal mandate. However,

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation would affect any unit, part or division of local government operating a unit that meets the applicability determination of Section 1 of this administrative regulation.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation will affect any government-owned service that participates in the early reduction program.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): Although it cannot be quantified, this administrative regulation is designed to decrease costs of compliance with the NOx SIP Call for existing Kentucky sources.

Other Explanation: There is no further explanation.

JUSTICE CABINET Kentucky Law Enforcement Council (New Administrative Regulation)

503 KAR 1:140. Peace officer professional standards.

RELATES TO: KRS 15.330(1)(g)

STATUTORY AUTHORITY: KRS 15.330(1)(g); 15A.160

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

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

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

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

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

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

2. Work experience, with a preference given to emphasis in law

enforcement, statistics, or a related area.

3. Number and quality of job task analyses completed.

(b) Methodological approach.

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

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

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

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

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

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

(b) The application is incomplete and the specific information which shall be supplemented in order to process the application. POPS shall receive the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. If the agency fails to submit the supplementary information within the specified time period, the application shall be considered abandoned and the agency shall resubmit an application for consideration of their job task analysis and associated agency testing.

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

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

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

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

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

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

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

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

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

receipt of the notice of appeal.

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

(2) State peace officers employed pursuant to KRS Chapter 18A who have had certification requirements adopted pursuant to KRS 15.380(2) shall submit KLEC POPS Form E to POPS.

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

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

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

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

(a) Biographical history;

(b) Family history;

(c) Education;

(d) Employment history;

(e) Interview with the applicant's references;

(f) Criminal history including domestic violence protective orders;

(g) Credit history.

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

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

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

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

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

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

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

(a) The applicant shall successfully complete each of the following events as instructed and evaluated by KLEC personnel who shall administer the test in conformity with the Validation of Physical Fitness Standards for the Kentucky Department of Criminal Justice Training, Appendix I - Procedures for Physical Fitness Testing Procedures for Mandatory Physical Fitness Tests, September 25, 1998, Fitness Intervention Technologies:

1. One and five-tenths (1.5) mile run in seventeen (17) minutes twelve (12) seconds;

2. 300 meter run in sixty-five (65) seconds;

3. Twenty (20) push ups;
4. Sixteen (16) inch vertical jump;
5. One (1) bench press equal to sixty-four (64) percent of the applicant's body weight;
6. Eighteen (18) sit ups in one (1) minute.

(b) If an applicant passes all events when participating in the physical agility test in its entirety, he shall have met the physical agility minimum requirements.

(c) If an applicant passes at least one (1) event when participating in the physical agility test in its entirety:

1. He may retest in the failed events no sooner than forty-eight (48) hours and no later than sixty (60) days from the date of the initial test.

2. All failed events shall be retested on the same date.

3. If the applicant passes all previously failed events on the date of the retest, he shall have met the physical agility minimum requirements.

4. If the applicant does not pass all previously failed events on the date of the retest, he shall repeat the physical agility test in its entirety and shall receive no credit for events which were passed during previous tests or retests. The applicant may repeat the physical agility test no sooner than forty-eight (48) hours from the date of the retest.

(d) If an applicant fails all events when participating in the physical agility test in its entirety, he shall repeat the physical agility test in its entirety and shall receive no credit for events which were passed during previous tests or retests.

(e) An applicant may participate in the physical agility test in its entirety, four (4) times in a one (1) year period, which shall be calculated from the first date of testing.

(f) An applicant may participate in one (1) physical agility retest for each physical agility test taken in its entirety.

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

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

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

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

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

POPS office as needed.

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

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

(b) Applicants shall bring a completed copy of KLEC POPS Form H-2 at time of psychological testing.

(c) POPS shall receive the completed polygraph questionnaire KLEC POPS Form I-2 at the time of testing.

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

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

(3) Length of test result validity.

(a) Physical agility: results shall be considered current and valid one (1) year from the passing date of the test.

(b) Psychological screening: results shall be considered current and valid for one (1) year from the date of the screening. If the applicant experiences a significant life change during the one (1) year period, the applicant shall notify the employing agency who shall schedule a new psychological screening for the applicant.

(c) Polygraph examination: results shall be considered current and valid for a period of one (1) year from the date of the examination. If the applicant experiences a significant life change during the one (1) year period, the applicant shall notify the employing agency who shall schedule a new polygraph examination for the applicant.

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

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

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

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

(a) Fifty (50) dollars for each psychological screening;

(b) \$100 for each polygraph examination;

(c) Sixteen (16) dollars for each drug screening.

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

(3) Financial hardship.

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

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

1. The application has been received and is complete; or

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

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

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

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

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

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

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

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

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

(4) An agency that knowingly discloses confidential information in violation of KRS 15.400(3) may be denied participation in KLEC polygraph and psychological examinations.

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

(2) Use of alcohol or other intoxicants.

(a) An applicant shall not possess, consume nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician while participating in the testing process.

(b) If an applicant has taken a controlled substance as prescribed by a physician or has taken any other medication, whether prescribed or not, he shall not participate in physical agility testing if he is under the influence thereof to the extent that the applicant may be impaired or may endanger himself or other persons or property. An applicant shall advise the KLEC test administrator in writing of the use of controlled substance or medication whether or not it has

been prescribed by a physician.

(3) Termination of a dangerous or disruptive situation. If the conduct or condition of an applicant constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of testing, a KLEC staff member may take all reasonable steps necessary to terminate the situation, including removal of the applicant from testing.

(4) A copy of KLEC POPS Form R shall be mailed to the applicant and the employing agency within five (5) days following the removal stating that the applicant has been removed or barred from testing, the supporting reasons and circumstances of the removal, and whether the agency may reschedule testing.

Section 11. Compliance. (1) Inspection. Test results, testing procedures and all other certification documentation shall be retained by the agency and be available for inspection and audit at any time by agents authorized by KLEC.

(2) KLEC may initiate an inspection and audit of an agency's certification documentation randomly to assure routine compliance or to investigate a specific complaint.

(3) KLEC shall have access to the services of the DOCJT Compliance and Audit Section, as coordinated through the DOCJT Commissioner, in order to audit specific applicants and agencies to assure compliance with certification requirements.

(4) If during the course of an audit conducted by the DOCJT Compliance and Audit Section a violation of certification is detected, the DOCJT Compliance and Audit Section shall report the possible violation to KLEC.

(5) Denial of Participation in KLEFPF. If KLEC determines that an agency has knowingly employed or appointed a person who fails to meet minimum certification standards, KLEC shall immediately notify the administrator of KLEFPF.

Section 12. Issuance of Certification. All identification cards issued to a peace officer verifying certification remain the property of KLEC and shall be returned to POPS upon the peace officer's loss of certification.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Standards for Educational and Psychological Testing", Part IV - Standards for Administrative Procedures, (1985 Edition), American Psychological Association;

(b) Federal DOT Work Place Standards, 49 CFR §40, subparts A and B;

(c) KLEC POPS Form A - Attesting to Minimum Standards/Testing Registration;

(d) KLEC POPS Form B - Basic Training Completed (non-DOCJT);

(e) KLEC POPS Form C - Grandfather Information;

(f) KLEC POPS Form D - All Standards Met;

(g) KLEC POPS Form E - Request for Certification for Exempt Officers;

(h) KLEC POPS Form F - Status Update/Recertification;

(i) KLEC POPS Form G-1 - Medical Examination Report;

(j) KLEC POPS Form G-2 - Medical History Statement;

(k) KLEC POPS Form G-3 - Medical Guidelines Implementation Manual;

(l) KLEC POPS Form H-1 - Background Investigation;

(m) KLEC POPS Form H-2 - Personal History Statement;

(n) KLEC POPS Form I-1 - Polygraph Consent Form;

(o) KLEC POPS Form I-2 - Polygraph Applicant Questionnaire;

(p) KLEC POPS Form I-3 - Polygraph Test Questions;

(q) KLEC POPS Form J - JTA Submission;

(r) KLEC POPS Form K-1 - Drug Screening Applicant Consent Form;

(s) KLEC POPS Form K-2 - Drug Screening Chain of Custody;

(t) KLEC POPS Form L-1 - Code of Ethics;

(u) KLEC POPS Form L-2 - Canon of Ethics;

(v) KLEC POPS Form Q - Agency Submission Form;

(w) KLEC POPS Form R - Removal from Testing;

(x) KLEC POPS Form S - Notice of Appeal;

(y) KLEC POPS Form T-1 - Medical Release - Phase I Testing;

(z) KLEC POPS Form T-2 - Liability Waiver - Phase I Testing.

(2) This material may be inspected, copied, or obtained at Kentucky Law Enforcement Council, Office of Peace Officer Professional Standards, 415 Funderburk Building, Eastern Kentucky University, 521 Lancaster Road, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m.

PAMELA J. MURPHY, Acting Secretary

STEPHANIE C. BINGHAM, General Counsel

APPROVED BY AGENCY: April 15, 1999

FILED WITH LRC: April 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1999, at 10 a.m., in Room 211, Funderburk Building, Richmond, Kentucky 40475-3137. Individuals interested in being heard at this hearing shall notify this agency in writing by May 14, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephanie C. Bingham, General Counsel, Department of Criminal Justice Training, Funderburk Building, Richmond, Kentucky 40475-3137; Telephone Number (606) 622-5897, Facsimile Number (606) 622-2740.

REGULATORY IMPACT ANALYSIS

Contact Person: Stephanie C. Bingham

(1) Type and number of entities affected: all peace officers in the Commonwealth who are required or may choose to be certified, and their agencies. This is estimated to be approximately 8,000 officers and a minimum of 400 agencies.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Cost to law enforcement agencies for testing applicants and training officers as required for certification. This includes \$166 per applicant if the agency participates in all KLEC administered testing, plus the agency's expense for medical examinations and background investigations.

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

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

1. First year following implementation: Testing applicants and training officers (basic and annual in-service); documentation of applicants and officers meeting minimum standards for certification, or those qualified for certification through grandfather provisions; reporting changes in employment.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Approximately \$412,800 (through the Kentucky Law Enforcement Foundation Program Fund - KLEFPF).

2. Continuing costs or savings: Estimated at \$362,500.

3. Additional factors increasing or decreasing costs: A long-term savings for the Commonwealth is anticipated due to reduction in injury to law enforcement officers and liability claims, and a reduction in costs for law enforcement agencies for hiring and training.

(b) Reporting and paperwork requirements: Informational publications to law enforcement agencies; design, implementation and maintenance of a data base to accomplish testing and officer certification.

(4) Assessment of anticipated effect on state and local reve-

nues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the Kentucky Law Enforcement Foundation Program Fund - KLEFPF and testing fees charged to individual agencies.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Increased professionalism of law enforcement personnel resulting in a safer public environment.

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

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

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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: Local law enforcement agencies including city, urban-county, and county police officers, and sheriff's departments, who are required or may choose to employ certified peace officers.

3. State the aspect or service of local government to which this administrative regulation relates: KRS 15.380(1)(b) and (c) specifically require city, county, and urban-county police officers, and deputy sheriffs (with specific exceptions) to be certified.

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: Effect on revenue is unlikely. Expenditures cannot be estimated since costs will depend on the initial size of local units of law enforcement and any change in number of personnel including growth or turnover. Costs will be incurred for testing applicants and training officers as required for certification. This includes \$166 per applicant if the local agency participates in all KLEC administered testing, plus the agency's expense for medical examinations and background investigations.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
Bureau of Learning Support Services
(New Administrative Regulation)

703 KAR 5:020. The formula for determining school performance classifications and school rewards.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455, 158.6457

STATUTORY AUTHORITY: KRS 156.070, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 requires the Kentucky Board of Education to promulgate administrative regulations to establish a system for identifying and rewarding successful schools and to establish appropriate consequences for schools failing to meet or exceed their assistance line. This administrative regulation establishes procedures for determining successful schools, school rewards, and classifications of schools within the school accountability program.

Section 1. Definitions. (1) "Academic index" means the summary statistic or index which describes school success on the academic goals one (1), two (2), five (5), and six (6) set forth in KRS 158.6451(1)(b).

(2) "Accountability index" means the statistic defined in KRS 158.6457(1).

(3) "Accountability level" means elementary (grades end of primary, four (4), and five (5)), middle (grades six (6), seven (7), and eight (8)), or high school (grades nine (9), ten (10), eleven (11), and twelve (12)).

(4) "Assistance line" means that unique line for a school that starts in the biennium ending 2002 one (1) standard error of measurement below the school's baseline to a point that is one (1) standard error of measurement below eighty (80) on the accountability index scale in the biennium ending 2014. Points calculated defining this line shall be rounded to the nearest tenth. If a school's baseline is above eighty (80), the assistance line means a horizontal line at eighty (80) minus one (1) standard error of measurement.

(5) "Alternate portfolio" means that component of the assessment system designed for students with legally identified disabilities who cannot with the assistance of adaptive devices available participate in the regular curriculum.

(6) "Alternate portfolio scores" means the scores assigned by teachers, or scores reassigned through state scoring review procedures, to a collection of best pieces assembled through the instructional process.

(7) "Baseline accountability index" means the accountability index score that describes the school's average performance during the 1998-99 and 1999-2000 school years, and is that number against which progress shall be measured.

(8) "Gained population" means students in grades at which accountability assessments are administered who now attend a different school because of service area boundary changes or other local board of education policy changes affecting the school population served.

(9) "Goal line" means a fixed line that extends from a point that is one (1) standard error of measurement below school's baseline index to a point that is one (1) standard error of measurement below the state goal established for the target biennium. Points calculated defining this line shall be rounded to the nearest tenth. In any biennium, a school's growth accountability index shall be at or above this line in order to achieve a classification of meets goal in recognition of growth.

(10) "Growth accountability index" means the average accountability index that describes the school's performance every two (2) years beginning with the 2000-2001 and 2001-2002 school years.

(11) "Lost population" means students in grades at which accountability assessments are administered who no longer can attend a particular school because of service area boundary changes or other local board of education policy changes affecting school population served.

(12) "Nonacademic index" means the statistic which describes

school success on the nonacademic goals set forth in KRS 158.6451(1)(c), (d), and (f).

(13) "Reward share" means the unit of money to be distributed to schools, and is determined by the total amount of the money available for rewards in a biennium and the total number of shares to be awarded.

(14) "School classification" means the status of a school or school district, including meets goal, progressing, or in need of assistance based on measures of growth.

(15) "School" means an A1 school as defined in 703 KAR 5:040, Section 1(1).

(16) "School recognition points" means those points as defined in this administrative regulation for the purpose of recognizing school standing.

(17) "Stable population" means students in grades at which accountability assessments are administered who would have attended the school prior to and after any service area boundary changes or other local board of education policy changes affecting school population served.

(18) "Standard error of measurement" means, for purposes of the assistance line or the goal line, the statistic derived from the baseline calculations taking into account appropriate sources of measurement error and number of students assessed.

(19) "Standing of a school" means the actual performance of a school as measured by the accountability index.

(20) "State goal" means 100 on the accountability index scale which all schools are expected to meet by the target biennium.

(21) "Student achievement levels" means categories of student learning in each of the content areas, including nonperformance, medium novice, high novice, low apprentice, medium apprentice, high apprentice, proficient, or distinguished.

(22) "Target biennium" means the biennium by the end of which schools are expected to reach the state goal, which is the biennium ending with the 2013-2014 school year.

(23) "Threshold" means the point on the goal line corresponding to the end year of the biennium.

(24) "Writing portfolio scores" means the scores assigned by teachers, or scores reassigned through portfolio scoring audit procedures, to a collection of a student's best work.

Section 2. Academic and Nonacademic Index Calculations. (1) The points assigned to students scoring at each student achievement level and sublevel for purposes of computing the academic indices for a particular content area shall include:

(a) Nonperformance - if a total open-response raw score of less than one (1), and multiple-choice total raw score that is less than chance performance and the score converts to less than medium novice, it shall be assigned a score of zero. For the writing or alternate portfolio, a blank or incomplete shall be assigned a score of zero;

(b) Medium novice (reading, mathematics, science, social studies, alternate portfolio, writing on-demand prompt, writing portfolio, arts and humanities, practical living and vocational studies) shall be assigned a score of thirteen (13);

(c) High novice (reading, mathematics, science, and social studies) shall be assigned a score of twenty-six (26);

(d) Low apprentice (reading, mathematics, science, and social studies) shall be assigned a score of forty (40);

(e) Medium apprentice (reading, mathematics, science, social studies, alternate portfolio, writing on-demand prompt, writing portfolio, arts and humanities, practical living and vocational studies) shall be assigned a score of sixty (60);

(f) High apprentice (reading, mathematics, science, and social studies) shall be assigned a score of eighty (80);

(g) Proficient in all content areas shall be assigned a score of 100, or distinguished in all content areas shall be assigned a score of 140.

(2) For all content areas except writing, the scores derived from the Kentucky Core Content Test shall be based on a scoring method that assigns sixty-seven (67) percent of the weight of the scores from open-response items and thirty-three (33) percent of the weight from multiple-choice items. The writing score shall be based on the writing prompt and the writing portfolio.

(3) The values for attendance rate and successful transition to adult life rate shall be the actual percentage reported. The values entered into formula calculations for retention rate and dropout rate shall be 100 minus the actual percentage calculated. Nonacademic data for a particular assessment year shall be calculated using the data from the previous school year. Nonacademic data shall be based on all grades within a school building generating appropriate data as follows:

- (a) Attendance, primary through grade twelve (12);
- (b) Retention rates, grades four (4) through twelve (12);
- (c) Dropout rates, grades seven (7) through twelve (12); and
- (d) Successful transition to adult life for the graduating students.

(4) Scores from alternate portfolios shall be included in the academic indices so that the data from an alternate portfolio completed by a student eligible to participate with an alternate portfolio contributes the same weight to the academic component of the accountability index as would the data for a student participating in the regular components of the assessment program at the elementary, middle, or high school levels.

Section 3. Components of the Accountability Index and Weights.

(1) The accountability index shall consist of two (2) components. Component One consists of academic indices and the nonacademic index. Component Two shall be an index created from a national norm-reference assessment (NRT). Component One shall comprise ninety-five (95) percent of the total index. Component Two shall comprise five (5) percent of the index.

(2) The accountability index shall be rounded to the nearest tenth on the accountability scale.

(3) Computing the academic index for each of the content areas of writing, reading, mathematics, science, social studies, arts and humanities, and practical living and vocational studies shall be based on the average of student scores as described in Section 2(1) of this administrative regulation. Component One of the accountability index shall be calculated according to the following weights:

(a) Elementary school (grades end of primary - five (5))

Content Area	Component One (Without NRT)	Component One and Two (With NRT)
Reading	20%	19.00%
Mathematics	20%	19.00%
Science	15%	14.25%
Social studies	15%	14.25%
Writing (15%)		
Writing On-Demand Prompt	3%	2.85%
Writing Portfolio	12%	11.40%
Arts and Humanities	5%	4.75%
Practical Living and Vocational Studies	5%	4.75%
Nonacademic Index (5%)		
Attendance Rate	4%	3.80%
Retention Rate	1%	0.95%
National Norm Referenced Test	(Not Applicable)	5.00%
	100%	100.00%

(b) Middle school (grades six (6) - eight (8))

Content Area	Component One (Without NRT)	Component One and Two (With NRT)
Reading	15%	14.25%
Mathematics	15%	14.25%
Science	15%	14.25%
Social studies	15%	14.25%
Writing (15%)		
Writing On-Demand Prompt	3%	2.85%
Writing Portfolio	12%	11.40%
Arts and Humanities	7.5%	7.125%
Practical Living and Vocational Studies	7.5%	7.125%

tional Studies		
Nonacademic Index (10%)		
Attendance Rate	4%	3.80%
Retention Rate	4%	3.80%
Dropout Rate	2%	1.90%
National Norm Referenced Test	(Not Applicable)	5.00%
	100%	100%

(c) High school (grades nine (9) - twelve (12))

Content Area	Component One (Without NRT)	Component One and Two (With NRT)
Reading	15%	14.25%
Mathematics	15%	14.25%
Science	15%	14.25%
Social studies	15%	14.25%
Writing (15%)		
Writing On-Demand Prompt	3%	2.85%
Writing Portfolio	12%	11.40%
Arts and Humanities	7.5%	7.125%
Practical Living and Vocational Studies	7.5%	7.125%
Nonacademic Index (10%)		
Attendance Rate	2%	1.90%
Retention Rate	0.5%	0.48%
Dropout Rate	3.75%	3.56%
Successful Transition to Adult Life	3.75%	3.56%
National Norm Referenced Test	(Not Applicable)	5.00%
	100%	100%

(4) The academic index for each content area and the nonacademic index shall be determined by summing the indices as described in this section.

(5) Component One of the accountability index shall be calculated by aggregating the data from all of the students in the school.

(6) Component Two of the accountability index shall be derived from the national norm referenced assessment as follows:

(a) Student performance standards comparable to those used in Component One and described in Section 2 of this administrative regulation shall be established by the end of the year 2000.

(b) Scores shall be associated with each performance level as described in Section 2 of this administrative regulation; and

(c) The Component Two index shall be based on the average of the scores.

Section 4. Schools Not Conforming to the Standard Grade Configuration. (1) For the Kentucky Core Content Test, if a school does not have grades four (4) and five (5) at the elementary level, grades seven (7) and eight (8) at the middle school, or grades ten (10), eleven (11), and twelve (12) at the high school, the school shall be combined with the school or schools having the missing grade(s) its students previously attended or would subsequently attend, forming a single school accountability unit.

(2) A school that does not contain a grade at which the national norm-referenced assessment is administered shall have its accountability index calculated using only the weights specified as Component One of the index in Section 3 of this administrative regulation. Schools that have more than one (1) grade at which the national norm-referenced assessment is administered shall have those grades combined to form the basis for Component Two of the calculations described in Section 3 of this administrative regulation.

(3) A school or school district may request a waiver of the requirements of subsections (1) and (2) of this section or from the normal configuration of schools (elementary, middle, or high school) from the Kentucky Board of Education specifying other combinations of schools and assessment data if all students in an accountability grade are included, and all schools are accountable for all content areas assessed. A condition for the granting of a waiver shall be that each affected school and school district shall waive in writing its right to make the

school configuration for which it sought a waiver the basis of a subsequent appeal of a school's classification. A waiver request shall be received by the Kentucky Department of Education by June 30 of the year prior to the biennium for which the waiver is requested. For the biennium ending in year 2000, a waiver request shall be received by the Kentucky Department of Education by September 1, 1999.

Section 5. Schools Having More than One (1) Accountability Level. If a school has more than one (1) accountability level, the school's accountability index shall be the average of the academic and nonacademic data for the school.

Section 6. School Service Area Reconfigurations. (1) If as a result of a change in service area boundaries or local board of education policies affecting student population served by a school, less than eighty (80) percent of a school's student population at its accountability grades is stable, the school shall be considered a reconfigured school. To determine if eighty (80) percent of the population is stable, the number of students in the stable population shall be divided by the sum of that number, plus the lost population, plus the gained population. If the result is less than eight-tenths (.8), the school shall be considered a reconfigured school.

(2) A school that would be considered a reconfigured school in the 1998-1999 school year shall be treated as if it were not reconfigured, with the exception that the nonacademic index for the district from the previous year at the corresponding level (elementary, middle, or high school) shall be substituted for that school's nonacademic data. Schools reconfigured after the 1998-1999 school year shall be assigned a baseline calculated from the 1998-1999 and 1999-2000 aggregate district level data for the appropriate level (elementary, middle, or high school).

(3) A school district shall notify the Department of Education of any school considered a reconfigured school as provided in this administrative regulation by September 30 of the school year in which the reconfiguration occurs. A school that is considered a reconfigured school in either year of a biennium after 2000 on which accountability decisions are based shall have the performance judgment that would have applied to the district at that level (elementary, middle, or high school), if separate decisions (elementary, middle, or high school) were to be applied at the district level. In the alternative, a school district may submit to the Department of Education a plan for reconstituting baseline data taking into consideration the changes in service areas. The plan shall assure that local district calculations are accurate and appropriately include all student data in both baseline and growth index calculations. The plan shall be submitted to the Department of Education at the same time the district notifies the Department of Education of the school reconfiguration. If the Department of Education approves the plan, it shall become effective and shall remain in effect unless a specific waiver from this reconfiguration arrangement is requested from and granted by the Kentucky Board of Education as provided in this administrative regulation. This alternative shall not be implemented until the affected schools have a complete biennium of data to be considered in the growth calculations. A condition for acceptance of the plan shall be that each affected school and school district shall waive in writing its right to make the plan the basis of a subsequent appeal of a school's classification.

(4) A school that has contained more than one (1) level (elementary, middle, or high school) and is reconfigured by removing an entire level of the accountability grades may request that the portion of the school remaining stable be considered within the accountability system using its established historical data.

(5) A school in transition because of a new building or a new policy affecting population served and being phased in may request that the Department of Education establish data to maintain the continuity of accountability data if the request does not require the tracking of individual student data. This request shall require the approval of each affected school council (or the principal, if a school does not have a council) and the local board of education upon the recommendation of the superintendent.

Section 7. Accountability Procedures. (1) To establish expected levels of growth for each school, a straight line shall be drawn from a school's baseline minus one (1) standard error of measurement

established in the 1998-1999 and 1999-2000 biennium to the state goal of a growth accountability index of 100 minus one (1) standard error of measurement by 2014.

(2) There shall be five (5) points of school recognition. These shall be determined from the baseline data (school years 1998-1999 and 1999-2000) so that at least ten (10) percent of the schools fall below the first point of recognition and the fifth recognition point shall be set at 100 on the accountability index scale, with the remaining points being established at equal whole number intervals between the high and the low.

Section 8. School Classifications Recognizing Growth. (1) To determine if a school is classified as meets goal, progressing, or in need of assistance, the school's growth accountability index for a biennium shall be compared to the corresponding goal point and assistance point.

(2) A school shall be classified as meets goal if the school's growth accountability index meets or exceeds its goal point and meets the dropout requirements of this section.

(3) To receive rewards under the provisions of this administrative regulation, a school shall have a biennial dropout rate less than or equal to five and three-tenths (5.3) percent, or a dropout rate that is at least one-half (1/2) of one (1) percent lower than its dropout rate of the previous biennium. A school shall not receive rewards if its dropout rate exceeds six (6) percent. If a school is reconfigured for a biennium, the school shall receive the aggregate district dropout rate for the biennium.

(4) To receive rewards under this administrative regulation, a school shall reduce the percent of novices on a schedule so that by the target biennium, the school shall have five (5) percent or less of its students scoring in the novice range of performance. The percent of novices shall be calculated to be reflective of the weights in Section 3 of this administrative regulation. The schedule shall be calculated by subtracting five (5) from the baseline percent novice and dividing this value by seven (7). The maximum allowable percent novice for each biennium shall be calculated as follows:

(a) Year 2002 = baseline percent novice minus the required novice reduction factor;

(b) Year 2004 = baseline percent novice minus the required novice reduction factor multiplied by two (2);

(c) Year 2006 = baseline percent novice minus the required novice reduction factor multiplied by three (3);

(d) Year 2008 = baseline percent novice minus the required novice reduction factor multiplied by four (4);

(e) Year 2010 = baseline percent novice minus the required novice reduction factor multiplied by five (5);

(f) Year 2012 = baseline percent novice minus the required novice reduction factor multiplied by six (6); and

(g) Year 2014 = baseline percent novice minus the required novice reduction factor multiplied by seven (7).

(5) A school shall be classified as a progressing school if the school's growth accountability index falls below its goal point and meets or exceeds its assistance point. A progressing school shall obtain an accountability index greater than that which it obtained in the previous biennium to earn a reward and other recognition as a progressing school.

(6) A school shall be classified as in need of assistance school if the school's growth accountability index falls below its assistance point. A school classified as being in need of assistance shall be eligible to apply for Commonwealth school improvement funds and may be subject to a scholastic audit.

(7) In 2002, the highest scoring five (5) percent of all schools shall be designated as Commonwealth pace-setter schools if they have met or exceeded the fourth point of recognition and if they meet the dropout rate requirements of subsection (3) of this administrative regulation. This calculation shall be based on the total accountability index of the school regardless of whether one (1), multiple, or no grades at which the norm referenced assessment is administered are included. If not otherwise receiving rewards in recognition for growth, a Commonwealth pace-setter school shall receive one (1) share of rewards. In addition, to be classified as a pace-setter school beginning with the biennium ending in 2004, a school shall not have declined in both of the two (2) previous biennia. The

rewards that may be due a school for having passed a higher point of recognition shall be given in addition to this amount.

Section 9. Reward Amounts. (1) There shall be two (2) levels of rewards for growth. A school classified as meets goal in accordance with Section 8(2) of this administrative regulation shall earn three (3) shares of rewards. A school classified as progressing in accordance with Section 8(4) of this administrative regulation shall earn one-half (1/2) share of rewards.

(2) A special one (1) time reward amount shall be distributed to schools as they meet or exceed school recognition points. These schools shall receive one (1) share of rewards and other forms of recognition as determined by the Kentucky Board of Education for meeting or exceeding each school recognition point.

(3) If a school passes two (2) or more of the school recognition points, in one (1) biennium, the reward shall be cumulative. A school shall be awarded these amounts only one (1) time for meeting or passing each point. A school earning this reward and subsequently falling below a recognition point shall not earn the reward for passing the point again.

(4) A school shall earn a recognition point reward based on where its baseline falls and shall not receive rewards for meeting or exceeding school recognition points below its baseline index.

(5) The total amount of rewards to be distributed to schools and school districts earning rewards shall not exceed 1.75 percent of the amount of funds paid to certified personnel within Kentucky's public schools during the last year of the accountability cycle. The total number of shares earned shall be divided into the amount determined pursuant to the subsection to determine the per share reward amount; however, a reward share shall not exceed \$2000. A reward share shall be distributed to a school that meets the requirements for rewards as specified in Section 8 of this administrative regulation. The number of shares earned shall be multiplied by the total number of certified staff, as provided in KRS 158.6455 and subsection (6) of this section, to determine the final reward amount, as follows:

(a) Meets goal: number of certified full-time equivalent (FTE) staff times three (3) shares;

(b) Progressing: number of certified full-time equivalent (FTE) staff times one-half (1/2) share;

(c) Pass one (1) school recognition point: number of certified full-time equivalent (FTE) staff times one (1) share; and

(d) Pace setter: number of certified full-time equivalent (FTE) staff times one (1) share.

(6) Beginning with rewards issued at the close of the 1999-2000 school year, a school shall earn rewards for use in the school based on the number of certified staff assigned to the school at the close of the biennium. A reward amount shall be determined based on the number of verified certified staff assigned to the school or combinations of schools earning the reward. A reward amount for part-time and itinerant staff shall be calculated based on the proportion of time spent in the school.

WILMER S. CODY, Commissioner

HELEN MOUNTJOY, Chairperson

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: April 14, 1999

FILED WITH LRC: April 14, 1999 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on May 21, 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 meeting shall notify this agency in writing by May 14, 1999, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 Noland

(1) Type and number of entities affected: 176 school districts.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: School Rewards Trust Fund; State Appropriation for Assessment Implementation

(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: Pursuant to KRS Chapter 13A and 158.6455, this can only be done by regulation.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would occur, explain detrimental effect: 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, ART, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Bureau of Learning Support Services

(New Administrative Regulation)

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

RELATES TO: KRS 158.6451, 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 156.070, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 provides the Kentucky Board of Education with the authority to promulgate administrative regulations to establish a system of de-

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termining successful schools and a system of rewards and assistance for certified staff in schools and districts. This administrative regulation establishes procedures for the inclusion of special student populations in the state-required assessment and accountability programs.

Section 1. (1) "Procedures for Inclusion of Special Populations in the State-Required Assessment and Accountability Programs," dated February, 1999, is hereby incorporated by reference.

(2) This document may be inspected and copied at the Department of Education, Office of Assessment and Accountability, 18th Floor, Capitol Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. through 4:30 p.m.

WILMER S. CODY, Commissioner
HELEN MOUNTJOY, Chairperson
KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: April 14, 1999

FILED WITH LRC: April 14, 1999 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on May 21, 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 meeting shall notify this agency in writing by May 14, 1999, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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.

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Member and Provider Services (New Administrative Regulation)

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

RELATES TO: KRS 205.520, 42 CFR 431.615, 440.130, 447 Subpart B, 42 USC 1396a, 1396d, 1396s

STATUTORY AUTHORITY: KRS 194.130, 194A.050, 199.011, 199.640, 199.670, 205.520, 205.634, 1998 Ky. Acts ch. 615

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes uniform conditions and requirements for certification for out-of-state residential services for Medicaid-eligible children under age twenty-one (21), and for determining the availability of providers of residential care within the Commonwealth.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designated agent.

(2) "Participating provider" means a provider who receives reimbursement from the Department for Medicaid Services for services provided to a Medicaid-eligible child under age twenty-one (21).

(3) "Residential care" means behavioral health services provided twenty-four (24) hours a day by a participating provider in a structured setting with an organized program of care.

(4) "Comparable services" means that an in-state residential provider's program equals or surpasses an out-of-state's residential provider's program based on measurable components of treatment.

(5) "Comparable cost per child" means total payments made by the department per child to an out-of-state facility are comparable to total payments made per child to an in-state facility for the residential episode of care.

Section 2. Instructions and Exceptions. (1) With the exception of the situations specified in paragraphs (a) and (b) of this subsection, the department shall not preauthorize and reimburse an out-of-state residential care provider for Medicaid-eligible children until the participating out-of-state provider presents documentation that there is not an in-state participating provider capable and willing to provide comparable services at a comparable cost per child. An exception may be made if:

(a) The identified in-state resource is farther away from the child's parent or guardian than a similar out-of-state resource; or

(b) The services offered by the out-of-state resource are deemed by the department to be more appropriate for the individual child than the services offered by the in-state provider.

(2) Components of treatment shall include clinical program de-

scriptions, including specialty, if any, staff credentials, staffing model, quality improvement plan, utilization management, protocols and opportunity for family interaction, and discharge and outcome management. The physical structure and design may also be considered when determining comparable services.

(3) Incidental acute physical health care or routine preventive care payments made by the department during the residential episode of care are excluded from the calculation of comparable cost per child.

(4) Participating in-state and out-of-state providers shall meet provider qualification criteria established in 907 KAR 1:034 and 907 KAR 3:030.

Section 3. Procedures for Placement. (1) The following procedures shall be performed prior to an out-of-state placement:

(a) The department shall transmit a contact list of participating in-state providers to a participating out-of-state provider. The list shall be updated and transmitted to an out-of-state provider if the department enrolls an additional in-state provider.

(b) The out-of-state provider shall contact the department for preauthorization of services for a specific child and provide the following information:

1. Child's demographics;
2. Name and address of child's parent or legal guardian;
3. Child's clinical history and diagnosis;
4. Treatment plan, including the estimated date of discharge and a proposed transition plan to the home and community; and
5. Documentation that there is not an in-state provider with comparable services and costs, capable of and willing to serve, the specific child.

(c) A participating in-state provider shall fax, call, or otherwise transmit to the department, a weekly report of the availability of residential care, which shall be reviewed by the department prior to approval of an out-of-state placement.

(d) The department shall create a database of participating in-state and out-of-state providers containing each participating provider's identifying information, services, and costs. The department shall utilize this database to determine comparable costs and services among providers and shall update the database not less than annually.

(2) For a child approved for out-of-state residential care, the department shall maintain records documenting diagnoses, specific treatment needs, demographics, and the specific reason for an exception, meeting the criteria in Section 2(1) of this administrative regulation. The department shall transmit this data to a participating provider who requests it.

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: April 13, 1999

FILED WITH LRC: April 13, 1999 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1999 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 14, 1999, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation to: Hiren B. Desai, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: Kentucky Medicaid eligible children referred for psychiatric care in an out-of-state facility. In-state and out-of-state Medicaid providers of residential care for the Early Periodic Screening, Diagnosis and Treatment 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: None 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: Any increased expenditures should be offset by increased revenues.

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

1. First year following implementation: In-state Medicaid providers of residential care for the Early Periodic Screening, Diagnosis and Treatment Program must track and report to the department or its designated agent census data and bed availability weekly. Out-of-state providers must document that no willing or capable in-state provider exists before out-of-state services are authorized.

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: Benefit expenditures are expected to be budget neutral. Any savings realized from decreasing out-of-state placements would be offset by either placement in community-based settings or in in-state residential placements.

2. Continuing costs or savings: Benefit expenditures are expected to be budget neutral.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None anticipated. (Increased reporting to be done by Peer Review Organization.)

(4) Assessment of anticipated effect on state and local revenues: Local revenues may increase through the development of local resources and services.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds. No anticipated cost for implementation or enforcement of 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: To be implemented statewide.

(b) Kentucky: None

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Employment opportunities may increase because of private development of new programs and increased utilization of in-state psychiatric facilities. Services for children may be developed in their local communities and closer to their homes.

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

(c) If detrimental effect would result, explain detrimental effect: Failure to implement this regulation could result in lack of development of needed services and a continued necessity for placing Kentucky children out-of-state.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.
2. State compliance standards. This administrative regulation does not set compliance standards.
3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No
 2. State whether this administrative regulation will affect the local government or only a part or division of the local government. N/A
 3. State the aspect or service of local government to which this administrative regulation relates. N/A
 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. N/A
- Revenues (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Financial Management and Analysis (New Administrative Regulation)

907 KAR 4:020. Kentucky Children's Health Insurance Program.

RELATES TO: KRS Chapter 45A, 304.17A-310, 42 USC 1397aa et seq., PL 105-33

STATUTORY AUTHORITY: KRS 194A.030, 205.6481-205.6497, 42 USC 1397aa et seq.

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services has responsibility to administer the Kentucky Children's Health Insurance Program. KRS 205.6481-105.6497 authorizes the cabinet, by administrative regulations, to establish the Kentucky Children's Health Insurance Program (KCHIP) to provide health care coverage and other coordinated services to children of the Commonwealth who are uninsured and otherwise not eligible for health insurance coverage. This administrative regulation establishes the eligibility criteria, schedule of benefits, premium contribution, level of copayments for services, and the criteria for health services providers and insurers wishing to contract with the Commonwealth to provide KCHIP coverage.

Section 1. Definitions. (1) "Accountable pediatric organization"

(APO) means a licensed health insurer or other licensed entity that meets the criteria as established in Section 6 of this administrative regulation, under contract with the cabinet in accordance with KRS Chapter 45A, which agrees to provide, or arrange for the provision of, comprehensive health services to KCHIP enrollees, on the basis of an at-risk, prepaid capitated reimbursement system.

(2) "Cabinet" means the Kentucky Cabinet for Health Services.

(3) "Cabinet agent" means an entity with which the cabinet contracts in accordance with KRS Chapter 45A, to determine the eligibility of applicants for KCHIP.

(4) "Child" means an individual who has not attained age nineteen (19).

(5) "Copayment" means a partial payment based on income made by a responsible party on behalf of an enrollee for the delivery of a KCHIP-covered service.

(6) "Department" means the Department for Medicaid Services or its contractor.

(7) "Emergency care" means care for a condition as defined in 42 USC 1395dd.

(8) "Enrollee" means a child who receives services from an APO under the KCHIP Plan.

(9) "KCHIP" means the Kentucky Children's Health Insurance Program.

(10) "Premium contribution" means the responsible party's financial contribution for the purchase of the KCHIP plan.

(11) "Presumed eligible" means a child who is believed to be eligible for KCHIP after administration of an income, health insurance status, and residency screening. The presumed eligibility period for a child shall not exceed a sixty (60) calendar day period, no more than once per year.

(12) "Responsible party" means the individual who applies for coverage under KCHIP on behalf of a child and who is responsible for coordination with the cabinet for eligibility determination, payment of premium contributions to the APO, and copayments to providers and shall include a child who is eighteen (18) years of age who meets the definition of a child as established in subsection (4) of this section.

(13) "Rural area" means an area outside of an urban area.

(14) "Urban area" means a metropolitan statistical area, as designated by the U.S. Office of Management and Budget, which contains an urban nucleus of at least 50,000 population, along with adjacent counties which have a high degree of economic and social ties, for a total metropolitan population of at least 100,000.

(15) "Urgent care" means care for a condition not likely to cause death or lasting harm but for which treatment should not wait for a normally scheduled appointment.

Section 2. Eligibility Criteria. (1) A child shall be eligible for KCHIP if:

- (a) The child is a resident of Kentucky;
- (b) The child is not a transient traveling through and not residing in the state;
- (c) If an alien, the child shall be a qualified alien pursuant to 8 USC 1641(a) for permanent residence;
- (d) The child is not an inmate of a public institution or a patient in an institution for mental disorders;
- (e) Family income does not exceed 200 percent of the federal poverty guidelines updated annually in the Federal Register by the United States Department of Health and Human Services under authority of 42 USC 9902(2);
- (f) The child is uninsured for at least a six (6) month period prior to application for KCHIP unless the child is an infant less than six (6) months of age;
- (g) If the child's insurance was terminated, it was terminated less than six (6) months prior to application for KCHIP for reasons beyond his parent's control, including:
 1. Loss of employment;
 2. Death of a parent;
 3. Divorce, with associated loss of health care coverage for the child;
 4. Change to a new employer that does not provide an option for dependent coverage;
 5. Change of address and no employer-sponsored coverage is

offered in that county;

6. Discontinuation of health benefits to employees of the parent's employer;

7. Expiration of the coverage purchased by a parent or guardian under the Consolidated Omnibus Budget Reconciliation Act of 1985;

8. Self-employment;

9. Termination of health benefits due to a long-term disability;

10. Termination of dependent coverage due to an extreme economic hardship on the part of either the employee or employer as determined by the department;

11. Loss of Medicaid benefits due to reasons other than fraud; or

12. Other unique circumstances approved by the department on a case-by-case basis; and

(h) The child is not eligible for Medicaid coverage pursuant to 907 KAR 1:011.

(2) Income considerations.

(a) For purposes of eligibility, and except for types of money established in paragraph (c) of this subsection, family income includes money received before taxes from all sources.

(b) Child support paid for a child in the home shall be included in family income. Child support paid from the parent to a child outside the household shall be deducted from the family income.

(c) Family income shall not include the following:

1. Capital gains;

2. Assets drawn down as withdrawals from a bank, the sale of property, a house, or a car;

3. Tax refunds;

4. Gifts;

5. Loans;

6. Lump-sum inheritances, one (1) time insurance payments, or compensation for injury;

7. Noncash benefits, such as employer-paid or union-paid portion of health insurance or other employee fringe benefits;

8. Food or housing received in lieu of wages;

9. The value of food and fuel produced and consumed on farms;

10. The imputed value of rent from owner-occupied nonfarm or farm housing;

11. Federal noncash benefit programs as Medicare, Medicaid, food stamps, school lunches, and housing assistance; or

12. Income exclusions established in 907 KAR 1:640, Section 6.

(3) Income disregards. In comparing monthly income with the federal poverty income guidelines, which have been divided by twelve (12), gross income shall be adjusted as follows:

(a) The standard work-related expenses of an employed person or out-of-school youth who contributes to the family income shall be deducted from gross earnings. For a person with either full-time or part-time employment the standard work expense deduction shall be ninety (90) dollars per month. Earnings of an in-school child shall be disregarded.

(b) Child care for children less than fourteen (14) years of age as a work expense shall be allowed for a child who is living in the home of the parent for full-time and part-time employment. The dependent child care work expense shall be deducted after the ninety (90) dollar disregard specified in paragraph (a) of this subsection has been applied. The child care work expense allowed shall not exceed the subsidy rates for the Child Care Assistance Program as defined in 905 KAR 2:160.

(4) Continuation of coverage. Eligibility for KCHIP shall be determined by the cabinet or its agent.

(a) If a child has been approved for KCHIP benefits, the child shall be continuously eligible for six (6) months from the date of the initial enrollment unless the child moves from the state, becomes eligible for Medicaid, is covered under another health insurance policy, or becomes an inmate of a public institution or a patient in an institution for mental diseases.

(b) After the six (6) months continuous eligibility period, the child may become ineligible if the child moves from the state, becomes eligible for Medicaid, is covered under another health insurance policy, becomes an inmate of a public institution or a patient in an institution for mental diseases, or the family income exceeds 200 percent of the federal poverty guidelines as identified in subsection (1)(e) of this administrative regulation.

(c) Eligibility for a child enrolled in KCHIP shall be redetermined every twelve (12) months beginning twelve (12) months from the date the child's eligibility is determined. Enrollment shall continue without interruption for additional twelve (12) month periods if the child meets the eligibility criteria established in subsection (1) of this section, and the responsible party reapplies for coverage no sooner than ninety (90) calendar days before and no later than thirty (30) calendar days after the end of the previous twelve (12) month enrollment period.

(5) Presumed eligibility coverage.

(a) An APO may serve a child presumed eligible for KCHIP. Reimbursement for a service furnished to a child presumed eligible shall be provided by the department after the child is determined eligible and is enrolled in KCHIP. The APO shall be paid the capitated monthly rate for the time a child is presumed eligible if the child is ultimately determined to be eligible for KCHIP.

(b) If a child is not determined to be eligible for KCHIP, the APO shall not be paid for the period of presumed eligibility.

(c) The period that a child may be presumed eligible for KCHIP prior to final eligibility determination shall be limited to a sixty (60) day period, not to exceed once per year.

(d) Premium contributions due for the period a child is presumed eligible shall be determined and collected from the responsible party after the final eligibility determination. After the final KCHIP eligibility determination, a child's enrollment date shall be retroactive to include the time-limited period in which the child is presumed eligible.

(e) At the discretion of the cabinet, a pilot project may be established in a geographic region to test the efficacy of alternative models of presumptive eligibility.

(6) Premium contributions shall be paid as specified in Section 6(4) of this administrative regulation in order for a child to remain eligible for KCHIP.

(7) Two (2) statewide open enrollment periods per year to re-enroll in KCHIP shall be established for enrollees who have a voluntary lapse in coverage.

Section 3. Copayments for Services. (1) There shall not be copayments for preventive services provided to KCHIP enrollees, and copayments for other services shall not exceed those prescribed by 42 USC 1397.

(2) The copayment shall be made to the provider by the responsible party.

(3) Copayment amounts for specified services shall be established in the KCHIP Schedule of Benefits, incorporated by reference in this administrative regulation.

Section 4. KCHIP Application Data. The following applicable information shall be required from the enrollee or responsible party for enrollment into KCHIP:

(1) The child's demographics, to include at a minimum, name, address, sex, date of birth, race, and Social Security number;

(2) The monthly gross earned income of an employed person who contributes to the family income and child, the employer is name and frequency of income;

(3) The name and address of a health insurance provider who currently provides coverage or who provided coverage in the six (6) months prior to the date of application, policy number, policy holder's name and Social Security number;

(4) The amount of unearned income, such as child support or disability;

(5) The name and age of another child or incapacitated adult living with the child; and

(6) The signature, date, telephone number, and relationship of the person submitting application data for the child.

Section 5. Covered Services. (1) An APO shall provide or arrange for the provision of medically necessary health services, including emergency services, to the extent the services are specified in the KCHIP Schedule of Benefits.

(2) The department shall consider health services as medically necessary if the services are reasonable and necessary to diagnose and provide preventive, palliative, curative, or restorative treatment for physical or mental conditions in accordance with professionally

recognized standards of health care generally accepted at the time services are provided, in accordance with 42 CFR 440.230.

(3) The amount and duration of benefits covered by KCHIP are established in the KCHIP Schedule of Benefits.

(4) The benefits listed in the KCHIP Schedule of Benefits include:

- (a) Hospital care;
- (b) Prenatal and newborn delivery and care;
- (c) Organ transplants;
- (d) Office visits;
- (e) Diagnostic tests, including allergy testing and injections;
- (f) Outpatient surgery;
- (g) End-stage renal dialysis;
- (h) Emergency room services;
- (i) Ambulance services;
- (j) Well child services;
- (k) Immunizations;
- (l) Therapies, including physical, nutritional, speech and occupational;
- (m) Prescription drugs;
- (n) Family planning;
- (o) Vision services, including corrective lenses;
- (p) Hearing evaluation, including hearing aids;
- (q) Home health care;
- (r) Skilled nursing facility services;
- (s) Durable medical equipment;
- (t) Hospice;
- (u) Dental;
- (v) Behavioral health services; and
- (w) The home visitation program.

(5) The APO shall make services, service locations, and service sites available and accessible in terms of timeliness, amount, duration, and personnel sufficient to provide or arrange for the provision of a covered services on an emergency or urgent care basis, twenty-four (24) hours a day, seven (7) days a week.

(a) Primary care delivery sites shall not be more than:

- 1. Thirty (30) miles or thirty (30) minutes from the residence or place of employment for an enrollee in an urban area; or
- 2. Forty-five (45) minutes or forty-five (45) miles from the residence or place of employment for an enrollee in a rural area.

(b) Appointment and waiting times shall not exceed:

- 1. Thirty (30) calendar days from the date of the enrollee's request for routine care; or
- 2. Forty-eight (48) hours from the time of the enrollee's request for urgent care.

(c) Specialty care. With the exception of a specialist who provides a behavioral health service established in paragraph (k) of this subsection, specialty care requiring a referral appointment to a specialist shall not exceed:

- 1. Thirty (30) calendar days for routine care; or
- 2. Forty-eight (48) hours for urgent care.

(d) An APO shall ensure that a specialist shall be available for a KCHIP enrollee and shall include sufficient pediatric specialists to meet the needs of enrollees to the equivalent of other children residing in the APO region but not served by the APO.

(e) Emergency care. Emergency care shall be provided immediately, including stabilization, treatment and use of or transfer to the health care facility most suitable for the type of injury, illness or condition, regardless of contracts pursuant to KRS 304.17A.

(f) An APO using a defined network of health care providers shall cover an emergency department screening and stabilization service in accordance with KRS 304.17A-580.

(g) Hospitals. Except as provided by clauses a and b of this subparagraph, transport time to a hospital shall not exceed thirty (30) minutes. In a rural area, transport time shall:

- 1. Not exceed sixty (60) minutes; or
- 2. Be equivalent to that of another child residing in an APO region and receiving a health service under managed care but not served by the APO.

(h) General dental services.

- 1. Except as provided by subparagraph 2 of this paragraph, transport time shall not exceed one (1) hour.
- 2. In a rural area, transport time shall be equivalent to that of

another child residing in an APO region and receiving a health service under managed care but not served by the APO.

3. Appointment and waiting times shall not exceed:

- a. Three (3) weeks for regular appointments; or
- b. Forty-eight (48) hours for urgent care.

(i) General vision, laboratory or radiology services.

1. Except as provided by subparagraph 2 of this paragraph, transport time shall not exceed one (1) hour.

2. In a rural area, transport time shall be equivalent to that of another child residing in an APO region and receiving a health service under managed care but not served by the APO.

3. Appointment and waiting times shall not exceed:

- a. Three (3) weeks for regular appointments; or
- b. Forty-eight (48) hours for urgent care.

(j) Pharmacy services.

1. Except as provided by subparagraph 2 of this paragraph, transport times shall not exceed one (1) hour.

2. In a rural area, transport time shall be equivalent to that of another child residing in an APO region and receiving a health service under managed care but not served by the APO.

(k) Behavioral health.

1. The evaluation for routine care shall be initiated within seven (7) calendar days of the referral or request for a service by an enrollee.

2. The evaluation for urgent care in a location other than an emergency room or a hospital shall be initiated within twenty-four (24) hours of the:

- a. APO's notification of the enrollee's urgent care need from the referring party; or
- b. Time of the enrollee's presentation to a licensed mental health care facility.

3. The evaluation for emergency care in a location other than the emergency department of a hospital shall be initiated within three (3) hours of the:

- a. APO's notification of the emergency from the referring party; or
- b. Time of the enrollee's presentation to a licensed mental health care facility.

4. The evaluation of an enrollee for involuntary hospitalization pursuant to KRS 202A.028, 202A.041, 202A.051, and 202A.061 or 645.120, shall be performed within the time frame for evaluation for emergency care as established by subparagraph 3 of this paragraph.

5.a. Except as provided in clause b of this subparagraph, the transport time to a service relating to behavioral health shall not exceed one (1) hour.

b. In a rural area, the transport time to a behavioral health service shall be equivalent to the amount of time taken to transport a person:

- (i) Residing in an APO region to a behavioral health service, but not served by the APO; and

(ii) Taken the same route by a motor carrier with a certificate to transport a person in accordance with KRS 281.607 through 281.760.

(l) Other services. The transport time to a covered service not specified in paragraphs (a) through (k) of this subsection shall be equivalent to that of another child residing in an APO region and receiving health services under managed care but not served by the APO.

(6) The cabinet may act to allow limited exceptions to the time and distance standards established in subsection (5)(a) through (d) and (g) through (l) of this section, upon presentation of documentation sufficient in the opinion of the cabinet to support the exception.

(7) If an APO fails to meet access standards as established in subsection (5) of this section, the APO shall submit a corrective action plan for approval by the department prior to implementation of the plan in order to improve enrollees' access to services.

(8) The APO shall ensure direct access and shall not restrict and enrollee's choice of a qualified network provider for the following services:

- (a) Primary care dental services;
- (b) Primary care vision services including eye-glasses provided by an ophthalmologist, optometrist or optician;

- (c) Mental health care management, with necessary mental health services authorized by the APO;
- (d) Prenatal care for enrollees under eighteen (18) years of age;
- (e) Voluntary family planning services;
- (f) Screening, evaluation and treatment for sexually transmitted diseases, tuberculosis, and other communicable diseases defined in 902 KAR 2:020; or
- (g) Childhood immunizations.

Section 6. Premium contributions. (1) Premium contributions shall be based on a family's annual income, as established in KRS 205.6485.

(2) Family income as a percent of poverty shall be determined by using the most recent federal poverty guidelines established in Section 2(1)(e) of this administrative regulation, and criteria established in Section 2(2) and (3) of this administrative regulation.

(3) One (1) premium contribution shall be made per family, regardless of the number of enrolled children in the family.

(4) Premium contributions shall be paid in order for the child to remain eligible for KCHIP.

(5) An APO shall have the option of discounting the premium contribution for an enrolled family that elects to pay premiums in multiple month sums determined by the APO. The optional discount amount shall be at the discretion of the APO.

Section 7. KCHIP Entity Requirements. An APO shall meet the criteria established in subsections (1) through (14) of this section prior to the cabinet's approval of the entity as an APO as defined in Section 1(1) of this administrative regulation.

(1) If the APO is a full-risk organization, is not a full-risk organization or proposes partial or shared risk, it shall provide the cabinet with evidence that it meets Department of Insurance licensure requirements for the level and nature of the proposed service;

(2) The APO shall provide the cabinet with evidence that it meets the financial requirements established as follows:

(a) Comply with the applicable solvency requirements of the appropriate statutes relating to licensure of the APO and the risk-bearing agency or health insurance company it is using to provide services;

(b) Maintain solvency reserves that shall:

1. Be met with funds from the risk agency or regular solvency funds as required by the Department of Insurance for the appropriate licensure category;

2. Be accessible to the Department of Insurance in the event of the APO's insolvency and shall require approval of the department before a disbursement is made; and

3. Provide coverage for expenses incurred for an enrollee's health service from the date of insolvency until the end of the period for which a medical capitation payment was received by the APO;

(c) Submit for the department's approval, a plan which shall address the financial insolvency of the APO and specify the method for:

1. Continuation of services to an enrollee through the end of the period for which a capitation payment has been made;

2. Continuation of inpatient facility services to an enrollee until discharge from the facility occurs; and

3. Immediate notification to the department of the anticipated or projected failure to meet financial insolvency reserve requirements as established in this subsection;

(d) Notify the department within sixty (60) calendar days prior to making a change to its insolvency protection arrangements;

(e) Submit a monthly financial statement to the department within forty-five (45) calendar days of the end of each month which shall include:

1. A balance sheet;

2. A statement of revenue and expenses;

3. Changes in the APO equity;

4. A certification statement; and

5. A written report as requested by the department relating to financial conditions and status;

(f) Submit semiannual and annual reports in the National Association of Insurance Commissioners Managed Care format in the time frame required by KRS 304.38.090;

(g) File a financial disclosure report, as required by the Health Care Financing Administration with the department within 120 calendar days of the end of the contract year and within forty-five (45) calendar days of entering into, renewing, or terminating a transaction with an entity, other than an individual practitioner or group of individual practitioners, or with an entity with which the APO contracts for the provision of management functions, supplies, equipment or health-related services;

(h) Make available books, medical records, and information relating to member services, quality of care, and financial transactions for review, inspection, investigation, auditing, and photocopying by authorized federal and state agency reviewers, investigators and auditors.

1. The books, records, information, and APO's staff shall be available upon request of a reviewer, investigator or auditor during routine business hours at the site of operation; and

2. If required by a reviewer, investigator or auditor, an interview of the APO's staff shall be conducted in private at the site of operation during routine business hours;

(i) Maintain books, records, and information relating to health care providers, enrollee and member services and financial transactions for a minimum of five (5) years in accordance with 907 KAR 1:672, Sections 4(3) and (4), and for an additional time period as required by federal and state laws; and

(j) Have adequate stop-loss insurance, certified by an actuary, to be sufficient given the APO's financial status;

(3) The APO shall respond to a request for proposals (RFP) issued by the cabinet within forty-five (45) calendar days of receipt.

(4) The APO shall describe, in detail, the region of the state in which it seeks to provide KCHIP coverage.

(5) The APO shall provide to the cabinet, legal documentation of health care provider contracts as it relates to Section 1(1) of this administrative regulation.

(6)(a) The APO shall provide access to a toll-free telephone number to be serviced no less than forty (40) hours per week for the purpose of general enrollment information, prescreening of applicants, questions about services, provider inquiries, primary care physician referrals, and assisting with complaints.

(b) The toll-free number shall be serviced in such a way as to be easily accessible to working parents.

(7) The APO shall provide access to a toll-free telephone number twenty-four (24) hours per day, seven (7) days per week to assist enrollees, parents or guardians with access to emergency or urgent care.

(8)(a) The APO shall provide an enrollee the opportunity to select, from at least two (2) primary care providers serving the enrollee's APO, one (1) of which shall be a physician.

(b) An enrollee shall have the right to change the primary care provider after the initial visit and once a year regardless of reason, and at any time for a reason approved by the enrollee's APO.

(9) The APO shall be required to maintain confidentiality of enrollee eligibility information and medical records, and prevent unauthorized disclosure of this information for any reason in accordance with KRS 194.060, 434.840 to 434.860 and 42 CFR 431, Subpart F.

(10) The APO shall provide to the cabinet procedures for submission of KCHIP data to the cabinet in accordance with contract requirements established in KRS Chapter 45A.

(11) The APO shall describe its proposed system of outreach and assistance to children potentially eligible for KCHIP and to children potentially eligible for Medicaid services.

(12) The APO shall include the following providers in the APO network or submit for the cabinet's approval, documentation which establishes that services or service sites shall adequately meet the needs of KCHIP recipients pursuant to Section 5 of this administrative regulation:

(a) Primary care centers, including federally qualified health centers and rural health clinics that serve the proposed region;

(b) Public health departments that serve the proposed region;

(c) The Kentucky Commission for Children with Special Health Care Needs;

(d) Children's hospitals located in the proposed region. If there is not a children's hospital located in the proposed region, a children's hospital serving the region shall be included in the APO network;

(e) Community mental health centers that serve the proposed region; and

(f) School-based health clinics which, at a minimum, manage children with chronic disease, provide preventive health care, and assess and refer to community providers and support agencies.

(13) The APO shall not discriminate against a provider who is located within the geographic coverage area of the APO and who is willing to meet the terms and conditions for participation established by the APO.

(14) The APO shall establish a consumer advisory committee composed of a majority membership of parents or guardians of enrollees and advocates. The committee shall be responsible for advising the APO on quality, access to care and other issues affecting APO enrollees.

(15) The APO shall establish a provider advisory committee composed of APO network providers. The committee shall be responsible for advising the APO on quality, access to care and other issues affecting APO enrollees and providers.

(16) The APO shall maintain documentation necessary to investigate allegations of fraud or abuse, shall cooperate with and report all suspected instances of fraud or abuse to the Office of the Inspector General and the department.

Section 8. Contract Procedures. (1) The cabinet shall contract with an entity which it believes best meets the requirements to provide KCHIP coverage established in Sections 2 through 6, 9 and 10 of this administrative regulation.

(2) The cabinet may develop a partial-risk model with the APO for the beginning phases of the KCHIP Program.

(3) Contracts shall conform to the provisions established in KRS Chapter 45A.

Section 9. Complaint, Grievance and Appeal Rights. (1) If dissatisfied with an action taken:

(a) By the APO, with respect to a health care service, involving denial, reduction or termination of a KCHIP service, an enrollee or his parent or guardian shall be entitled to a complaint, grievance or appeal with his respective APO in accordance with Section 10 of this administrative regulation. The APO shall process complaints, grievances or appeals in a time frame that shall not place the enrollee at risk or seriously jeopardizes the enrollee's health or well being. If the enrollee or his parent or guardian is dissatisfied with the APO complaint, grievance, or appeal resolution, the enrollee or his parent or guardian shall be entitled to a complaint, grievance, or appeal process by the cabinet in accordance with 907 KAR 1:563, Section 12. The cabinet shall process complaints, grievances or appeals in a time frame that shall not place the enrollee at risk or seriously jeopardizes the enrollee's health or well being.

(b) By the cabinet or its agent, an enrollee or his parent or guardian shall be entitled to a complaint, grievance or appeal with the cabinet, to be conducted in accordance with 907 KAR 1:563, Section 12.

(2) A KCHIP enrollee or a parent or guardian of a KCHIP enrollee shall be informed, in writing, or in an alternative format he can understand, of his rights to, and procedures for due process by the:

(a) Cabinet, upon KCHIP application or, at any time there is a change in eligibility status;

(b) APO, at the time of enrollment and following any denial, reduction or termination of services; or

(c) APO or the cabinet, at other times as required by federal and state laws.

(3) The APO shall establish and maintain:

(a) A toll-free telephone number in accordance with Section 7(6) of this administrative regulation; and

(b) A procedure for logging and reporting to the cabinet, the management of complaints and grievances filed.

Section 10. APO Grievance Procedure. (1) The APO shall have a grievance procedure in place to resolve an enrollee's or parent's or guardian's complaint with respect to a health care service provided to him.

(2) The APO grievance procedure shall be subject to approval by the cabinet, and shall include established written policies and

procedures for the receipt, handling and disposition of complaints and grievances which shall:

(a) Be approved by the APO's governance body or board of directors;

(b) Include individuals with authority to require corrective action in the process of complaint, grievance, and resolution process;

(c) Include a routine process for evaluation of patterns of complaints and grievances for impact on APO policy and procedures;

(d) Establish procedures for maintenance of records of complaints, grievances and appeals separate from enrollee medical records;

(e) Inform enrollees and subcontractors about internal and state agency complaint, grievance and appeal processes;

(f) Provide enrollees with assistance in filing complaints and grievances, if the enrollee requests assistance; and

(g) Include assurance that there shall be no discrimination against an enrollee solely on the basis that the enrollee filed a grievance or made a complaint.

Section 11. Quality Improvement. (1) The department shall:

(a) Establish a quality improvement program which measures performance, conducts performance improvement projects, and corrects significant systematic problems on a continuing basis for services provided, or arranged for, by an APO for its enrollees. The quality improvement program shall be based on information related to the total KCHIP population of the APO and shall address the following areas:

1. Services and health care outcomes which shall be based on the performance indicators and standards established in the Health Plan Employer and Data Information Set (HEDIS) 3.0, incorporated by reference in 907 KAR 1:705, and shall include enrollees' risk factors, morbidity, mortality, readmission to health care facilities, and effects of education programs for at-risk families;

2. Utilization of covered health care services in settings provided by the APO and its subcontractors, based on type of disability and chronic illness, race, ethnicity, gender and age;

3. Access to and coordination of care by type of disability, chronic illness, race, ethnicity, gender and age. This includes provider ratios, points of access to specialists, distance to care and waiting periods for services as established in Section 5 of this administrative regulation and appropriate physical and language support in accordance with 20 USC Chapter 33;

4. Clinical treatments and procedures that have established practice guidelines or are considered to be high risk to an enrollee as demonstrated through morbidity and mortality data;

5. Adverse incidents, including complications and adverse conditions occurring as a result of treatment;

6. Enrollee and provider satisfaction information, including number, type and resolution of complaints, denials of service, grievances and appeals;

7. Health education participation by enrollees;

8. Preventive health services provided by the APO to enrollees;

9. Continuity of care, including coordination of physical and behavioral health services; and

10.a. The procedures and criteria to credential and recredential providers at least every two (2) years, including:

(i) Verification of an individual provider's license or certificate to practice;

(ii) The Drug Enforcement Administration (DEA) number or certificate;

(iii) Verification of graduation from professional schools and trainings;

(iv) Verification of board certification or eligibility;

(v) Employment history;

(vi) Professional liability claims history;

(vii) Limited or suspended medical staff privileges;

(viii) History of Medicaid or Medicare imposed penalties;

(ix) Information regarding a censure by the state or county professional association;

(x) Information regarding a provider's status in the National Practitioner Data Bank and the State Board of Examiners; and

(xi) Information regarding a provider's status among professional peers, including statements from the applicant about physical or

behavioral health conditions or illness, loss of license, felony convictions, loss or limitation of privileges or any disciplinary activity and attestation to correctness or completeness of the application to become an APO provider.

b. The APO may utilize its existing credentialing procedures for providers serving the KCHIP population, if the procedures meet the standards established in clause a of this subparagraph.

(b) Arrange for two (2) individuals representing the APOs to be voting members of the Department Quality Improvement Council established in 907 KAR 1:705;

(c) Collect reports and encounter data from the APOs for quality improvement in the KCHIP population. These reports and data shall include the following:

1. A written continuous quality improvement plan with short- and long-term goals and measurable objectives, designated staff with authority for carrying out the plan, and a schedule for routinely reviewing activities and findings, approved by the APO's governing body and the department at least annually and any time significant changes are made.

2. Information on the items identified in paragraph (a) of this subsection;

3. Clinical and nonclinical performance improvement projects; and

4. Plans and progress for corrective actions initiated.

(2) An APO shall:

(a) Establish a quality improvement program which meets the department's requirements, as established in subsection (1)(a) of this section;

(b) Submit to the department reports and encounter data as identified in subsection (1)(c) of this section;

(c) Establish and document the method for taking a corrective action relating to quality improvement;

(d) Integrate quality improvement with other management activities, including a change in access to an APO provider or a member service;

(e) Be accredited by a national accrediting agency of managed care organizations by the end of five (5) consecutive years of contracting with the department;

(f) Demonstrate meaningful improvement of clinical care and the quality of services to its enrollees;

(g) Assure oversight of delegated activity; and

(h) Meet federal standards required by the Health Care Financing Administration (HCFA) for State Children's Health Insurance Programs under 42 USC 1397aa et. seq. and as federally mandated.

Section 12. APO Payments. (1) The department shall provide an APO a per month, per enrollee capitation payment regardless of an enrollee's receipt of services.

(2) A capitation payment shall be based upon a standard rate setting methodology as established in subsection (3) of this section.

(3) The payment rate shall be based upon computations of a certified actuary using national actuarial standards, principles and appropriate actuarial factors representing the KCHIP benefit package.

(4) The department may contract with an APO for payment of a medical service provided to a recipient prior to the enrollment of a recipient in the APO on a capitated or other basis as part of the APO's contract.

Section 13. Incorporation by Reference. (1) "KCHIP Schedule of Benefits", Department for Medicaid Services, April 1999 Edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: April 14, 1999

FILED WITH LRC: April 15, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative

regulation shall be held on May 21, 1999 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 14, 1999 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Hiren B. Desai, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: uninsured children through age 18 between 100 to 200% Federal Poverty Level; health insurers; health care providers

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There were no public comments received but to the extent that if families are able to enroll their children in KCHIP, health care coverage will increase, possibly creating greater employment capabilities for both families and health care providers.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There were no public comments received, but there is no indication that the cost of doing business in the geographical area will change or have an adverse effect.

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

1. First year following implementation: The accountable pediatric organizations and subcontractors will be required to submit encounter data to the department to support monitoring and accountability processes. These requirements are similar to current requirements and are no more onerous than current Medicaid reporting requirements, nor filing necessary paperwork for commercial plans. Every state agency will be required to do outcome reporting to support the department's goals, develop baseline health status data for the department and develop strategies for improving the health status of the uninsured population.

2. Second and subsequent years: Same impact for second and subsequent years as additional geographic regions are affected in the second and third years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$64,122,500 (cost)

2. Continuing costs or savings: \$64,122,500 (cost)

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Federal financial and service reporting as required by the Health Care Financing Administration (HCFA).

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds. *Federal matching funds of 79% equaling \$50,182,358 and state matching funds of 21% equaling \$13,940,142. State revenues will come from funds appropriated in the 1998-2000 budget.

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

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

(b) Kentucky: There were no public comments received, but any economic impact arising from enacting this regulation would be positive and minimal.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Provides health insurance benefits to uninsured children through age 18 between 100 - 200% of the Federal Poverty Level.

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

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of uninsured children by preventing access to affordable and comprehensive health care coverage.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to the Balanced Budget Act of 1997 the Commonwealth of Kentucky has exercised the option to establish the Kentucky Children's Health Insurance Program for children who are currently uninsured and have family incomes between 100 - 200% of the Federal Poverty Level. Having elected to offer KCHIP coverage, the state must comply with federal requirements contained in the Balanced Budget Act of 1997.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. No

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

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

CABINET FOR FAMILIES AND CHILDREN Office of Program Support (New Administrative Regulation)

920 KAR 1:060. Protection of human subjects.

RELATES TO: 45 CFR 46.101 to 46.409

STATUTORY AUTHORITY: KRS 194B.050, 45 CFR 46.101 to 46.409, EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: The cabinet is required, by 45 CFR 46.101 through 46.409, to have an Institutional Review Board for the Protection of Human Subjects to protect the rights and welfare of human subjects of research conducted or sponsored by the cabinet. This administrative regulation: (a) incorporates by reference, applicable federal regulations and publications which set forth the type of projects covered, definitions, assurances, membership, functions and operations, review procedures, criteria for approval of research, record requirements, informed consent requirements, consent documentation, ethical principles and guidelines, a listing of research activities which may be reviewed through expedited review procedures and other relevant matters; and (b) covers specific requirements for protecting human subjects in studies sponsored or funded by the Cabinet for Families and Children within the larger requirements defined by federal regulation.

Section 1. Definitions. As used in this administrative regulation the following terms shall have the meanings set forth below:

(1) "Auxiliary review board" means an independently functioning local board within the Cabinet for Families and Children established to serve a particular facility or institution.

(2) "Board" means the cabinet's Institutional Review Board established by this administrative regulation and attached to the Office of Program Support.

(3) "Cabinet" means the Cabinet for Families and Children.

(4) "Health risk project" means a project in which the intervention variable is judged by the board to have a potential for adversely affecting the health of the human research subjects.

(5) "Principal investigator" means the investigator involved in the research project that has responsibility for making decisions regarding the research study.

(6) "Research" shall have the meaning set forth in 45 CFR 46.102(e) and in addition shall include descriptive and exploratory research activities that lay the groundwork for contributions to knowledge. Research shall be considered sponsored by the Cabinet for Families and Children if:

(a) It is supported financially by the cabinet;

(b) It uses staff or facilities provided by the cabinet; or

(c) It is sponsored or endorsed by cabinet policy makers.

Section 2. Institutional Review Board. (1) An Institutional Review Board for the Protection of Human Subjects within the cabinet is hereby created. The board shall be attached to the Office of Program Support.

(2) The board shall consist of not less than five (5) nor more than eleven (11) members appointed by the secretary. Members representing various professional and academic fields shall be nominated by department commissioners or by office heads and appointed by the secretary. The board shall meet as needed to review a project. The board shall include a chair appointed by the secretary of the cabinet.

(3) The Executive Director of the Office of Program Support shall assign the necessary staff, provide needed administrative support, and serve as liaison between the board and the U.S. Department of Health and Human Services. Staff assigned to the board by the Executive Director of the Office of Program Support shall ensure the following:

(a) Maintenance of appropriate records;

(b) Conduct a preliminary review of a submitted project on a timely basis;

(c) Refer a project, to which this administrative regulation is applicable, to the board; and

(d) Make recommendations to the board on the disposition of an applicable project.

Section 3. Project Submission. (1) It shall be the responsibility of the appropriate division director, commissioner, or office head to direct the program or project administrators under their jurisdiction to submit a research project, involving a human subject, to the board chair or board staff for possible consideration by the board. Project submission shall include three (3) copies where applicable of the following:

- (a) Institutional Review Board request for approval of research activity form;
- (b) A narrative description of the project's purpose and proposed research procedures;
- (c) The research instrument to be used;
- (d) A narrative description of how subject confidentiality shall be addressed; and
- (e) The research subject consent form that shall be appropriate for the research project.

(2) No modification in the research protocol or design of an approved research project, that may increase the level of risk to the subjects, shall be implemented unless first approved by the board. If an alteration becomes necessary, it shall be the responsibility of the research administrator to obtain the prior approval of the board. Failure to obtain prior approval of the board may result in the suspension or termination of the initial board approval and the requirement that all research activity be stopped.

Section 4. Scope of Board Approval. (1) Board approval of a project represents only a judgment that a human subject has been adequately protected and shall not in any way represent a judgment concerning its ultimate research value or a policy decision regarding the value of the research to the cabinet.

(2) The board shall have the ultimate responsibility of reviewing all research projects involving a human subject, when the research is sponsored by the cabinet and when it is not specifically exempted from board review. If the primary review is performed by an approved auxiliary review board, the board may limit its review to the findings and recommendations of the auxiliary review board or the board may choose to conduct its own review of the project.

(3) A research administrator may request a reconsideration of an adverse decision by the board by submitting a written request for reconsideration to the chair of the Institutional Review Board.

(4) The request shall be made within thirty (30) days of the principal investigator's notification of adverse decision.

(5) Upon receipt, the request for reconsideration and any related documents shall be conveyed to the board chair for reconsideration. A reconsideration shall be made in the same manner as the initial review.

Section 5. Board Responsibilities. (1) The board chair shall, in coordination with the Office of Program Support, call a meeting as needed to conduct board business on a timely basis.

(2) A review and recommendation concerning a project shall be consistent with the criteria specified in the federal regulations 45 CFR 46.101 to 46.409 adopted without change in this administrative regulation.

(3) The board shall also use the Institutional Review Board for the Protection of Human Subjects Request for Approval for Research Activity form adopted by the board and incorporated by reference in this administrative regulation.

Section 6. Responsibilities of Principal Investigators. (1) If a change is made in research design or protocol that affects the level of risk to a subject, confidentiality procedures, or consent procedures, the change shall be submitted, before implementation, to the board for approval.

(2) An unanticipated problem involving a risk to a subject or another individual as a result of research activity shall be reported to the board within ten (10) working days.

(3) If a project is defined as a health risk project by the board, the principal investigator shall report to the board a research subject death, which becomes known to him, whether the death appears likely to be related to participation in the research project. A report of a death shall be made to the board in writing within seven (7) days of the principal investigator's knowledge of the death.

(4) Prepare an annual report and submit an annual request for reapproval of an ongoing research study. Submit a copy of final research finding and conclusions.

Section 7. Auxiliary Review Boards. (1) The chief executive of the cabinet institution or facility conducting research, subject to the federal regulations pertaining to human subjects, may form an auxiliary review board to conduct the required review of a project. The establishment of an auxiliary review board shall be approved by the secretary of the cabinet.

(2) An auxiliary review board, as an institutional review board, shall conduct a review consistent with this administrative regulation.

(a) The findings and recommendations of the auxiliary review board on a research study involving risk to a human subject shall be forwarded at least five (5) working days before initiation of the research, to the board chair.

(b) The board shall respond to the auxiliary review board, within twenty-one (21) days of the board's receipt of the auxiliary review board's finding and recommendations.

Section 9. Confidentiality. Research information that identifies an individual subject shall be regarded as confidential and shall not be disclosed to a person outside the research project staff or published without the subject's prior written authorization. Nothing contained herein shall be deemed to prevent the release of raw or summary data that does not identify a subject.

Section 10. The decision of the board concerning the protection of a human subject shall be guided by:

(1) The "Belmont Report Ethical Principles and Guidelines for the Protection of Human Subjects of Research", report, National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research (April 18, 1979); and

(2) 45 CFR 46.101 through 45 CFR 46.409.

Section 11. Adoption Without Change. 45 CFR 46.101 through 46.409, as effective July 1, 1998 are adopted without change.

(2) This material may be inspected, copied, or obtained at the Cabinet for Families and Children, Office of Program Support, Fourth Floor Center, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. through 4:30 p.m.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The "Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research", report, National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research", edition April 18, 1979; and

(b) Institutional Review Board for the Protection of Human Subjects, Request for Approval for Research Activity form, edition October, 1981.

(2) This material may be inspected, copied, or obtained at the Cabinet for Families and Children, Office of Program Support, Fourth Floor Center, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. through 4:30 p.m.

TERESA SUTER, Executive Director

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: April 6, 1999

FILED WITH LRC: April 14, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1999 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 14, 1999, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed

administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judy Trigg, Regulation Coordinator, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cookie Whitehouse

(1) Type and number of entities affected: All departments and offices within the Cabinet for Families and Children that fund, sponsor, or allow clients or staff to participate in a research study.

(2) Direct and indirect cost or savings to those affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the 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: 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

2. Second and subsequent years: Same as item 1.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: The Institutional Review Board meets approximately 2 or 3 times a year, depending on the number of research studies proposed. Each meeting involves a commitment on the part of board members to review the research proposals and at least 1/2 day of administrative work on the part of board staff. There would be no fiscal impact as the board members and staff to the BOARD would be state staff and these reviews would be considered part of their job responsibilities.

2. Continuing cost or savings: Same as item 1.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Board staff must review proposals, arrange board meetings, prepare minutes, and handle correspondence.

(4) Assessment of anticipated effect on state and local revenues: Prevents possible revenue decrease in federal research funds, should the federal government find us in noncompliance.

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

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

(a) Geographical area in which administrative regulation will be implemented: To be determined after the public hearing on this ordinary regulation.

(b) Kentucky: To be determined after the public hearing on this ordinary regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There were no alternatives as this board is federal mandated.

(8) Assessment of expected benefits:

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

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

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

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

(10) Any additional information or comments: The regulation is a federal requirements for continuing to receive federal funds with "research components.

(11) TIERING: Is tiering applied? The provisions of the regulations must apply equally to any unit within the cabinet that may approve or allocate funds for any "research" project/study for which

these regulations are applicable.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 46.101 to 46.409

2. State compliance standards. The Cabinet for Families and children (CFC) must have an official Institutional Review Board responsible for reviewing any proposed research studies involving CFC funds, staff or clients.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations define the activities that are defined as research, the type of research projects to which the requirements apply, which may be exempted, and which must be reviewed.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities, than those required by the federal mandate. The state regulations do not impose stricter requirements than those in the federal regulations, but they do expand the federal regulations by defining "Health Risk Studies". The principal investigator of a project designated as a "Health Risk Study" is required to report in writing any "research subject" death to the IRB within seven days of the principal investigator becoming aware of the death. Otherwise, the state regulations simply define the procedures CFC will follow in implementing the federal regulations.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. It was the concern of one of the earlier CHR Institutional Review Board members that some of the studies they were approving might have health risks that could potentially contribute to a subject's death. The board felt a need to be able to classify any approved projects that carried such a risk and to be alerted on a timely basis of the death of any research subject. The timely notification of a subject's death would give the IRB the option to withdraw project approval, should the subject death demonstrate greater subject risk than originally anticipated.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of April 13, 1999

The April meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, April 13, 1999 at 10:30 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 March 9, 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: Gregory Karambellas, Stephen Lynn, Donna Little, Susan Wunderlich, Angela Phillips, Donna Valencia, Susan Eastman, Edna Lowery, Ellen Benzing, Biff Baker, Dan Risch.

Guests: Ron Bingham, Governor's Office; Nancy Ward, Empower Kentucky; William P. Hanes, Pam Johnson, Kentucky Retirement Systems; Tom Troth, Bob Arnold, Dan Yeast, Department for Local Government; Lee Harris, Linda Poliskie, Real Estate Commission; Michael A. Mone', Board of Pharmacy; Nathan Goldman, Board of Nursing; Mark Mangeot, Bruce Williams, Eric Gracely, Steven Kull, Larry Lowe, Leah W. MacSwords, James Bickford, Katie Ashcraft, Mark York, Mark Matuszewski, Natural Resources and Environmental Protection Cabinet; David Waldner, David Wicker, Robert E. Nickel, Petroleum Storage Tank Environmental Assurance Fund; Ray DeBolt, Department of Juvenile Justice; Margaret S. Plattner, Vickie Bourne, Kevin Flanery, Charlie Harman, Glenn W. Ellis, Transportation Cabinet; Marilyn Troupe, Janet Banta, Education Professional Standards Board; Sharron S. Burton, Department of Insurance; Deborah Eversole, Carryn Lee, Public Service Commission; Judy Walden, Charles Cotton, Billy Perkins, Department of Housing, Buildings and Construction; Arch Gleason, Camille Bathurst, Kentucky Lottery Corporation; Jayne Arnold, John Gray, Betsy Dunnigan, John Walker, Candy Booth, Deborah Green, Trish Howard, Karen Doyle, Linda Harney, Ralph Von Derau, Cabinet for Health Services; Cliff Jennings, Cookie Whitehouse, Linda B. May, J. Sheldon Lightys, Sandra Rolland, Jerry Wildt, Ricky May, Thelma Cornett, Cabinet for Families and Children; Ted Bradshaw, Jan Gould, KRF; Bob Barnett, Kentucky Pharmacists Association; Lisa Elder, FMC Louisville Dialysis; Greg Donaldson, FMC Bishop Lane Dialysis Center; Robin F. Dixon, FMC of East; Nancy Estes, Sharon Fields, Kentucky Disabilities Coalition; Beecher Hudson, Chuck Steinhof, American Red Cross, Ed Brady, Lexington Red Cross Wheels; Jimmy C. Jeffers, Cumberland Cab; Joyce Kelly, Kelly's Kab; Mike Jackson, Joe Duke, Johnnie Davidson, LKLP Transportation; Tony S. Royalty, David H. Huff, Life First, Inc.; Greg Hamlin, Sandy Valley Transportation Services; Ray Young, Maysville Transit System; Gary Kitchin, Paducah Transit Authority; George Binder, KCEC; Carl Wark, Yellow Cab Newport/Region 9 Transportation; Pam Shepherd, Federated Transportation Services; Curtiss Shewmaker, Shewmaker Environmental, Inc.; Kim Fletcher, Proof Positive; Dwayne Justice, Meridian Transport Co.; Barbara Henchey, Mattingly Center; David C. Ware, Sue Jeffers, Bluegrass Community Action Agency; Bart Baldwin, Children's Alliance; Bill Doll, Kentucky Medical Association; Donovan Fornwalt, Council for Retarded Citizens; David Block, Options for Individuals; Michael Murray, ATI, Inc.; Carl Breeding, Westvaco Corp; Carl Sumner, Insurance Institute of Kentucky; Shawn Stuart, Data Source Labs; W. Ed Parker, Take Back Kentucky/Taxpayers Party; Buddy Fuqua, Ronald L. Logsdon, Audubon Area Community Services; Ruby Jo Cummins, Dan Walton, KAHCF; Tim R. Queary, KFIA; Kip Bowmar, Kentucky Association for Community Action, Inc.; Janice Eubanks, Region 16 Broker/Licking Valley CAP; Valerie Clem, Jodie Brandenburg, Kentucky River Foothills; Don Gorton, Kentucky Woodland Owners Association; Bernie Kunkel, Matth Toeppen, League of Kentucky Property Owners; Karen Thomas Lentz, Rhone Poulenc Rorer; Rev. William Curry, Mainstream & KTA; Bob Bauer, Kentucky Forest Industries Association; Richard A. Sturgill, Pine Mountain Lumber; Angela Kaye Geiger, Clifford F. Baldrige; Sandy Kays; W.S. Kroghdahl.

The Subcommittee determined that the following administra-

tive regulations did not comply with statutory authority:

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Forestry

402 KAR 3:020. Master Logger Program. James Bickford, Secretary, Leah MacSwords, Deputy Commissioner, and Mark Matuszewski, Director, represented the Cabinet. Matth Toeppen, League of Kentucky Property Owners, and W. Ed Parker, Take Back Kentucky/Taxpayers Party, spoke in opposition to this administrative regulation.

In response to questions by Representative Allen, Secretary Bickford stated that KRS 149.342(6) provided that a logger who primarily used mules or horses in the logging operation was exempt from the Master Logger Program.

In response to questions by Chairman Arnold, Mr. Matuszewski stated that: (1) the master logger program was a three-day training program for loggers, which focused on: (a) first aid and CPR during the first day; (b) silviculture and best management practices during the second day; and (c) safety on the third day; (2) the \$50 per logger fee for the program was used to cover the costs of the program, trainers, sites, and materials; and (3) each logger was required to attend six hours of continuing education every three years.

In response to questions by Representative Bruce, Mr. Matuszewski stated that: (1) the fee for the master logger program had been \$50 even before the program became mandatory; and (2) while the Cabinet did not want to lower the master logger program fee, the Cabinet had lowered the continuing education fee to \$25.

In response to questions by Senator Roeding, Mr. Matuszewski stated that the best management practices were: (1) part of the agriculture water quality plan; and (2) incorporated by reference in 402 KAR 3:030.

Mr. Toeppen stated that: (1) he: (a) was a businessman, cattle farmer, and tree farmer from Northern Kentucky; (b) had been in this country for 45 years; (c) owned about 1,200 acres of forest land; (c) had worked on this administrative regulation and 402 KAR 3:030 since their inception; (d) had been appointed by the Governor to a task force to develop these administrative regulations; and (e) spent several days in Frankfort working with the Natural Resources and Environmental Protection Cabinet, Division of Forestry, and others on the task force; (2) the Cabinet had informed the task force that it would: (a) write the proposed legislation; (b) submit the bill to the Governor; and (c) inform the task force: 1. when the bill had been completed; and 2. before it was submitted to the Governor; (3) the task force did not find out about the bill until after the legislation had been submitted to the Governor; (4) the original bill had been withdrawn because of objections raised by the public and other agencies; (5) a subsequent bill, Senate Bill 214, had been: (a) introduced; (b) based on meetings with some of the original task force members appointed by the Governor; (c) enacted by the General Assembly; and (d) amended to include Section 11 (KRS 149.350); (6) he had submitted a packet of information to the Subcommittee members, including: (a) a letter; (b) Section 11 of Senate Bill 214; and (c) the "Right to Farm Bill", House Bill 335, which had been enacted during the 1996 Regular Session of the General Assembly; (7) Section 11 required the governor to appoint a board to oversee and rewrite administrative regulations necessary to implement Senate Bill 214; (8) input from the Board was important to: (a) maintain the provisions established by House Bill 335; and (b) prevent the reintroduction of provisions from the original bill; (9) tremendous industry possibility existed in Kentucky because: (a) fifty percent of the land in Kentucky was forests; and (b) ninety-two percent of that land was privately-owned; (10) Kentuckians needed to be able to harvest the forestry crop; (11) because it took fifty to sixty years to grow a tree for harvesting, a farmer was required to wait fifty to sixty years to make money on his property; (12) he: (a) did not want further restrictions placed on tree farmers that would prevent them from receiving a return on investment; (b) did not object to fair administrative regulations; and (c) objected to this administrative regulation

and to 402 KAR 3:030; (13) Section 11 of Senate Bill 214 clearly required the creation of the Board; (14) the Cabinet had promulgated administrative regulations that were: (a) tied into the water quality act; and (b) contrary to the provisions of Senate Bill 214; (15) the intent of Senate Bill 214 was to have a separate board: (a) promulgate administrative regulations; and (b) work together with farmers, loggers, and the forestry department; (16) he: (a) had worked with the Division of Forestry for the last fifteen years; (b) generally found the Division to be flexible and helpful; and (c) believed these administrative regulations would: 1. delete the farmer's freedom; and 2. hurt the logging industry and tree-planting efforts; (17) farmers contributed to the general public by providing: (a) wildlife habitat; (b) clean water, except during the time period when the trees were logged; (c) clean air; (d) hunting and fishing opportunities; (e) beautiful scenery; and (f) other benefits; and (18) these administrative regulations should be deferred until the: (a) Governor had appointed the Forestry Best Management Practices Board; and (b) Board had reviewed the administrative regulations.

In response to a question by Representative Lee, Mr. Toebben stated that he: (1) objected to the content of this administrative regulation; and (2) was not prepared to offer reasons for his objection because he felt this administrative regulation had been improperly promulgated because the Board had not been established.

In response to a question by Chairman Arnold, Mr. Toebben stated that: (1) he was concerned that this administrative regulation intermingled the water quality act with the forestry act; and (2) there were many objectionable provisions in this administrative regulation.

Senator Roeding stated that: (1) Senate Bill 214, Section 11(6), which had been codified as KRS 149.350(6), provided that the Board shall oversee implementation of best management practices education and enforcement; and (2) the objection that the Board had not been appointed was a valid concern.

In response to questions by Senator Pendleton, Mr. Toebben stated that: (1) he: (a) did not have a copy of this administrative regulation with him; (b) understood that Section 11 required the Board to conduct the education; and (c) though the water quality act was intermingled throughout this administrative regulation; and (2) while he agreed with Senator Pendleton that logger education was necessary: (a) this administrative regulation established additional provisions that were objectionable; and (b) an education program had existed for some time.

In response to questions by Chairman Arnold, Secretary Bickford stated that: (1) this administrative regulation: (a) established an educational program that was currently needed; and (b) did not include hidden provisions; and (2) as a result of flying around Kentucky, he had seen evidence that: (a) logger education was needed; and (b) some of Kentucky's land had been irreparably damaged from: 1. improper logging; and 2. absentee landlords who did not care if the land was ripped up by loggers.

In response to questions by Representative Lee, Mr. Matuszewski stated that the best management practices had been: (1) approved by the Kentucky Agriculture Water Quality Authority; and (2) used in the master logger program for years.

In response to questions by Representative Lee, Ms. MacSwords stated that: (1) this administrative regulation established the application process, fee, and requirements for the master logger program; (2) 402 KAR 3:030 established the best management practices that were currently being used; (3) while the continuing education courses had not been designed, this administrative regulation did require: (a) completion of continuing education; (b) submission of an application; and (c) payment of a fee; and (4) the continuing education could be expanded to other topics that dealt with silviculture, other than best management practices.

In response to questions by Representative Lee, Secretary Bickford stated that: (1) since 1992, the master logger program had taught the best management practices contained in the Agriculture Water Quality Silviculture Act; and (2) 402 KAR 3:030 incorporated by reference the same best management practices.

Representative Lee stated that the continuing education classes should be based on: (1) decisions made by the Board in consultation with the Cabinet; and (2) an administrative regulation promulgated by the Board.

Secretary Bickford stated that the master logger program: (1)

consisted of three-days of training: (a) the first day focused on first aid and CPR; (b) the second day focused on the best management practice that had been taught since 1992; and (c) the third day focused on safety; and (2) this administrative regulation did not specify that 402 KAR 3:030 would be the curriculum for the master logger program.

Ms. MacSword stated that: (1) the Board would assist the Cabinet in designing continuing education; and (2) this administrative regulation merely required: (a) continuing education; and (b) submission of the: 1. application; and 2. fee.

In response to questions by Representative Lee, Secretary Bickford stated that: (1) KRS 149.350(5) provided that the Board shall: (a) review existing forestry best management practices within one year of establishment of the Board; and (b) conduct periodic reviews no sooner than every five years; (2) because the Cabinet did not write Section 11 of Senate Bill 214, it was difficult for the Cabinet to determine its meaning; (3) the Cabinet, not the Board, was the entity statutorily required to promulgate administrative regulations; (4) the Board: (a) would submit recommendations to the Cabinet within one year; and (b) had limited authority to recommend changes; and (5) the Cabinet would continue to listen to every request it received and to work with regulated people and entities.

Representative Lee stated that the Cabinet had: (1) worked with him; and (2) not been anything but cooperative with him.

In response to a question by Chairman Arnold, Subcommittee staff stated that: (1) Section 6 of this administrative regulation provided that continuing master logger education shall consist of one of more of the following subjects: (a) forest management; (b) silviculture; (c) forest health; (d) ecosystem management; (e) timber harvesting; (f) laws and regulations relating to timber harvesting and water quality; and (g) logging safety, or advanced best management practices; (2) the advanced best management practices would be one part of the available continuing education; and (3) KRS 149.342(3): (a) provided that the Cabinet shall specify the education and training requirements for the master logger program; and (b) had been enacted as Senate Bill 214, Section 6.

Senator Roeding stated that he wanted to add that the continuing master logger education shall be overseen by the board because KRS 149.350(6) required the board to oversee implementation of best management practices education.

Secretary Bickford stated that Senator Roeding's suggestion would grant the Board authority that belonged to the Cabinet and governor.

Mr. Parker stated that: (1) he: (a) was opposed to this administrative regulation; (b) represented: 1. Take Back Kentucky; and 2. the Taxpayers Party of Kentucky; (c) was part of the group that had reviewed Senate Bill 214 all of last year; and (d) thought it was academic to discuss implementing part of a bill while stating that the implementation did not apply to the bill; (2) the master logging program was: (a) implemented by this administrative regulation; and (b) could not be segregated from: 1. 402 KAR 3:030; or 2. the rest of Senate Bill 214; (3) America needed to follow the laws that had already been enacted; (4) existing laws should be amended: (a) through a reasonable process; and (b) not by a bureaucrat; and (5) the bureaucrats who wanted to implement the master logging program should follow the requirement that the Board be established prior to implementation.

In response to questions by Senator Long, Mr. Parker stated that: (1) there were too many rules, laws, and regulations in America; (2) America needed to get rid of a lot of its rules, laws, and regulations; (3) he opposed the implementation of Senate Bill 214 without the establishment of the Review Board; (4) the secretary of the Natural Resources and Environmental Protection Cabinet should give his authority to the Board; and (5) a board of citizens, rather than bureaucrats from the state, should establish the requirements.

Senator Long stated that: (1) Secretary Bickford was a citizen; (2) somebody needed to be in charge of implementing legislation passed by the General Assembly; (3) he was a part owner of a farm; (4) a person who practiced good management cut trees on his farm, rather than another person's farm located two farms away; and (5) he supported this administrative regulation.

Representative Allen stated that: (1) he had never supported Senate Bill 214, because there was not a need for that legislation;

(2) Senate Bill 214 concerned an area in which the government should not be involved; (3) because less than two percent of the pollution that came into water came from forests, the remaining ninety-eight percent pollutants should be controlled; (4) forestry in Kentucky, especially in the east, had: (a) flourished; and (b) come back since the turn of the century; (5) there was more board feet growing in Kentucky than at any time since 1940 because forestry had been regulated by free enterprise, rather than the government; (6) current laws: (a) regulated timber and trespassing; and (b) required a person who trespassed on another's land to cut timber to pay the landowner three times the value of the timber; (7) Senate Bill 214 would not alleviate that situation; (8) while he agreed with Secretary Bickford about the need for some of the education, because the voluntary program had been successful, loggers should not be required to attend the master logging program; (9) the Division of Forestry had done a good job; (10) people across Kentucky had requested the Division mark the landowners' trees to inform the landowners which trees may be sold; (11) this area should not be regulated by the government, but by free enterprise; (12) the forestry situation reminded him of discussions about the need to regulate small coal operators in 1974; (13) in ten or fifteen years, small tree farmers would be out of business, eliminated by government regulation in a manner similar to small coal operators; (14) while two or three giant saw mills will still be in business, the small family tree farmers will: (a) be out of business; (b) not be able to afford permits, engineers, architects, and other requirements; (15) the voluntary master logger program should be continued by the Division of Forestry; (16) currently, word of mouth compliments about the work of master loggers has improved their business through free enterprise; and (17) he wanted to: (a) make a motion that this administrative regulation be found deficient; and (b) request a roll call vote.

Senator Roeding seconded the motion to find this administrative regulation deficient.

The Subcommittee approved the motion to find 402 KAR 3:020 deficient, with: (1) Senator Roeding, and Representatives Allen, Bruce, and Lee voting to find this administrative regulation deficient; and (2) Senators Long and Pendleton, and Representative Arnold voting not to find this administrative regulation deficient.

402 KAR 3:030. Best management practices for timber harvesting operations. James Bickford, Secretary, Leah MacSwords, Deputy Commissioner, and Mark Matuszewski, Director, represented the Cabinet. Carl Breeding, Legislative Agent, Westvaco Corp; Bob Bauer, Executive Director, Kentucky Forest Industries Association; and Richard Sturgill, Partner, Pine Mountain Lumber, appeared before the Subcommittee.

Secretary Bickford stated that: (1) the Cabinet appreciated the opportunity to appear before the Subcommittee; (2) around the turn of the century, Kentucky, and in particular eastern Kentucky, was stripped of its timber by large out of state companies; (3) it took about eighty years was the forests to mature again; (4) Kentucky was once again experiencing heavy logging activities, which was good because: (a) forests were a renewable resource, if the harvesting was performed responsibly; (b) jobs were provided; and (c) money was made for the landowner; (5) while many Kentucky landowners were good stewards, timber rights on some large tracts of land were owned by: (a) absentee landlords; and (b) out-of-state companies, who were not concerned about: 1. proper harvesting techniques; or 2. the land; (6) the legislation proposed by the Cabinet: (a) was based on: 1. evidence he saw as he traveled across the state, especially the eastern part; and 2. much encouragement from Kentucky citizens; (b) resulted in the enactment of Senate Bill 214 during the 1998 Regular Session of the General Assembly; (c) was aimed primarily at loggers, not landowners; and (d) required: 1. the presence of a master logger during timber harvest; 2. loggers to follow the best management practices; 3. the establishment of a forestry best management practices board by July 1999; and 3. the Cabinet to promulgate administrative regulations; (7) the proposed administrative regulations: (a) establish the master logger program; and (b) take the existing best management practices for silviculture directly and without change from the agriculture water quality authority; (8) nominations for the best management practices board: (a) have been 1. sought and obtained; and 2. submitted to the governor for his approval; and (b) will be appointed prior to July 1999;

(9) the Division of Forestry: (a) has continued to work hard to train foresters in the best management practices; (b) needed this administrative regulation in place to work with loggers and landowners prior to the implementation of the best management practices; (c) believed the promulgation of this administrative regulation would greatly reduce the misunderstandings and problems expected after the best management practices become effective; and (10) this administrative regulation: (a) was fair to both landowners and loggers; and (b) provided protection for Kentucky forests from individuals who were not good stewards or loggers.

In response to a question by Chairman Arnold, Secretary Bickford stated that this administrative regulation was promulgated prior to the appointment of the board.

In response to a question by Chairman Arnold, Subcommittee staff stated that KRS 149.350(5) required the forestry best management practices board to: (1) review existing forestry best management practices within one year of the board's establishment; and (2) conduct periodic reviews for rewriting the practices no sooner than every five years thereafter.

Secretary Bickford stated that he did not believe Senate Bill 214 required the board to be established prior to the promulgation of administrative regulations.

Chairman Arnold stated that he believed Senate Bill 214 did require the board to be established prior to the promulgation of administrative regulations.

Representative Allen stated that: (1) while he agreed that at the turn of the century the forests had been depleted and polluted Kentucky's rivers and streams, those actions were: (a) not caused primarily by loggers; and (b) caused by homesteaders who burned the trees to clear plots of land to: 1. grow corn and grass; and 2. feed their families; (2) because it was no longer feasible to farm the hills, the trees have grown back in record numbers; (3) he: (a) received a brochure from the Division of Forestry last week that said there was more board feet growing in Kentucky now than anytime since 1940; and (b) did not believe that claim, so he: 1. looked at the thirty acre sage grass field where he hunted rabbits when he was six or seven years old; and 2. noticed that field and another ridge were now covered in trees; and (4) he wanted to make a motion to find this administrative regulation deficient.

Senator Roeding seconded the motion to find this administrative regulation deficient.

Mr. Sturgill stated that: (1) he, Mr. Breeding and Mr. Bauer wanted to address the Subcommittee before it voted on 402 KAR 3:020; (2) the master logger program: (a) had been a real benefit to people: 1. in Eastern Kentucky; and 2. all over Kentucky; and (b) educated loggers on how to harvest timber properly; (3) he had over 300 employees that depended solely on the forestry industry for income; (4) the Secretary and the Cabinet should be able to implement the law that had been enacted during the 1998 General Assembly, rather than waiting for the 2000 Regular Session; (5) Senate Bill 214: (a) had not been given a chance to work; (b) was a good bill; and (c) had been voted on by all the members of the General Assembly; (6) some regulation of the timber industry would be necessary; (7) because the coal in eastern Kentucky had been mined out, timber provided a great opportunity for eastern Kentucky to expand its economy; and (8) he supported this administrative regulation and 402 KAR 3:020.

Mr. Breeding stated that: (1) there was some confusion relating to these two administrative regulations; (2) 402 KAR 3:020: (a) was separate from 402 KAR 3:030; and (b) established the master logger program; and (3) because members of the Board would be appointed by the governor, the Cabinet and Secretary Bickford would: (a) not ignore directives from the Board; and (b) respond to Board member requests.

Mr. Bauer stated that: (1) the master logger program was: (a) a voluntary program; and (b) had been initiated about six years ago by: 1. the industry; and 2. the University of Kentucky; (2) KRS 149.342(3) required the University of Kentucky, the Forest Industries Association, and Division of Forestry to oversee continuing education; (3) continuing education: (a) had been available in the past; (b) was available from: 1. these entities; 2. the American Pulpwood Association; and 3. others; (c) trained and helped loggers; and (d) focused on best management practices, safety, and other topics; (4)

the best management practices: (a) had been: 1. taught as part of the master logger program for the last six or seven years; and 2. developed over twenty years; (b) would not prevent a person from logging his land; (5) the Forest Industries Association: (a) had 1,100 members, including 500 loggers from small family operations; (b) did not want over-regulation; (c) had been trying to implement the best management practices for several years; (6) because of the growth of timber in Kentucky, the proposed administrative regulations would help foresters perform their work better; (7) he believed the Board would play an important role when the best management practices were implemented one year from now; (8) Senate Bill 214 gave loggers a change to correct problems; and (9) some of the same industry representatives and landowners: (a) would be involved in the implementation of the best management practices; and (b) had been involved in agriculture water quality.

Chairman Arnold stated that: (1) Union County: (a) no longer had small coal companies; (b) used to have seven or eight small coal companies; and (c) now had big coal operators; (2) he: (a) disagreed with the statement that coal had been depleted from eastern Kentucky's mountains; (b) had friends from the mountains who told him that some coal would never be mined because it was more expensive and harder to reach; and (c) did not want to see a similar problem occur with the forest industry; (3) currently there were fifteen or twenty small mills in his community; (4) the Cabinet should: (a) learn from history; and (b) not over-regulate the forest industry out of business; and (5) he did not want to see: (a) one or two large mills throughout Kentucky; and (b) the small foresters out of business.

Representative Lee stated that: (1) he: (a) reluctantly voted to find 402 KAR 3:020 deficient because the Board had not: 1. been established; and 2. made recommendations to the Cabinet regarding the promulgation of administrative regulations; (b) had no problem with CPR, first aid, or other items included in 402 KAR 3:020; (c) believed the General Assembly intended the Board to: 1. be established; 2. have input into the best management practices, and 3. be involved in every phase of the promulgation of administrative regulations to implement Senate Bill 214; and (d) would vote to find this administrative regulation deficient for the same reasons; (2) during the 2000 Regular Session, the General Assembly would reconsider this issue; and (3) the Board's input: (a) was needed; and (b) should be reflected in the administrative regulations promulgated by the Cabinet.

Representative Bruce stated that: (1) he: (a) agreed with Representative Lee; and (b) thought the Cabinet could reintroduce these administrative regulations after the Board had been appointed prior to the 2000 Regular Session; and (2) these two administrative regulations were found deficient: (a) because the Board had not been appointed; and (b) not because of the substance of these administrative regulations.

The Subcommittee unanimously approved the motion to find 402 KAR 3:030 deficient.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

Department For Local Government: Uniform Financial Information Report

109 KAR 13:010. Uniform financial information report. Bob Arnold, Commissioner, Tom Troth, General Counsel, and Dan Yeast, Branch Manager, Special Districts, represented the Department.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; (2) Section 1 was amended to comply with the drafting requirements of KRS 13A.222(4); and (3) Section 2 was amended to comply with the format requirements for incorporating material by reference, as required by KRS 13A.2251(2).

Board of Pharmacy

201 KAR 2:165. Transfer of prescription information. Michael Moné, Executive Director, represented the Board.

This administrative regulation was amended as follows: (1) the RE-

LATES TO and STATUTORY AUTHORITY paragraphs were amended to: (a) correct citations; and (b) comply with the: 1. drafting requirements of KRS 13A.220(4); and 2. format requirements of KRS 13A.222; (2) Sections 1 through 3 were amended to comply with the: (a) drafting requirements of KRS 13A.220(4); and (b) format requirements of KRS 13A.222; and (3) Section 2 was amended to: (a) delete a cross reference that did not apply; and (b) insert a citation to the specific federal regulation that applied.

201 KAR 2:185. Prescription drug refills. This administrative regulation was amended as follows: (1) the TITLE was amended to reflect the subject matter governed by this administrative regulation; (2) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct citations; and (3) the NECESSITY, FUNCTION, AND CONFORMITY paragraph, and Sections 1 to 5 were amended to comply with the: (a) drafting requirements of KRS 13A.220(4); and (b) format requirements of KRS 13A.222.

Board of Nursing

201 KAR 20:400. Delegation of nursing tasks to unlicensed persons. Nathan Goldman, General Counsel, represented the Board.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct a statutory citation; (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 that repeated or summarized KRS 314.011, as required by KRS 13A.222(4)(b); (b) include a definition of nursing task, as required by KRS 13A.222(4)(a); and (c) comply with the drafting requirements of KRS 13A.222(4)(e); and (4) Sections 2, 3, and 4 were amended to comply with the drafting requirements of KRS 13A.222(4).

Public Protection And Regulation Cabinet: Office of the Petroleum Storage Tank Environmental Assurance Fund: Petroleum Storage Tank Environmental Assurance Fund

Robert E. Nickel, Executive Director, David Waldner, Principal Assistant, and David Wicker, Staff Attorney, represented the Office.

Representative Bruce stated that he was informed that the Governor had announced the promulgation of an emergency administrative regulation, 415 KAR 1:080E, that authorized payment to subcontractors, rather than to the contractors who had filed for bankruptcy.

Representative Lee stated that he also wanted to commend the Cabinet for promulgating an emergency administrative regulation that would: (1) relieve subcontractors who: (a) performed work on sites for contractors who had declared bankruptcy; and (b) because they had not been paid for their work, had sued property owners; (2) give property owners and subcontractors an opportunity to submit claims directly to the Cabinet; and (3) expedite verification of eligibility documentation.

Subcommittee staff stated that: (1) while an insufficient number of copies of handouts regarding 415 KAR Chapter 1 had been submitted by the public, the hand-outs would be available after the meeting to Subcommittee members; and (2) if twenty (20) copies of material for Subcommittee consideration were not submitted, the Subcommittee may be required to defer consideration of the administrative regulation to which the material related.

415 KAR 1:050. Definitions. In response to a question by Senator Roeding, Mr. Wicker stated that, although some comments were made about how definitions were used in other administrative regulations, the agency had not received public comment about this definitions administrative regulation.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the TITLE, the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 were amended to comply with the drafting requirements of KRS 13A.222(4); and (3) Section 1 was amended to: (a) delete obsolete terms; (b) clarify references to other administrative regulations; and (c) add definitions for "actual cost" and "certified company."

415 KAR 1:060. Financial responsibility account. In response to questions by Senator Roeding, Mr. Waldner explained that: (1) re-

lease detection is a term used to describe, in general, methods for detecting if a leak had occurred from either: (a) the piping associated with a tank; or (b) the tank itself; (2) the requirement to have release detection in place prior to closure originated with federal regulations adopted in 1988; and (3) owners and operators were well informed of the requirement.

This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; (2) Sections 1 through 3 and 5 through 12 were amended to comply with the drafting requirements of KRS 13A.222(4); and (3) Section 6(1) through (5) were amended for clarity.

415 KAR 1:070. Petroleum storage tank account. In response to a question by Senator Roeding, Mr. Nickel stated that the 15,000 persons affected by this administrative regulation were aware of the requirements of this administrative regulation.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to correct a statutory citation; (2) Sections 1 through 9 were amended to comply with the drafting requirements of KRS 13A.222(4); (3) Section 5(5) was amended for clarity; and (4) Section 7 was amended to specify a reference to an administrative regulation.

415 KAR 1:110. Contractor costs. 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: (a) correct a statutory citation; and (b) conform to the drafting requirements of KRS 13A.222(4); (3) Section 1 was amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (4) Section 4 was deleted as superfluous; and (5) Sections 2, 3, 5, and 6 were amended to comply with the drafting requirements of KRS 13A.222(4).

415 KAR 1:116. Certification of contracting companies. 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 deleted and the definition of "certified company" moved to 415 KAR 1:050; (3) the NECESSITY, FUNCTION, AND CONFORMITY paragraph, and Sections 2 through 5 were amended to comply with the drafting requirements of KRS 13A.222(4); and (4) Section 2(3) was amended to change the date for compliance from March 1999, to July 1, 1999.

Transportation Cabinet: Department of Highways: Division of Professional Services: Professional Engineering and Related Services

600 KAR 6:010. Definitions. Charles Harman, Staff Assistant, represented the Cabinet.

Subcommittee staff stated that this existing administrative regulation: (1) established the definitions for 600 KAR Chapter 6; and (2) had been amended by the agency to add a definition for "Pool".

This administrative regulation was amended as follows: (1) the TITLE was amended to reference 600 KAR Chapter 6, pursuant to KRS 13A.222(4)(e); (2) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; (3) Section 1 was amended to create a new definition for "FHWA"; and (4) Section 1 was amended to comply with the: (a) formatting requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

600 KAR 6:065. Pooling of professional engineering or related services. Subcommittee staff stated that this was a new administrative regulation that established firm pools for the provision of engineering and design services.

In response to a question by Senator Long, Mr. Harman stated that the Cabinet was not changing the engineer selection committee by this administrative regulation.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) a new Section 1(1) was

created to provide that road design projects be limited to 10% of total number of projects; (3) Section 2 and 3 were amended to comply with the formatting requirements of KRS 13A.220(4); and (4) Sections 1, 2, 4, and 5 were amended to comply with the drafting requirements of KRS 13A.222(4).

600 KAR 6:070. Contracting for professional engineering or related services. Subcommittee staff stated that this existing administrative regulation established the requirements for contracting for professional engineering or related services.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) Section 8(5) was amended to provide an administrative hearing for a consultant given a below average rating; (3) Sections 1, 4 and 7 were amended to comply with the formatting requirements of KRS 13A.220(4); and (4) Sections 1, 2, 4, 5, 7, 9 and 10 were amended to comply with the drafting requirements of KRS 13A.222(4).

Department of Vehicle Regulation: Division of Vehicle Enforcement: Division of Motor Carriers

601 KAR 1:005. Safety administrative regulation. Subcommittee staff stated that this was an existing administrative regulation that was amended by the agency to: (1) update material incorporated by reference; and (2) make technical corrections.

In response to a question by Representative Bruce, Mr. Harman stated that: (1) this administrative regulation addressed Vehicle Enforcement Officers; (2) he was not aware of new legislation that required a farmer to license a trailer; (3) he would notify Vehicle Enforcement Officers that it was not illegal for a farmer to have an unlicensed trailer; and (4) this administrative regulation: (a) did not address that issue; and (b) related to new safety regulations for truck drivers.

The NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2, 3, 7, and 9 were amended to comply with the drafting requirements of KRS 13A.222(4).

Department of Highways: Division of Traffic: Right-of-Way

603 KAR 4:050. Limited supplemental guide signs. Subcommittee staff stated that this was a new administrative regulation that established the limited supplemental guide signs program which provided information to tourists of activities in a particular area.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) Section 1 was amended to delete a definition that was established by defined by statute; (3) Section 5(1)(f) was amended to require that a business meet state and local building code requirements for safety; (4) Section 8 was amended to comply with the formatting requirements for incorporating material by reference; (5) Sections 2, 5, and 7 were amended to comply with the formatting requirements of KRS 13A.220(4); and (6) Sections 1, 3, 4, and 5 were amended to comply with the drafting requirements of KRS 13A.222(4).

Education Professional Standards Board

704 KAR 20:082. Probationary certificate for teachers of children, birth to primary. Marilyn Troupe, Office of Teacher Education and Certification, and Janet Banta, Office of Teacher Education and Certification, represented the Board.

This administrative regulation was amended as follows: Section 2(1)(c) was amended to specify the requirements for early childhood experience and training, as required by KRS 13A.100, 13A.130, and 13A.222(4).

Department of Insurance: Group and Blanket Health Insurance

806 KAR 18:080. Association uniform data collection. Sharron Burton, Staff Attorney, represented the Department. Subcommittee staff stated that this existing administrative regulation had been amended by the agency to expand reporting requirements to employer-organized associations in addition to associations that offer group health insurance to members.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by

KRS 13A.220(3)(f); (3) Section 1 was amended to alphabetize the definitions; and (4) Section 3 was amended to permit the Commissioner to impose a civil penalty after notice and a hearing.

Cabinet For Health Services: Department for Public Health: Health Services and Facilities

902 KAR 20:078. Operations and services; group homes. Ralph von Derau, Health Planner, Office of the Inspector General, represented the Department.

In response to questions by Senator Roeding, Mr. von Derau stated that: (1) this administrative regulation: (a) did not require group homes with less than four persons to have an advisory board; (b) governed small group homes which were defined as having not less than four, nor more than eight, persons; and (c) was amended to: 1. conform with the drafting requirements established by KRS 13A.222; and 2. expand the type of staff authorized to prescribe medication; and (2) the non-restraint provisions did not prevent a physician from prescribing anti-psychotic drugs.

Senator Roeding stated that he: (1) was concerned about the: (a) administrative costs that would result from requiring a group home to establish: 1. an advisory board; and 2. a services committee; and (b) possibility a noninfectious tuberculosis patient would become infectious; (2) hoped that all communicable diseases, including HIV, were included in the provision requiring that a resident be free from communicable disease; and (3) wanted to ensure that the prohibition against use of physical and chemical restraints did not interfere with a physician's treatment of psychosis.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 8 were amended to comply with the drafting requirements of KRS 13A.222(4); and (3) Section 7 was amended to authorize other practitioners to prescribe self-administration of medications.

Department for Medicaid Services: Payment and Services

907 KAR 3:005. Physicians' services. Duane Dringenburg, Division Director, Medicaid Services; Betsy Dunnigan, Acting Director, Division of Physical Health; and Karen Doyle, Commissioner's Office, represented the Department.

Ms. Dunnigan stated that this administrative regulation had been amended by the agency to: (1) incorporate by reference the revised early and periodic screening, diagnosis, and treatment (EPSDT) requirements; (2) authorize coverage for services provided by physician assistants; and (3) comply with the drafting requirements of KRS Chapter 13A.

Ms. Doyle stated that the Kentucky Medical Association had agreed to the amendments the Department had filed for this administrative regulation.

Senator Roeding stated that: (1) he: (a) had worked with the Cabinet and Bill Doll, who represented the Kentucky Medical Association, on an amendment to this administrative regulation; and (b) wanted to amend this administrative regulation on Page 4.22, Section 4, to add the phrase, "per diagnosis"; and (2) this amendment would authorize a physician in a high complexity situation to perform diagnoses separately for a patient who had an ulcer at one visit and heart disease at a subsequent visit.

Ms. Doyle stated that the Cabinet had agreed to this amendment.

This administrative regulation was amended as follows: (1) Sections 1 and 2 were amended to comply with the drafting requirements of KRS 13A.222(4); (2) Section 3 was amended to change the edition date of the material incorporated by reference; and (3) the material incorporated by reference was amended to: (a) comply with changes in regard to KRS 194A.030, 42 CFR 415.152, 42 CFR 415.174, and 42 CFR 415.184, as explained in the summary of the material incorporated by reference filed by the Department; and (b) insert the phrase "per diagnosis" on page 4.22 to provide that established patient evaluation and management (E/M) office or other outpatient services of moderate or high complexity shall be limited to one (1) per recipient, per physician, per diagnosis, per twelve (12) month period except as referenced in Section IV, 13c.

907 KAR 3:010. Reimbursement for physicians' services. This administrative regulation was amended as follows: (1) Section 3 was

amended to clearly establish vaccination reimbursement rates for physicians; and (2) Sections 1, 2, and 3 were amended to comply with the drafting requirements of KRS 13A.222(4).

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Finance and Administration Cabinet: Kentucky Retirement Systems: General Rules

105 KAR 1:205 & E. Eligibility for disability retirement. Pam Johnson, General Manager, and Bill Hanes, Deputy Commissioner, represented the Cabinet.

Subcommittee staff stated that the Regulations Compiler had made a technical correction to a statutory citation in the STATUTORY AUTHORITY paragraph of this administrative regulation.

Transportation Cabinet: Department of Vehicle Regulation: Division of Vehicle Enforcement: Division of Motor Carriers

601 KAR 1:025. Transporting hazardous materials by air or highway. Subcommittee staff stated that this was an existing administrative regulation that was amended by the agency to update material incorporated by reference.

Education Professional Standards Board

704 KAR 20:084. Interdisciplinary early childhood education, birth to primary. Marilyn Troupe, Office of Teacher Education and Certification, and Janet Banta, Office of Teacher Education and Certification, represented the Board.

Public Service Commission: Utilities

807 KAR 5:070. Filing requirements and standards for commission approval of water district commissioner training programs. Deborah Eversole, Attorney, Carryn Lee, Manager, Rates and Tariffs Branch, represented the Commission.

In response to a question by Senator Long and Representative Bruce, Ms. Eversole stated that this administrative regulation: (1) did not require water commissioners to participate in the training programs; and (2) made the programs available to the commissioners.

Cabinet for Families and Children: Department for Community-Based Services: Division of Policy Development: Child Welfare

905 KAR 1:370. Criteria for out-of-state placement. Sandra Rolland and Sharon Surbeck represented the Department. In response to questions by Senator Roeding, Subcommittee staff stated that: (1) because of time constraints, Subcommittee staff: (a) did not prepare an amendment for this administrative regulation; and (b) would prepare an amendment for the agency to submit to the Interim Joint Committee on Health and Welfare; (2) the initial staff review raised issues that: (a) were covered in existing provisions established in the applicable statutes and this administrative regulation; or (b) would be clarified in an amendment to be made at the Interim Joint Committee on Health and Welfare; and (3) KRS 13A.120(2)(e) prohibited repeating or summarizing statutory provisions in administrative regulations.

Ms. Rolland stated that: (1) KRS 615.030: (a) adopted the Interstate Compact on the Placement of Children; and (b) provided that the sending state, Kentucky, would request courtesy supervision from the state agency in the receiving state for a child placed by Kentucky in that state; and (2) the amendment to be made at the Interim Joint Committee on Health and Welfare would clarify that courtesy supervision shall include a minimum of: (a) one contact every six months with the out-of-state worker and the child; and (b) one written report to Kentucky every six months.

Food Stamp Program

921 KAR 3:010. Definitions. Cliff Jennings and Jerry Wildt, EBT Project Director, represented the Cabinet.

In response to a question by Representative Bruce, Mr. Jennings stated that the Electronic Benefit Transfer (EBT) system should reduce fraud in the food stamp program.

In response to questions by Senator Roeding, Mr. Wildt stated that: (1) the EBT program would: (a) begin as a pilot: 1. for the food stamp program; 2. in five counties located in central Kentucky; and 3. on May 1; (b) be expanded to other counties in July, after ap-

proval had been received from the federal government; and (c) be statewide by November 1, 1999; (2) approximately thirty states currently used some form of EBT; (3) the federal government had mandated that the food stamp program in each state use EBT by 2002; (3) Kentucky had joined the Southern Alliance of States, which currently consisted of nine states; to: (a) get volume pricing from suppliers and vendors; (b) obtain inter-operability to permit recipients to use the EBT card in other states as they traveled for employment or other reasons; and (c) learn from the successes and mistakes made in implementing the program in other states; and (4) he had met with the project directors from the surrounding states to: (a) discuss border issues that impacted both recipients and merchants in Kentucky; and (b) minimize negatives as much as possible.

In response to questions by Representative Lee, Mr. Wildt stated that: (1) measures had been taken to ensure that the input received from recipients by case workers would be hard to duplicate and not be subject to fraud; (2) the EBT cards did not include picture identifications because: (a) the costs of including the picture: 1. were prohibitive; and 2. did not justify the investment; and (b) at many stores, the purchaser swiped the EBT card without handing the card to the store worker; (3) a personal identification number (PIN) was required to use an EBT card; and (4) while a person who had obtained a recipient's PIN number and EBT card would be able to access the recipient's account, a similar situation currently existed because someone could obtain a recipient's coupons.

921 KAR 3:035. Certification process.

921 KAR 3:045. Issuance procedures.

921 KAR 3:060. Administrative disqualification hearing and penalties.

The Subcommittee and promulgating administrative bodies agreed to defer consideration of the following administrative regulations to the May 11, 1999 meeting of the Subcommittee:

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.

Finance And Administration Cabinet: Office of Financial Management and Economic Analysis: Underwriter and Bond Counsel Selection Process

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

Board of Pharmacy

201 KAR 2:030. License transfer.

201 KAR 2:040. Registration of interns.

201 KAR 2:050. Licenses and permits; fees.

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 9:330 & E. Determination of death by a paramedic.

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

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

Board of Nursing

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

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

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

Board of Podiatry

201 KAR 25:031. Continuing education.

Natural Resources And Environmental Protection Cabinet: Department for Environmental Protection: Division for Air Quality: General Administrative Procedures

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

New Source Standards

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

Existing Source Standards

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

General Standards of Performance

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

Mobile Source-related Emissions

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

Chemical Accident Prevention

401 KAR 68:010. General provisions.

401 KAR 68:020. Hazard assessment.

401 KAR 68:048. Program 2 prevention program.

401 KAR 68:065. Program 3 prevention program.

401 KAR 68:090. Emergency response.

401 KAR 68:100. Regulated substances for accidental release prevention.

401 KAR 68:150. Risk management plan.

401 KAR 68:200. Other requirements.

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 1:090. Ranking system.

415 KAR 1:100. Third-party claims.

415 KAR 1:114. Contractor certification.

415 KAR 1:120. Hearings.

415 KAR 1:130. Small owners tank removal account.

415 KAR 1:135. Financial audits.

415 KAR 1:140. Laboratory certification.

Justice Cabinet: Abuse Investigations

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

Department of Corrections: Division of Adult Institutions: Office of the Secretary

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

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

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

Department of Criminal Justice Training: Kentucky Law Enforcement Council

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

General Training Provisions

503 KAR 3:040. Telecommunications academy trainee requirements; misconduct; penalties; discipline procedures.

Transportation Cabinet: Department of Vehicle Regulation: Division of Vehicle Enforcement: Division of Motor Carriers

601 KAR 1:040E. Application for operating authority and registration of motor carriers.

Department of Highways: Division of Traffic: Right-of-Way

603 KAR 4:055. Scenic highways and byways.

Mass Transportation

603 KAR 7:080 & E. Human service transportation delivery. Ron Bingham, Empower Kentucky; Margaret Platner, Transportation Cabinet; Kevin Flanery, Deputy Secretary, Transportation Cabinet; Donovan Fornwalt, Council of Retard Citizens; Edward E. Sisk, Madisonville Yellow Cab Company; Rev. William L. Curry, Mainstream Transportation Authority, C & C charter bus, and Kentuckiana Transportation Association ("KTA"); Greg Hamlin, Sandy Valley Transportation Services; Pam Shepherd, Federated Trans-

portation Services; Linda May, Kentucky Works, Cabinet for Families and Children; Bill McGehee, Greenville Med-Van; and Sandy Kays, appeared before the Subcommittee.

Subcommittee staff stated that this new administrative regulation implemented the procedures to administer the human service transportation delivery services.

In response to a question by Representative Bruce, Mr. Flanery stated that he: (1) was responsible for the Vehicle Enforcement Officers; and (2) would: (a) inform the Officers that unlicensed farm trailers were not illegal; and (b) report to Representative Bruce.

Mr. Bingham stated that: (1) he wanted to report the status of the meetings and negotiations regarding this administrative regulation; (2) there would be an amendment to this administrative regulation; (3) he wanted to thank everyone who had participated in the meetings to discuss possible improvements to the program; (4) three major areas of concern needed to be addressed: (a) freedom of choice for the disabled; (b) ensuring equity statewide for profit and non-profit operations, primarily in rural counties; and (c) ensuring equity in Jefferson County, due to the size of the operation; (5) the exact language had not been worked out, but the Cabinet's intent was to amend this administrative regulation to provide freedom of choice statewide for: (a) non-ambulatory people; and (b) ambulatory mentally handicapped people; (6) the Cabinet: (a) was working to comply with Medicaid requirements; and (b) would soon submit the amendment to the Subcommittee soon; (7) the constituents were trying to cover as many people as possible; (8) to inform the Subcommittee, the Cabinet would publish the distribution rides that were: (a) profit; and (b) non-profit; (9) the Cabinet was supported by several companies and associations in Jefferson County; (10) the Cabinet would implement an oversight committee to look at: (a) equity; and (b) quality; and (11) the committee would consist of: (a) independent cab companies; and (b) constituent associations.

In response to questions by Senator Long, Mr. Bingham stated that: (1) non-ambulatory people were included in the definition of those having choice; (2) only the ambulatory mentally handicapped were recognized in the "07" category; and (3) he would find out the: (a) number of the ambulatory disoriented persons; and (b) the cost of including them with freedom of choice.

Mr. Flanery stated that: (1) of the entire group totaled 1,000, and were: (a) ambulatory; and (b) mentally handicapped; and (2) the Cabinet would include that group in the freedom of choice definition.

In response to questions by Representative Lee, Mr. Bingham stated that the Cabinet was trying to make the system equitable regarding the method used by the broker to assign rides to a carrier.

Representative Lee stated that: (1) he thought the oversight committee was a great idea, if action was taken to correct problems; (2) he had been contacted by a lot of his constituents regarding the proposed changes; (3) most of those who contacted him dealt with special need individuals who needed extra consideration and special care when being transported; (4) his primary goal was to: (a) ensure that these people continued to receive that care; and (b) not have: 1. people being dropped off at the wrong place; 2. legs broken; 3. lack of commitment to appointment times; and 4. rudeness; (5) if the oversight board corrected these things, it would be a step in the right direction; (6) he looked forward to hearing from some of the special needs people who were represented at the meeting.

In response to questions by Senator Roeding, Mr. Flanery stated that: (1) the costs represented in the initial staff review were old numbers; (2) new costs to the state were not being created; (3) the Cabinet had: (a) gathered costs from several cabinets that had transportation programs; and (b) put all of the dollars into one program to be more efficiently operated; (4) the Cabinet had provided a packet to the Subcommittee that included the Medicaid costs; (5) in 1989, the Medicaid costs were about \$4,500,000; (6) in 1999, the amounts were \$36,000,000; (7) there was an 800% increase in the costs; (8) the Cabinet had: (a) not created new costs; (b) brought all of the funding together; and (c) provided transportation to all; and (9) this was not a new fund source.

Ms. Kays stated that: (1) if freedom of choice were given to them and taken away from the others, then the others would not have freedom of choice and they would have it; (2) she did not think that it was fair that freedom of choice be taken away from the others.

Mr. Fornwalt stated that: (1) he agreed with Senator Long that

the principle of free choice should apply statewide to every legitimate disability category; (2) the Council owed a debt of gratitude to Ron Bingham for bringing the Cabinet, providers, disability lobby, and Region 6 broker together to discuss this matter; (4) the Council realized and understood that there would be occasions and conditions at which choice would have to be denied; (5) the Council respected the Cabinet's decision to defer consideration of this administrative regulation by the Subcommittee to permit its members an opportunity to look at the proposed language of the amendment; (6) he: (a) wanted to acknowledge that considerable progress had been made; and (b) hoped that the parties would have everything worked out for the next meeting.

Mr. Sisk stated that: (1) he had signed a contract with Pennyryle Allied Community Services (PACS) of Hopkinsville, which controlled Region 2; (2) this Region had become effective April 1; (3) since that time, he had had a total of two runs; (4) he had: (a) complied with all requirements; (b) bought all of the required special safety equipment; and (c) spent in excess of \$500 per vehicle to equip the vehicles for this program; (5) he was not the only one who had very little business from the program; (6) he: (a) attended a meeting on December 21, 1998, regarding the amendment to this administrative regulation; and (b) requested fairness in transportation assignments from the: 1. State; and 2. transportation provider; (7) he had been told that the program would be fair because of a monitoring process that ensured participation of all able and willing providers, in compliance with Sections 5 and 6 of House Bill 468, enacted during the 1998 Regular Session of the General Assembly; (8) he saw no fairness in this program whatsoever; (9) he knew other companies that had not received any assignments; (10) he thought that the only reason he had received his first assignment was because he: (a) called Joe Shealy at Multimodal; and (b) complained; (11) he then received a confusing run from PACS; (12) he was only an "02" provider by the terms of his contract with PACS; (13) the first assignment he had received from PACS was an "02" and "07" run, a client going from Dawson Springs to the Pennyroyal Area Mental Health Center; (14) he did not know whether to charge this run as an "02" or an "07" because they were connected; (15) he was not sure he should have transported the client; (16) the second assignment he received was a regular customer who rode with him before April 1 by calling DSI; (17) the client, who had a Medicaid card, called him and needed to go to the emergency room; (18) he told the client that he could not take her to the emergency room without her: (a) calling the urgent care number; and (b) requesting his services; (19) about 30 minutes after the client's call, he: (a) received a call from PACS; and (b) was given the assignment; (20) as of that day, he had made a grand total of: (a) \$50.20, if he could not charge the "07" rate for the first run; or (b) \$72.20, if he could charge the "07" rate; (21) he believed that charging it at the "07" rate would be Medicaid fraud, because his contract stated that he was an "02" carrier, the cheapest method of carrying; (22) in his area, he could only charge \$1.00 per mile, for a minimum of \$5.00; (23) if there were people out there who were ambulatory, the taxi companies needed to receive more business; (24) if the State wanted to save money, taxi companies should receive the ambulatory business; (25) before this program had been implemented, he had not carried that many people because he did not have the advertising dollars to compete with the larger wheelchair companies in his area.

Rev. Curry stated that: (1) he represented the: (a) Mainstream Transportation Authority; and (b) Kentuckiana Transportation Association; (2) the KTA had met with Mr. Bingham, Ms. Platner, and Mr. Ellis on several occasions; (3) he thought they had made some progress in understanding the needs of the: (a) mentally and physically challenged community; and (b) providers for fairness and equity; (4) he thought that Empower Kentucky was a great concept, but it was not working right; (5) when they met, they discussed carriers of the: (a) "07", ambulatory and disoriented; and (b) "08" wheelchairs; (6) an "07" patient was someone who could: (a) walk with a lot of assistance; and (b) not: 1. move out of a chair; or 2. take more than a few steps unaided; (7) it was the KTA's position that the Cabinet needed to address scheduling first; (8) if the Cabinet did not understand the mentally and physically challenged community, it could not: (a) schedule rides for them; or (b) provide the proper mode of transportation; (9) he had been a provider and broker and the fifteen

minute window before and after an appointment did not work; (10) the KTA asked about costs, but the Cabinet could not address costs; (11) presently, he received a sufficient amount of money from the state; (12) for a wheelchair, he received: (a) \$25.00; and (b) \$1.50 per mile; (13) for an "07" client: (a) \$12.50; and (b) \$1.50 per mile; (14) the State proposed that he pick up an "07" and "08" client and be paid: (a) the low rate for the "07" client; and (b) a \$4.00 fare for everyone else, no matter how many were picked up; (15) he had equipment that: (a) met Americans with Disabilities Act ("ADA") approval; and (b) had cost \$40,000; (16) a driver was paid \$9.00 per hour; (17) gasoline was \$1.02 per gallon; (18) insurance per vehicle was \$2,300 per year; (19) he paid \$42.00 per hour to operate a vehicle; (20) he could not operate his business on \$4.00 per fare; (21) he wanted: (a) the State to save money; (b) to preserve the quality of service; and (c) everyone to be treated fairly and equitably; (22) he did not agree on: (a) costs; and (b) scheduling; (23) they had tentatively agreed upon the issue of freedom of choice; (24) they did not have an agreement in writing; (25) a request had been made for Yellow Cab to attend the meetings, but it sent the broker, Jeri Green; (26) Yellow Cab had not sent anyone from the operations side to talk to the other providers; (27) the providers: (a) were hopeful that they could work out an agreement that benefited everyone; and (b) had not been shown good faith in addressing scheduling and costs; (28) he was considered the second largest wheelchair carrier in Kentucky; (29) he did not see how he could operate for \$4.00 per ride, which would not cover his operating expenses.

Mr. Hamlin stated that: (1) Sandy Valley Transportation Services (SVTS) was a non-profit charitable organization; (2) SVTS had been the Region 14 broker and provider since June, 1998; (3) SVTS and its board of directors realized that for the program to work in Region 14, they would have to work with the private, for-profit operators; (4) they had done so harmoniously up to that point; (5) Sixty-seven percent of all business went to the private, for-profit companies; (6) in turn, they agreed to abide by Empower Kentucky's safety concerns; (7) one of the major objectives of Empower Kentucky was to ensure clients receive safe, dependable, accessible transportation; (8) since June, 1998, all providers had to: (a) meet certification for: 1. first aid; and 2. CPR; and (b) receive training in: 1. defensive driving; 2. passenger assistance techniques; and 3. bloodborne pathogens; (9) the training was a major improvement over the training drivers had received in the past, if any; (10) each vehicle utilized in the Empower Kentucky network was inspected annually to ensure that it met standards of a safe and roadworthy vehicle; (11) several vehicles had been removed from service since the inspections began; (12) several drivers had been dismissed for failure to pass drug and alcohol tests; (13) wheelchair units had been removed from service because they did not meet ADA requirements; (14) all wheelchair units now met ADA requirements; (15) the vehicles were equipped with two-way communications in the event of an accident; (16) rides could be scheduled through a toll-free phone number: (a) 24 hours per day; and (b) 7 days per week; (17) the SVTS tried to honor the service recipient's freedom of choice whenever possible; (18) typically, the only coordinated trips were those that went outside the Big Sandy Valley area; (19) Kentucky Works and SVTS: (a) worked closely with the: 1. Cabinet for Families and Children; and 2. community based services; and (b) were working on innovative plans to meet the welfare to work transportation needs; (20) SVTS had employed 9 Kentucky Works participants since June, 1998; (21) Empower Kentucky had made transportation services in the Big Sandy Valley area: (a) safer; (b) cleaner; and (c) more efficient.

Ms. Shepherd stated that: (1) she was executive director of Federated Transportation Services of the Bluegrass ("FTSB"); (2) FTSB was the Region 10 human service transportation broker for Fayette County; (3) FTSB began providing: (a) TANF transportation on November 1, 1998; and (b) Medicaid transportation on March 1, 1999; (4) FTSB: (a) was a pure broker; and (b) did not have vehicles; (5) it subcontracted all of transportation to other subcontractors with operating authority in Fayette County; (6) FTSB had subcontracts with: (a) United Transportation, a for-profit cab company; (b) American Red Cross Wheels, a non-profit disable carrier; (c) Lexington, a fixed-route bus service; and (d) NR Medical Transport, a for-profit disabled carrier; (7) a contract to transport their own clients was being finalized with Caretenders, a for-profit disable carrier; (8)

FTSB subcontractors provided service: (a) 7 days per week; and (b) 24 hours per day; (9) individuals eligible to receive Medicaid TANF vocational rehabilitation and the Department for the Blind called the FTSB office for transportation needs; (10) FTSB's reservationist: (a) took the information; (b) determined if the individual was eligible; and (c) arranged transportation with a proper provider; (11) FTSB paid the majority of the providers the same rate that they received from Medicaid; (12) this was possible because of coordination; (13) United Transportation cab company was instrumental in working out coordination for several individuals going to daily appointments; (14) in a taxicab, one to four individuals could ride for the same price; (15) American Red Cross Wheels had had an increase in business from nursing homes for non-emergency medical transportation; (16) in the past, the residents had been transported by ambulance; (17) because they could use non-emergency transportation, it was a great savings; (18) an increase in transportation in the welfare to work program had given providers additional services they were not previously receiving; (19) in the past, the participants in the welfare to work program: (a) did not receive transportation to work; and (b) only received transportation assistance for school or training; (20) if someone called for transportation, their reservationist asked what form of transportation the person had been utilizing; (21) over 95% of Medicaid recipients that called their office received the transportation provider they requested; (22) FTSB and its subcontractors had an excellent working relationship; (23) if a problem arose: (a) they had open communication; and (b) the situation was resolved; (24) the subcontractors and individuals did not deal with the voucher system, which was easier for the recipients and providers; (25) there were no problems with the non-profits and for-profit providers working together for the best interests of the recipients; (26) FTSB: (a) supported the Kentucky Human Service Transportation delivery program; and (b) believed it would benefit the providers and passengers for complete and better service.

Ms. May stated that: (1) she: (a) was the Kentucky Works program coordinator for Floyd and Martin counties; and (b) worked for the Department for Community Based Services, Division of Family Support; (2) the lack of transportation had been the greatest obstacle for poor families living in remote communities throughout Eastern Kentucky since the beginning of the: (a) jobs program in Fall, 1990; and (b) implementation of welfare reform in October, 1996; (3) her perspective came from working with welfare recipients who were impeded in making the transition from welfare to work by their inability to locate reliable transportation to and from their: (a) childcare provider; (b) work activity; (c) education; or (d) training class; (4) Sandy Valley Transportation Services removed this barrier for their recipients; (5) since June, 1998, when the transportation project went into effect, transportation needs were no longer a barrier to participants meeting their requirements for the Kentucky Works program; (6) by having the transportation services available, many long-term, dependent, single mothers were able to get to and from: (a) employment; (b) short-term training classes; (c) Prestonsburg Community College; or (d) Mayo Vo-Tech; (7) this was a unique learning effort to all; and (8) the willingness if SVTS to work with the Department for Community Based Services to ensure transportation needs were met expanded opportunities to those who would have little or no chance for self-sufficiency.

Mr. McGehee stated that: (1) he owned the: (a) Rolling Wheels taxicab; and (b) Greenville Med-Van; (2) since the Pennyrile Community Allied Services had become broker for his region, the business had decreased from about 80 customers to four customers; (3) he was concerned because he had: (a) all of his assets invested in his company; and (b) only four customers to pay his bills and insurance; (4) his four customers rode with PACS if they had to go to a doctor out of town; (5) he had letters from his customers who were very disappointed with the service they had received from PACS; (6) although his customers had called PACS and had requested his services, they were refused; (7) one of his customers got so upset that he: (a) was arrested; and (b) thrown into jail; (8) he was concerned about: (a) these patients; and (b) earning a living next year; (9) he had to have a way to pay his bills; (10) when he called the head of PACS, he was told that: (a) he was supposed to line up his customers; and (b) his customers could not have any provider they wanted; (11) some of his customers: (a) had ridden with him for 13

years; and (b) did not want PACS; (12) his customers should have freedom of choice; (13) even if he did carry his customers, PACS received one-third of his overhead money; and (15) after giving them one-third of his money, he did not think they would try to take his customers also.

In response to questions from Representative Lee, Mr. McGehee stated that: (1) PACS: (a) was a broker; and (b) had its own transportation also; and (2) as broker it: (a) used its own providers first; and (b) gave him whatever was left.

Ms. Platner stated that the Cabinet: (1) had just started the program in Region 2 on April 1; (2) realized there were some challenges to beginning the program in a new area; (3) was working to correct any problems that existed; (4) needed time to get the program up and running; and (5) had: (a) encountered problems before; and (b) worked through them with the brokers and providers.

In response to questions by Representative Lee, Ms. Platner stated that: (1) she believed that some of the providers would not get the same business they had in the past under this program; (2) the Cabinet was: (a) attempting to better coordinate services; and (b) looking for better management; and (3) if a provider was not receiving business under the contract, the Cabinet could: (a) discuss the facts with the broker; and (b) look at the number of rides the provider was getting from the broker.

Mr. Flanery stated that: (1) they knew assigning rides to providers would be an issue as each Regional plan was implemented; (2) the broker could not take all of the business if it was also a provider; (3) the Cabinet had a monitoring program to prevent the broker from taking all of the business; (4) the Cabinet would publish the ratios so everyone knew how business was being assigned; (5) the statutes and contracts provided that any willing provider must be allowed to be a part of the program; (6) if the broker was not meeting that obligation, the Cabinet would take action against him; (7) Ms. Platner and the Office of Transportation Delivery had been directed to prevent that occurrence; (8) the Cabinet believed that the plan was working well in the regions that had been in operation for more than 2 weeks; (9) this program was unique in that the Cabinet had constantly invited scrutiny from all of the parties concerned; (10) under the old system of freedom of choice, there had not been a good opportunity for recipients or providers to voice their complaints; (11) the Cabinet: (a) expected that it would receive more complaints because it had solicited complaints; (b) implemented a tracking system for issues that arose so that they could respond quickly; and (c) recognized that it could not make everyone happy; (12) under the old system, about \$4,500,000 per year for transportation had been spent in 1989; (13) in 1998, about \$36,000,000 was spent for transportation, an 800% increase over 1989; and (14) Mr. McGehee and others had been encouraged to: (a) come directly to the Cabinet with problems as they arose; and (b) not wait several weeks.

Representative Lee stated that: (1) he would recommend to Mr. McGehee and other subcontractors to report problems to: (a) him; (b) their Representatives; or (c) their Senators; (2) he wanted their Representatives and Senators to know if the operator would still be around with the lack of business; (3) if freedom of choice for a certain group of individuals was going to be permitted, the savings base had already been eroded.

In response to questions by Representative Lee, Mr. Bingham stated that: (1) the real issue was to stop the escalation of transportation costs; and (2) the Cabinet had taken \$5,000,000 from the program.

Representative Lee stated that he did not want to see people like Mr. McGehee who complied with all the rules go out of business.

Chairman Arnold stated that: (1) he thought that: (a) the issue of assigning business was one of the biggest problems with the program; (b) Mr. Bingham was willing to work with Mr. McGehee and others to make sure they got a fair share of the transportation business; and (c) if the broker was also a carrier, the broker would take all of the business that it could; and (2) he wanted: (a) to caution against that happening; and (b) this issue to be addressed.

Education, Arts And Humanities Cabinet: Board of Education: Department of Education: Office of District Support Services: Learning Results Services

703 KAR 4:021. Repeal of 703 KAR 4:020 and 703 KAR 4:050.

Office of Learning Programs Development: Office of Instruction
704 KAR 3:410. Preschool education program for four (4) year old children.

704 KAR 3:420. Preschool associate teachers.

Board of Education: Department of Education: Office of Learning Programs Development: Exceptional and Handicapped Programs

707 KAR 1:150. Preschool education program for children with disabilities.

Department of Libraries and Archives: Division of Public Records: Archives

725 KAR 1:070E. Standards for documents presented for recording. Without objection, the Subcommittee unanimously approved a motion by Representative Bruce, seconded by Representative Allen, to request the Governor to remove the finding of emergency and revoke this emergency administrative regulation, because it did not meet the requirements of KRS 13A.190.

The Subcommittee approved a request by Representative Bruce to send a copy of the letter to the: (1) Governor; and (2) Department of Libraries and Archives.

Kentucky Board of Tax Appeals: Tax Appeals

802 KAR 1:010. Rules of practice and procedure.

Labor Cabinet: Department of Workplace Standards: Division of Occupational Safety and Health Compliance: Division of Occupational Safety and Health Education and Training: Occupational Safety and Health

803 KAR 2:320E. Air contaminants.

803 KAR 2:425E. Toxic and hazardous substances.

803 KAR 2:500E. Maritime employment.

Cabinet For Families And Children: Department for Community Based Services: Division of Policy Development: Public Assistance

904 KAR 2:500. Family Alternatives Diversion (FAD).

904 KAR 2:510. Relocation Assistance Program.

Day Care

905 KAR 2:090. Child care facility licensure.

Cabinet For Health Services: Department for Medicaid Services: Medicaid Services

907 KAR 1:002. Definitions.

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

907 KAR 1:019. Pharmacy services.

907 KAR 1:021. Amounts payable for drugs.

907 KAR 1:025E. Payments for nursing facility and intermediate care facility for the mentally retarded services.

Payment and Services

907 KAR 3:090E. Acquired brain injury services.

907 KAR 3:100E. Payments for acquired brain injury services.

Kentucky Children's Health Insurance Program

907 KAR 4:020E. Kentucky Children's Health Insurance Program.

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.

908 KAR 1:370. Licensing procedures and standards for persons and agencies operating alcohol and other drug abuse treatment programs.

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.

OTHER BUSINESS:

Justice Cabinet: Department of Juvenile Justice: Child Welfare

505 KAR 1:040. Policies and procedures manual. This issue was deferred to the May 11, 1999 meeting of the Subcommittee.

Cabinet for Health Services: Office of Inspector General: Division of Licensing and Regulation: Certificate of Need

900 KAR 6:050. Certificate of need administrative regulations. John Gray, Executive Director, Certificate of Need Office, represented the Cabinet. Ruby Jo Cummins, and Dan Walton, Counsel, represented the Kentucky Association of Health Care Facilities. The Regulations Compiler stated that the Cabinet had filed an emergency administrative regulation, 900 KAR 6:050E. Subcommittee staff stated that the emergency administrative regulation did not relate to the issue before the Subcommittee.

Mr. Walton stated that: (1) he and Ms. Cummins had submitted a letter containing the Association's position; and (2) as reflected in the Association's statement of its position and the Attorney General's opinion on the subject, OAG 96-37, the Cabinet had amended or created a statute by administrative regulation.

In response to a question by Chairman Arnold, Subcommittee staff stated that the issue before the Subcommittee related to the compliance with statutory authority of the exclusion of personal care homes from the definition of "Long Term Care", and placement in a category for nonsubstantive review.

Mr. Gray stated that: (1) the Kentucky Constitution prohibited arbitrary state action; (2) it would be arbitrary for a state agency to regulate a matter unless there was a valid, legitimate state interest involved; (3) there were three reasons for the Certificate of Need process: (a) to increase access; (b) to improve quality; and (c) to control costs; (4) when the Cabinet assumed responsibility for the Certificate of Need process from the Kentucky Health Policy Board in 1996, it held a series of public hearings at which it invited the public to present its views on whether the process accomplished the quality, access, and cost goals for each of the health services regulated by the Cabinet; (5) for a number of health services and facilities, there was no proof that the requirement for formal review for personal care beds, ambulatory care centers, birthing centers, state health care centers, infusion therapy, mobile health services, pediatric, extended care, private duty nursing, or rehabilitative agencies advanced any of the Certificate of Need goals; (6) formal review did not: (a) increase access; (b) improve quality; or (c) control costs; (7) formal review increased costs for these services, by requiring five to ten thousand dollars in attorneys fees to complete the Certificate of Need process; (8) the lack of a legitimate state interest in requiring formal review for these services was the basis for placing them in nonsubstantive review; (9) in its testimony at Subcommittee meetings and material submitted to the Subcommittee, the Kentucky Association of Health Care Facilities ("Association") raised the issue of Medicare by having claimed that the uncontrolled growth of personal care would greatly impact the state and Medicaid budgets; and (10) the Cabinet believed that the: (a) Association had not established facts to support its argument; and (b) material presented by the Cabinet to the Subcommittee established that the uncontrolled growth of personal care beds had not had an impact on the state or Medicaid budgets.

Mr. Walton stated that: (1) the problem with the Cabinet's position was that applicable statutes defined "long-term care" and included personal care in the definition; (2) the Certificate of Need statute specifically provided that the State Health Plan shall contain a need assessment for long-term care beds; (3) long-term care beds are contained in long-term care facilities; (4) the definition of long-term care facility includes long-term care beds and includes personal care; (5) if the Cabinet did not agree with the statutory requirements, it should request the General Assembly to amend applicable statutes; (6) the Cabinet did not have the authority to amend applicable statutes by the promulgation of an administrative regulation; and (6) such an administrative regulation violated KRS Chapter 13A.

In response to a question by Chairman Arnold, Subcommittee

staff stated that: (1) the authorizing statute controlled; (2) personal care homes were included in the definition of long-term care facilities established by KRS 216.510 and 216.535; (3) the Cabinet argued that, under KRS 216B.015((3)(f)), it is permitted to add personal care home categories of health services and facilities to nonsubstantive review; (4) after a review of all submitted materials, including the Attorney General's Opinion, 96-37, it was clear that the: (a) reasons for which the Cabinet could grant nonsubstantive review were circumstances that occurred in the normal course of business or resulted from the natural population growth of an area; and (b) Cabinet could not add broad categories of health services or facilities to nonsubstantive review; and (5) to accept the Cabinet's argument would mean that, contrary to applicable statutes, there would be no category that the Cabinet could not remove to nonsubstantive review.

Senator Long stated that, while he agreed, he wanted to point out that administrative bodies sometimes made law by administrative regulation.

Chairman Arnold stated that an agency should not attempt to make or change law by administrative regulation. Subcommittee staff stated that such action by an agency would result in a Subcommittee determination that the administrative regulation by which such action was taken was deficient.

Representative Lee stated that the Cabinet should request the 2000 General Assembly to amend the statute. Mr. Gray stated that if the General Assembly wanted to define long-term care bed to include personal care beds, it should amend the statute.

Representative Lee stated that it appeared that: (1) the statute already contained such a definition; and (2) it could not be clearer that it did contain such a definition.

Mr. Gray stated that the: (1) definitions section of KRS Chapter 216B did not contain a definition of long-term beds; (2) KRS Chapter 216 stated the definitions in KRS Chapter 216 were restricted to matters governed by KRS Chapter 216; (3) KRS Chapter 216 did not deal with Certificate of Need; and (4) if the General Assembly had intended that personal care beds be included in the definition of long-term care, a definition for long-term care beds in KRS Chapter 216B, the statute that governed the Certificate of Need process.

Mr. Walton stated that KRS Chapter 216B included long-term care beds, and long-term care facilities were defined in KRS Chapter 216 and included personal care.

Chairman Arnold stated that if the Subcommittee determined that this administrative regulation was deficient, it would ensure that the General Assembly addressed the issues raised before the Subcommittee.

The Subcommittee approved a motion by Representative Lee that this administrative regulation was deficient. Senator Roeding objected to the motion to find 900 KAR 6:050 deficient.

Mr. Gray stated that: (1) he was unsure whether the finding of deficiency was based on: (a) the failure of the Cabinet to include personal care beds in the definition of long-term care; or (b) the Cabinet's creation of a nonsubstantive review category that allowed services for facilities for which there were no review criteria in the State Health Plan to proceed under nonsubstantive review; (2) while applicable statutes required need analysis for long-term care beds, they did not require review criteria for long-term care beds; and (3) the Cabinet could put need analysis in the State Health Plan, and still entitle personal care beds to proceed under nonsubstantive review, because there would not be review criteria.

Subcommittee staff stated that: (1) if there were not review criteria, there should be; and (2) the administrative regulation had been determined to be deficient because placement under nonsubstantive review did not comply with statutory requirements; (3) clarification or permission for nonsubstantive review could be sought from the General Assembly at its next Regular Session; and (4) if the Cabinet amended this administrative regulation before it expired, the Subcommittee would review the amendments and make a determination as to their compliance with statutory authority.

The Regulations Compiler and Subcommittee staff stated that: (1) the Subcommittee's determination did not affect the emergency administrative regulation the Cabinet already had filed to amend this administrative regulation; (2) the emergency administrative regulation was not before the Subcommittee; (3) an emergency adminis-

trative regulation could: (a) not be found deficient; (b) be removed if the Governor agreed with a Subcommittee recommendation that the emergency administrative regulation be revoked.

Cabinet for Health Services: Department for Public Health: Maternal and Child Health

902 KAR 4:110. Abortion information. John Walker, General Counsel, represented the Cabinet. Subcommittee staff stated that: (1) pursuant to Subcommittee instructions, Subcommittee and Cabinet staff had met on the issues raised by the informational pamphlet; (2) applicable statutes required the Cabinet to publish a comprehensive list of available agencies, description of services offered, telephone numbers and addresses, and information about available medical benefits and father support obligations; (3) the Cabinet was informed that it did not have authority to require toll-free or state-wide telephone numbers; (4) the Cabinet agreed to amend this administrative regulation to include additional telephone numbers; (5) while the pamphlet did not contain the local numbers of state agencies, it provided toll-free numbers at which the local numbers could be obtained; (6) a planned Web site would contain more comprehensive information; (7) KRS Chapter 13A does not deal with the adequacy of, or procedure to be followed with regard to, Web sites; (8) prior to the next Regular Session of the General Assembly, legislation would be proposed to include Web sites and other computer technology; (9) the Cabinet believed that: (a) to include all local information would increase the cost and size of the pamphlet; and (b) there the cost and absence of statutory authority would prohibit it from publishing different local versions of the pamphlet; (10) the Cabinet had agreed to consider requests for additions to the pamphlet, and those interested in including additional information had been so informed; (11) neither those in favor nor those opposed to this administrative regulation appeared to favor a finding of deficiency; and (12) the Subcommittee might want to recommend that LRC refer the issue of the detail required by statute to be considered by the appropriate legislative subcommittee for recommendations to the General Assembly at its next Regular Session.

Mr. Walker stated that: (1) adding numbers to the pamphlet required an amendment to this administrative regulation, for which a Notice of Intent would be filed; (2) the Cabinet would include in general information local numbers that could be called.

In response to a question by Senator Roeding, Mr. Walker stated that a Notice Of Intent would be filed to amend this administrative regulation to include several telephone numbers that had been requested by various groups.

The Subcommittee approved a motion to recommend that LRC refer the issue of the detail required in the pamphlet by statute be considered by the appropriate legislative subcommittee for recommendations to the General Assembly at its next Regular Session.

Applicability of KRS Chapter 11A (Executive Branch Ethics) to Lottery Corporation

Arch Gleason, President, and Camille Bathurst, General Counsel, Lottery Corporation ("Lottery"); and Jill LeMaster, Executive Director, and Donna Dutton, General Counsel, Executive Branch Ethics Commission ("Commission"), appeared before the Subcommittee. Mr. Gleason stated that the Lottery Corporation: (1) had long sought to have the issue of the applicability of KRS Chapter 11A to the Lottery Corporation resolved; (2) wanted to comply with statutory requirements; and (3) believed that it had complied with the requirements and duties imposed on the Lottery by KRS Chapter 154A, by: (a) promulgating an administrative regulation establishing a code of ethics for the Lottery as required by KRS Chapter 154A; and (b) submitting it for review under the procedure established and required by KRS Chapter 13A.

Ms. Bathurst stated that: (1) KRS Chapter 154A: (a) governs the Lottery Corporation; and (b) specifically requires the Corporation to establish a code of ethics for the officers and employees of the Corporation by administrative regulation to implement the standards established by KRS Chapter 154A; (3) by letter, April 20, 1995, the Commission advised the Lottery that, contrary to a position the Commission had taken previously, it: (a) would not regard the Lottery as subject to the Executive Branch Ethics Code ("Code"); and (b) acknowledged that KRS 154A established ethics provisions ap-

plicable to Lottery officers and employees; (4) the Lottery promulgated an administrative regulation: (a) establishing a code of ethics for the Lottery; (b) approved by the Subcommittee in the course of the review procedure established by KRS Chapter 13A; (b) with which Lottery employees have complied; (5) the Lottery's code of ethics is: (a) an extremely detailed Lottery-specific code of ethics; and (b) in many respects, more stringent than the requirements imposed by the code of ethics established by the Commission for Executive Branch employees and officers; (6) unlike the Executive Branch Code of Ethics, the Lottery's Code of Ethics fulfills the statutory mandate of KRS Chapter 154A to implement the standards of conduct it established for Lottery officers and employees by administrative regulation; (7) the provisions of the Executive Branch Code of Ethics could not be adopted by the Lottery, because: (a) it would result in a restatement of the provisions of KRS Chapters 11A and 154A; and (b) violate KRS Chapter 13A; (8) the Commission's current position that the Lottery is subject to KRS Chapter 11A was: (a) a reversal of its previous position; and (b) based on Legislative Research Commission revised "The Executive Branch of State Government", a directory of state government, Informational Bulletin 171 ("IB 171"); (9) the individual who prepared IB 171 advised the Lottery that its inclusion in IB 171 was: (a) for informational purposes only; and (b) not intended to have any effect on relevant statutory provisions; (10) the Lottery wanted to comply with statutory requirements, which clearly and unambiguously authorize and direct the Lottery to establish a code of ethics for the Lottery by administrative regulation; (11) a change in the requirement imposed on the Lottery should be made by the General Assembly by amendment to KRS Chapter 154A; and (12) until such changes were made, the Lottery requested that the Subcommittee advise the Lottery and the Commission that the administrative regulation promulgated by the Lottery and approved by the Subcommittee, rather than the Executive Branch Code of Ethics, should govern the Lottery.

Ms. LeMaster stated that: (1) the Commission's position was detailed in the letter submitted to the Subcommittee; (2) upon the enactment of KRS Chapter 11A, the Commission was granted authority to determine who was considered a public servant in the Executive Branch; (3) because of the difficulty in determining which agency or quasi-state agency was an executive branch agency, the source used as an authoritative source by the Commission to determine which state agency and entity was an Executive Branch agency was IB 171; (4) when the Commission issued the advisory opinion referred to by Ms. Bathurst, the Lottery was not listed in IB 171; (5) when IB 171 was revised, the Lottery was listed, at which time the Commission determined that the Lottery was: (a) a part of the Executive Branch; and (b) subject to KRS Chapter 11A; (6) the Commission also based its determination on a determination by the Finance and Administration Cabinet that the Lottery was one of the financial reporting agencies of the State of Kentucky; (7) although KRS Chapter 154A required the Lottery to establish a code of ethics for the Lottery, the Commission believed that the Lottery Code of Ethics must: (a) comply with the Executive Branch Code of Ethics; and (b) be in addition to, but not exclusive of, the Executive Branch Code of Ethics; (8) while the Lottery, as a unique entity, should have a code of ethics specific to its industry, the Commission did not believe that the Lottery's code should be in place of the Executive Branch Code of Ethics.

Ms. Dutton stated that, while the Commission understood the Lottery's position was based on its interpretation of applicable statutes, it was concerned that agencies might request the legislature to exempt them from the requirements of the Executive Branch Code of ethics established by KRS Chapter 11A.

In response to a question by Chairman Arnold, Subcommittee staff stated that: (1) the material submitted by both agencies had been reviewed; (2) while the application of one or the other rule of statutory construction could be used to support either agency position: (a) IB 171: 1. did not have the effect of law; and 2. could not be used to determine whether or not the Lottery was subject to the Executive Branch Code of Ethics or had independent authority to promulgate an administrative regulation establishing a code of ethics for the Lottery; (b) the Subcommittee was bound by applicable statutes; (c) KRS Chapter 154A specifically required the Lottery to establish a code of ethics governing Lottery employees and officers by

administrative regulation; (d) KRS Chapter 154A dealt in detail with the specific subject matter of a code of ethics for the Lottery; (e) until the legislature determined that the Lottery did not have authority over the subject matter, and that the Executive Branch Code of Ethics applied, the Subcommittee did not have the authority to rule that the Lottery was governed by the Executive Branch Code of Ethics; (f) the Lottery had been granted the authority, and required, by statute, to establish a code of ethics; and (g) until the legislature amended KRS Chapter 154A, it could not be said that the Lottery's authority had been restricted; and (3) the Subcommittee could request LRC to refer the issues raised to the appropriate legislative subcommittee for determination of whether legislative change is required;

In response to a request for verification by Ms. Bathurst, and at the request of Chairman Arnold, Subcommittee staff stated that: (1) KRS Chapter 154A: (a) governed the subject matter of the code of ethics for the Lottery; and (b) granted the Lottery the authority, and required the Lottery, to establish a code of ethics; (2) the Lottery had complied with the mandate of KRS Chapter 154A by its promulgation of an administrative regulation establishing the Lottery Code of Ethics; (3) the Lottery was the administrative body with authority to establish a code of ethics governing the Lottery; and (4) the Lottery's administrative regulation complied with applicable statutory authority and requirements.

The Subcommittee approved a motion by Representative Lee to request LRC to refer to the appropriate legislative subcommittee the issues raised, and to determine whether amendment of applicable statutes was required.

Real Estate Commission

201 KAR 11:230. Mandatory continuing education. Compliance with House Bill 564. Lee Harris and Linda Poliskie represented the Commission. Representative Lee stated that: (1) the administrative regulation that would be filed would restrict: (a) exemption from continuing education to an agent who had: 1. an associates degree in real estate; and 2. been active in real estate for an average of at least 20 hours per week, for 180 months; (b) appeals to those who met these conditions; and (2) agents who believed that other circumstances warranted exemption would not be permitted to appeal under the administrative regulation the Commission intended to file.

Ms. Harris stated that others could appeal if Section 2 was amended to delete the requirement that a person denied an exemption "under this section" could appeal.

Representative Lee stated that such an amendment would not permit those who did not meet the specified criteria to appeal, because: (1) the exemptions are specific; (2) only those who meet the specific exemptions could appeal; and (3) others who believed that other circumstances warranted exemption could not appeal.

Subcommittee staff stated that: (1) because paragraphs (a) and (b) established the only conditions for exemption, a re-wording of Section 2 would not be sufficient to broaden the right to appeal; (2) a great number of agents who had been agents for a number of years would not have associate degrees, and would, therefore, be ineligible for exemption; and (3) at most, re-wording would simply establish contradictory provisions.

Ms. Harris stated that the second subsection should be something that is not tied in to the exemption.

Subcommittee staff stated that: (1) Representative Lee had raised was that the statute required the establishment of the specific reasons for which an exemption would be permitted; (2) adding a broad undefined exemption would not comply with the statutory requirement; (3) a broad undefined exemption would not comply with requirements established by KRS Chapter 13A, because a specific exemption is required; and (4) if the position of the Commission is that only those who meet the conditions established by paragraphs (a) and (b) of Section 1 are entitled to exemption from continuing education requirements, Subcommittee members have expressed concern that such a limited exemption was not the intent of House Bill 564.

Representative Lee stated that due process should not be denied any agent.

In response to a question by Ms. Harris, Subcommittee staff stated that: (1) the Commission had the authority to determine con-

ditions for exemption; (2) the Subcommittee had the authority to determine whether the conditions established by the Commission complied with House Bill 564; and (3) who would be granted an exemption had to be established by a clear statement of the conditions for exemption.

Representative Lee asked whether: (1) the Commission intended for an exemption to be granted only to an agent who had an associate degree and 180 hours at 20 hours a week; and (2) others who believed that other circumstances justified an exemption would not be granted an exemption or a right to appeal a denial of exemption. Ms. Harris stated that deletion of the words, "under this section" would allow anyone who had been denied an exemption to appeal.

Subcommittee staff stated that: (1) an appeal would not be allowed because the preceding section established the only grounds for appeal; and (2) even if could be argued that deletion of the words would allow an appeal to any agent, the Commission would not have complied with House Bill 564, because: (1) House Bill 564 requires the Commission to establish the conditions for exemption; and (2) no conditions would have been established.

Ms. Poliskie stated that the administrative regulation the Commission intended to file: (1) would establish experience and education requirements to be met to reinstate an agent's grandfather status; and (2) did not relate to another administrative regulation that dealt with exemption from continuing education for health or other reasons.

Representative Lee asked whether an agent that had been grandfathered had to put his license into escrow for a short period would be permitted an exemption if he did not have an associate degree in real estate.

Subcommittee staff stated that the terms of the administrative regulation the Commission intended to file would not permit an exemption for any reason except those established by the administrative regulation, a degree and practice during the time period specified. Senator Long stated that agents licensed before 1976 should not be exempt.

Representative Lee stated that the exemption of those licensed before 1976, grandfathering them, was the reason the bill was able to pass.

Ms. Harris stated that she thought Subcommittee staff had informed her that the exemption should be based on education and experience.

Subcommittee staff stated that: (1) the Commission had been informed that it had to establish the qualifications for exemption; (2) education or experience or another item could be one of the qualifications; (3) the administrative regulation the Commission intended to promulgate restricted exemption to a particular type of education and experience; and (4) the existing administrative regulation on continuing education should have been amended, rather than the promulgation of another administrative regulation that would also govern continuing education, because KRS Chapter 13A required that a discrete topic be governed by one administrative regulation.

Chairman Arnold stated that the Commission might avoid a finding of deficiency if it clarified the exemption requirements and reported to the Subcommittee.

Representative Lee stated that: (1) the Commission may have no more than 5 House Bill 564 exemption cases; and (2) those intended by House Bill 564 to be exempt should have recourse to an administrative appeal and not be restricted to filing suit in court.

Ms. Harris stated that the Commission was confined to: (1) establish objective criteria; and (2) at the same time, to have an out.

Representative Lee stated that Ms. Harris needed to meet with the Commission and determine what would be acceptable criteria for exemption.

Subcommittee staff stated that the: (1) discretion of the Commission had to be limited by standards established by the Commission; and (2) the Commission could not grant an exemption for conditions specified in an administrative regulation and for whatever other reasons it determined without reference to a standard.

Department of Housing, Buildings and Construction

815 KAR 35:015. Certification of electrical inspectors and health department permits. Charles Cotton, Commissioner, Judith Walden, General Counsel, and Bill Perkins, Chief Electrical Inspector, repre-

sented the Department. Representative Lee stated that: (1) in January the Subcommittee had discussed with the agency a problem for electricians that had arisen because of the open-pipe legislation; (2) in his district and in other counties, when an electrician requested a final inspection, he was told that it could not be inspected until he had a site evaluation permit; (3) the electrician, who performed proper work, was being penalized because the owner did not have a site evaluation permit; (4) the Department: (a) should simplify this process and provide that: 1. upon request, a final inspection would be made; 2. a sticker placed on the service panel; and 3. if there was no site evaluation permit, the electrical inspector would not turn in the certificate for the electric company to provide electrical service; (b) should do this by filing an: 1. emergency administrative regulation; or 2. amendment to the existing administrative regulation; and (c) would have the same result; and (d) would not have a lot of unhappy electricians; (5) the electricians should be removed from this process because they were being penalized for something over which they had no control; (6) the State would achieve the same goal if the electrician was eliminated from the process; (7) currently, the electrician had to: (a) wait for payment; or (b) beg someone for a site evaluation permit so they could get paid; and (8) the electrician had nothing to do with the site evaluation permit.

Commissioner Cotton stated that (1) the Department could take care of the sticker problem; (2) the issuance of the certificates could be a problem; and (3) the Department would like to consult with Dr. Rice Leach of the Department of Health and study the issue.

Representative Lee stated that: (1) electricians were: (a) doing proper work; (b) asking for a final inspection; and (c) being told that the electrical inspector would not even come to the site; (2) they needed to correct the problem by amending or promulgating an administrative regulation pertaining to this subject; (3) it was not the intent of the General Assembly that the electricians would be penalized in this manner; and (4) he was sure the other members on the Subcommittee agreed with him on this issue.

Ms. Walden stated that: (1) the electrical inspection could be made; (2) the problem was that the statute required the inspector to have the health department certificate in his possession.

Representative Lee stated that: (1) he did not have a problem with requiring the health department certificate; (2) a final inspection and sticker on the service panel did not mean that the electricity would be turned on the next day; and (3) the electrical inspector had to notify the electric company that the particular address met the requirements.

Ms. Walden stated that she did not know if that was the procedure used by utility companies throughout the State.

Representative Lee stated that: (1) the procedure should be used throughout Kentucky; (2) under the building code, the green sticker meant that the electrician had: (a) performed his work properly; and (b) met all requirements; (3) when the sticker was issued, the electrician could be paid by the owner or contractor; and (4) many contractors were saying that they would not pay the electrician until there was a final inspection.

Senator Long stated that: (1) he agreed with Representative Lee that the Department was penalizing the wrong person; and (2) this could be remedied with a proper administrative regulation.

Ms. Walden stated that she believed that: (1) it was an incidental penalization; and (2) it was not the intent of the Department to penalize the electricians.

In response to a question by Chairman Arnold, Subcommittee staff stated that the Department should: (1) meet with other agencies involved in this issue; and (2) contact Subcommittee staff who could assist in preparing an amendment or administrative regulation to resolve the issue raised.

Representative Lee stated that: (1) to remedy the issue, it would take (a) an administrative regulation; and (b) a memorandum sent to every county, so that they would know that this was the proper procedure; and (2) if this was done the electricians would be removed from something that they should not be in. Ms. Walden stated that they: (1) understood the problem; and (2) could remedy it.

The Subcommittee adjourned at 2:45 p.m. until May 11, 1999, at 10:30 a.m. in Room 149 of the Capitol Annex.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON EDUCATION

Meeting of April 5, 1999

The following administrative regulations were available for consideration by the Interim Joint Committee on Education during its meeting of April 5, 1999, having been referred to the Committee on March 15, 1999, pursuant to KRS 13A.290(6): 750 KAR 1:010 & 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 April 5, 1999 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**EDUCATION ASSESSMENT AND ACCOUNTABILITY REVIEW
SUBCOMMITTEE**

Meeting of April 1, 1999

The Education Assessment and Accountability Review Subcommittee met on Thursday, April 1, 1999 and submits this report:

The Subcommittee determined that the following administrative regulation complied with statutory requirements:

703 KAR 5:050 – Statewide Assessment and Accountability Program; School Building Appeal of Performance Judgements. Kentucky Department of Education staff, Mr. Kevin Noland, Associate Commissioner of the Office of Legal Services, represented the Kentucky Board of Education. Mr. Noland summarized the regulation. The regulation amended the previous policy to extend the appeal deadline for schools requesting a data review to 14 days following the completion of the review. The Commissioner of Education will name an advisory committee to review appeals and make a recommendation as to whether the appeal meets the standards set in statute. Mr. Noland responded to questions from Subcommittee members concerning the appeal deadline for schools requesting a data review.

**INTERIM JOINT COMMITTEE ON
AGRICULTURE AND NATURAL RESOURCES**

Meeting of April 14, 1999

Administrative regulations were available for consideration by the Interim Joint Committee on Agriculture and Natural Resources during its meeting of April 14, 1999 having been referred to the Committee on March 15, 1999 pursuant to KRS 13A.290(6):

The following administrative regulations were found to comply with KRS Chapter 13A:

University of Kentucky

Agriculture Experiment Station

12 KAR 1:115 12 KAR 2:061 12 KAR 3:022

12 KAR 2:031 12 KAR 2:066 12 KAR 3:027

12 KAR 2:041 12 KAR 3:012 12 KAR 3:037

12 KAR 2:046 12 KAR 3:017 12 KAR 3:042

12 KAR 2:051

Department of Fish and Wildlife Resources

301 KAR 2:132

301 KAR 6:051

Division of Air Quality:

401 KAR 51:001

401 KAR 63:105

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulation was deferred pursuant to KRS 13A.300: None

The following administrative regulation was reviewed but no action was taken: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the April 14, 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 K - 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 K - 17

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 K - 31

The Subject Index is a general index of administrative regulations published in VOLUME 25 of the Administrative Register, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	24 Ky.R. Page No.	Effective Date	Regulation Number	24 Ky.R. Page No.	Effective Date
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VOLUME 24

The administrative regulations listed under VOLUME 24 are those administrative regulations that were originally published in Volume 24 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1998 bound Volumes were published.

EMERGENCY ADMINISTRATIVE REGULATIONS:

12 KAR 4:170E	2326	4-7-98
Expired		10-18-98
31 KAR 4:120E	2575	4-22-98
Expired		11-18-98
200 KAR 15:010E	2327	4-7-98
Expired		10-18-98
302 KAR 20:040E	2330	4-3-98
Replaced		10-16-98
401 KAR 5:002E	2576	4-17-98
Replaced		11-18-98
401 KAR 5:009E	2588	4-17-98
Expired		11-18-98
601 KAR 2:020E	1863	2-13-98
Replaced		9-1-98
803 KAR 6:010E	2333	3-20-98
Expired		10-18-98
806 KAR 17:141E	2601	4-15-98
Expired		11-18-98
806 KAR 17:150E	2602	4-15-98
Expired		11-18-98
905 KAR 2:160E	2605	4-20-98
Replaced		11-18-98
907 KAR 1:006E	2337	4-6-98
Replaced		9-16-98
907 KAR 1:011E	2339	4-6-98
Replaced		9-16-98
907 KAR 1:022E	2080	2-18-98
Expired		10-18-98
907 KAR 1:026E	2612	4-24-98
Replaced		11-18-98
907 KAR 1:560E	2093	2-18-98
Expired		10-18-98
907 KAR 1:563E	2097	2-18-98
Expired		10-18-98
907 KAR 1:605E	2344	4-6-98
Replaced		9-16-98
907 KAR 1:626E	2614	4-24-98
Replaced		11-18-98
907 KAR 1:640E	2346	4-6-98
Replaced		9-16-98
907 KAR 1:645E	2350	4-6-98
Replaced		9-16-98

907 KAR 1:755E	2100	2-18-98
Withdrawn		9-1-98
907 KAR 3:030E	1639	12-19-97
Expired		7-21-98
908 KAR 2:210E	2352	4-6-98
Expired		10-18-98

ORDINARY ADMINISTRATIVE REGULATIONS:

202 KAR 3:010	2782	(See Volume 25)
202 KAR 3:030	2783	(See Volume 25)
600 KAR 6:050		
Amended	2760	(See Volume 25)
600 KAR 6:060		
Amended	2762	(See Volume 25)
600 KAR 6:080		
Amended	2765	(See Volume 25)
601 KAR 2:020	2784	(See Volume 25)
810 KAR 1:001		
Amended	2445	(See Volume 25)
810 KAR 1:009		
Amended	2447	10-12-98
810 KAR 1:015		
Amended	2450	(See Volume 25)
810 KAR 1:016		
Amended	2452	(See Volume 25)
811 KAR 1:090		
Amended	2454	(See Volume 25)
811 KAR 1:215		
Amended	2456	10-12-98
902 KAR 50:031		
Amended	1573	
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

Regulation Number	25 Ky.R. Page No.	Effective Date	Regulation Number	25 Ky.R. Page No.	Effective Date
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EMERGENCY ADMINISTRATIVE REGULATIONS: (Note: Emergency regulations expire 170 days from publication, or 170 days from publication plus number of days of requested extension, or upon replacement or repeal, whichever occurs first)

20 KAR 1:040E	1015	10-15-98
Expired		4-20-99

20 KAR 1:070E	1017	10-15-98
Expired		4-20-99
20 KAR 1:080E	1018	10-15-98
Expired		4-20-99
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

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Regulation Number	25 Ky.R Page No.	Effective Date	Regulation Number	25 Ky.R Page No.	Effective Date
40 KAR 2:070E	540	7-15-98	501 KAR 6:020E	231	7-14-98
Replaced	1581	1-19-99	Replaced	1355	12-17-98
40 KAR 2:075E	541	7-15-98	501 KAR 6:190E	1564	12-4-98
Replaced	1582	1-19-99	501 KAR 6:200E	1567	12-4-98
40 KAR 2:076E	543	7-15-98	501 KAR 6:210E	1568	12-4-98
Replaced	1584	1-19-99	501 KAR 14:010E	233	7-14-98
40 KAR 6:010E	543	7-15-98	Replaced	1038	11-20-98
Replaced	1265	1-19-99	502 KAR 31:020E	234	7-14-98
103 KAR 44:060E	546	8-7-98	Expired		1-18-99
Expired		2-18-99	503 KAR 1:140E	1570	11-30-98
105 KAR 1:170E	222	7-14-98	601 KAR 1:040E	1573	12-14-98
Replaced	589	11-20-98	603 KAR 7:080E	37	5-15-98
105 KAR 1:205E	1561	12-1-98	Expired		12-18-98
105 KAR 1:230E	223	7-14-98	702 KAR 7:125E	555	8-6-98
Replaced	1351	11-24-98	Replaced	1597	1-19-99
200 KAR 5:021E	548	7-17-98	704 KAR 3:480E	1021	10-14-98
Replaced	903	2-18-99	Replaced	2150	3-1-99
200 KAR 6:060E	225	7-15-98	704 KAR 20:720E	558	7-15-98
Replaced	946	12-17-98	Replaced	1602	1-19-99
200 KAR 21:010E	2116	2-12-99	705 KAR 4:240E	559	8-6-98
200 KAR 22:005E	549	7-17-98	Replaced	1284	1-19-99
Expired		2-18-99	725 KAR 1:070E	1832	1-6-99
200 KAR 30:010E	2311	2-26-99	735 KAR 2:010E	236	6-30-98
200 KAR 30:020E	2312	2-26-99	Replaced	1357	12-3-98
200 KAR 30:030E	2313	2-26-99	735 KAR 2:020E	238	6-30-98
200 KAR 30:040E	2314	2-26-99	Replaced	1358	12-3-98
200 KAR 30:050E	2315	2-26-99	735 KAR 2:030E	239	6-30-98
200 KAR 30:060E	2316	2-26-99	Replaced	1359	12-3-98
200 KAR 30:070E	2316	2-26-99	735 KAR 2:040E	240	6-30-98
201 KAR 9:330E	1338	11-12-98	Replaced	1360	12-3-98
201 KAR 9:335E	1339	11-12-98	735 KAR 2:050E	241	6-30-98
201 KAR 9:340E	1340	11-12-98	Replaced	1361	12-3-98
201 KAR 20:420E	1829	1-4-99	735 KAR 2:060E	243	6-30-98
201 KAR 20:430E	1830	1-4-99	Expired		1-18-99
201 KAR 20:440E	1830	1-4-99	750 KAR 1:010E	1022	9-23-98
201 KAR 38:010E	2317	3-4-99	Replaced	2369	4-5-99
201 KAR 38:020E	2318	3-4-99	750 KAR 2:010E	244	7-1-98
201 KAR 38:030E	2319	3-4-99	Expired		1-18-99
201 KAR 38:040E	2320	3-4-99	787 KAR 1:200E	245	6-30-98
201 KAR 38:050E	2321	3-4-99	Replaced	914	12-17-98
201 KAR 38:060E	2322	3-4-99	803 KAR 2:306E	246	7-2-98
301 KAR 2:181E	551	7-16-98	Expired		1-18-99
Replaced	1271	1-19-99	803 KAR 2:307E	249	7-2-98
301 KAR 2:221E	1341	10-22-98	Expired		1-18-99
Replaced	2137	3-10-99	803 KAR 2:308E	251	7-2-98
301 KAR 2:222E	1343	10-22-98	Expired		1-18-99
Replaced	2138	3-10-99	803 KAR 2:311E	253	7-2-98
301 KAR 2:223E	1347	10-22-98	Expired		1-18-99
Replaced	1700	3-10-98	803 KAR 2:316E	255	7-2-98
301 KAR 2:225E	552	8-10-98	Expired		1-18-99
Replaced	1095	1-19-99	803 KAR 2:317E	256	7-2-98
301 KAR 2:226E	1019	9-23-98	Expired		1-18-99
Replaced	1746	3-10-99	803 KAR 2:320E	258	7-13-98
301 KAR 6:005E	554	7-16-98	Withdrawn		1-15-99
Replaced	1272	1-19-99	Resubmitted	1835	1-15-99
405 KAR 10:010E	1562	11-24-98	803 KAR 2:403E	264	7-2-98
415 KAR 1:080E	2529	4-12-99	Expired		1-18-99
500 KAR 13:010E	1831	12-30-98	803 KAR 2:404E	265	7-2-98
500 KAR 13:020E	2534	4-5-99	Expired		1-18-99
501 KAR 1:030E	226	7-14-98	803 KAR 2:418E	269	7-2-98
Replaced	1352	12-17-98	Expired		1-18-99
501 KAR 1:050E	229	7-14-98	803 KAR 2:425E	271	7-2-98
Replaced	1037	11-20-98	Withdrawn		1-15-99
501 KAR 2:070E	230	7-14-98	Resubmitted	1840	1-15-99
Replaced	1355	12-17-98	803 KAR 2:500E	1841	1-15-99

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803 KAR 25:175E	1349	10-28-98	9 KAR 1:030		
Replaced	2371	4-14-99	Amended	884	
806 KAR 15:040E	560	7-21-98	As Amended	1577	1-19-99
Expired		2-18-99	9 KAR 1:035		
806 KAR 17:066E	2323	3-12-99	Repealed	1259	1-19-99
806 KAR 17:160E	272	6-19-98	9 KAR 1:036	1259	1-19-99
Replaced	1363	12-17-98	9 KAR 1:040		
806 KAR 17:170E	564	8-6-98	Amended	1086	
Expired		2-18-99	As Amended	1579	1-19-99
806 KAR 17:180E	275	6-19-98	9 KAR 1:050		
Expired		1-18-99	Amended	887	
806 KAR 17:190E	277	7-2-98	As Amended	1580	1-19-99
Expired		1-18-99	11 KAR 3:100		
806 KAR 17:200E	278	7-2-98	Amended	375	
Expired		1-18-99	As Amended	798	10-1-98
806 KAR 17:210E	280	7-2-98	11 KAR 4:050		
Expired		1-18-99	Amended	385	
806 KAR 17:220E	281	7-2-98	As Amended	806	10-1-98
Replaced	1363	12-17-98	11 KAR 4:070	450	
900 KAR 6:050E	2536	3-26-99	As Amended	808	10-1-98
904 KAR 2:006E	775	9-14-98	11 KAR 5:001		
904 KAR 2:018E	42	5-15-98	Amended	390	
Expired		12-18-98	As Amended	809	10-1-98
904 KAR 2:116E	782	9-15-98	11 KAR 5:130		
Expired		3-20-99	Amended	888	12-3-98
904 KAR 2:370E	786	9-14-98	11 KAR 8:030		
904 KAR 2:380E	44	6-15-98	Amended	890	
Expired		12-18-98	Amended	1398	1-19-99
904 KAR 2:490E	283	6-22-98	11 KAR 12:010		
Expired		1-18-99	Amended	392	
907 KAR 1:013E	1025	9-29-98	As Amended	810	10-1-98
Expired		4-20-99	11 KAR 12:040		
907 KAR 1:025E	285	6-30-98	Amended	393	
Withdrawn		1-15-99	As Amended	811	10-1-98
Resubmitted	1844	1-15-99	11 KAR 12:060		
907 KAR 1:635E	790	9-1-98	Amended	395	
Replaced	2173	3-17-99	As Amended	812	
907 KAR 1:755E	793	9-1-98	Reprint	991	10-1-98
Expired		3-20-99	11 KAR 12:070		
907 KAR 3:065E	48	5-15-98	Amended	397	
Expired		12-18-98	As Amended	812	10-1-98
907 KAR 3:090E	1851	1-11-99	11 KAR 14:010	451	
907 KAR 3:100E	1854	1-11-99	As Amended	813	10-1-98
907 KAR 4:020E	1856	1-15-99	11 KAR 14:020	453	
908 KAR 3:160E	2353	3-9-99	As Amended	813	10-1-98
921 KAR 2:015E	1862	1-14-99	11 KAR 14:030	454	
			As Amended	814	10-1-98
			11 KAR 14:040	456	
			As Amended	814	10-1-98
			11 KAR 14:050	457	
			As Amended	815	10-1-98
			11 KAR 14:060	459	
			As Amended	815	10-1-98
			11 KAR 14:070	460	
			As Amended	815	10-1-98
			11 KAR 14:080	462	
			As Amended	815	10-1-98
			11 KAR 15:010	464	
			As Amended	816	10-1-98
			11 KAR 15:020	465	
			As Amended	817	10-1-98
			11 KAR 15:030	467	
			As Amended	817	10-1-98
			11 KAR 15:040	468	
			As Amended	818	10-1-98
ORDINARY ADMINISTRATIVE REGULATIONS:					
2 KAR 2:010					
Amended	1425				
As Amended	1868	2-18-99			
2 KAR 2:020					
Amended	1426				
As Amended	1868	2-18-99			
2 KAR 3:031	2476				
2 KAR 2:040					
Amended	1427				
As Amended	1868	2-18-99			
9 KAR 1:010					
Amended	883	1-19-99			
9 KAR 1:015					
Amended	883				
As Amended	1577	1-19-99			

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11 KAR 15:050	470		32 KAR 2:210		
As Amended	818	10-1-98	Amended	1680	
11 KAR 15:060	472		As Amended	2125	3-19-99
As Amended	819	10-1-98	40 KAR 2:070		
11 KAR 15:070	474		Amended	1093	
As Amended	819	10-1-98	As Amended	1581	1-19-99
12 KAR 1:115			40 KAR 2:075	1263	
Amended	1943		As Amended	1582	1-19-99
As Amended	2355	4-14-99	40 KAR 2:076	1265	
12 KAR 2:031			As Amended	1584	1-19-99
Amended	892		40 KAR 6:010	1265	1-19-99
As Amended	2355	4-14-99	101 KAR 1:325		
12 KAR 2:041			Amended	398	10-12-98
Amended	1087		103 KAR 1:050	2687	
As Amended	2355	4-14-99	103 KAR 7:010		
12 KAR 2:046			Repealed	677	10-22-98
Amended	893		103 KAR 7:011	677	10-22-98
As Amended	2356	4-14-99	103 KAR 7:020		
12 KAR 2:051			Repealed	677	10-22-98
Amended	894		103 KAR 20:020	2226	
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12 KAR 2:056			103 KAR 44:060	1743	
Amended	894		As Amended	2126	2-25-99
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12 KAR 2:061			Amended	589	11-20-98
Amended	895		105 KAR 1:205	2227	
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12 KAR 2:066			Amended	901	
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12 KAR 3:012			Amended	2182	
Amended	1088		109 KAR 13:010		
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12 KAR 3:017			As Amended	2545	
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12 KAR 3:022			200 KAR 5:340	2709	
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12 KAR 3:027			Repealed	139	9-8-98
Amended	899		200 KAR 7:011	139	9-8-98
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12 KAR 3:037			Amended	400	10-22-98
Amended	900		200 KAR 21:010		
As Amended	2364	4-14-99	Amended	2648	
12 KAR 3:042			201 KAR 21:030		
Amended	1091		Amended	2649	
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13 KAR 2:020			Amended	904	
Amended	1428		Died		11-11-98
Amended	1899		201 KAR 2:030		
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13 KAR 2:045			Died		11-11-98
Amended	2177		Amended	2185	
Amended	2577		201 KAR 2:040		
13 KAR 2:090	1479		Amended	907	
Amended	1903		Died		11-11-98
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As Amended	1869	2-18-99	Amended	908	
31 KAR 4:120	1260	1-19-99	Died		11-11-98
31 KAR 4:130	1261	1-19-99	Amended	2188	
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As Amended	2546		As Amended	1031	11-18-98
201 KAR 6:010			201 KAR 20:240		
Repealed	1268	1-19-99	Amended	596	
201 KAR 6:011	1268	1-19-99	As Amended	1032	11-18-98
201 KAR 6:020	678		201 KAR 20:260		
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201 KAR 6:030	679		As Amended	1033	11-18-98
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201 KAR 6:040	680		Amended	598	
As Amended	1585	1-19-99	As Amended	1034	11-18-98
201 KAR 6:050	681		Amended	1945	4-21-99
As Amended	1585	1-19-99	201 KAR 20:400		
201 KAR 6:060	681		Amended	2189	
As Amended	1585	1-19-99	As Amended	2546	
201 KAR 6:070	682		201 KAR 20:420	2232	
As Amended	1586	1-19-99	201 KAR 20:430	2233	
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201 KAR 6:090	686		Amended	2432	
As Amended	1588	1-19-99	201 KAR 25:031		
201 KAR 8:140			Amended	1947	
Amended	590		201 KAR 26:121		
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201 KAR 8:440	475		As Amended	820	9-16-98
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Amended	2423		Amended	407	
201 KAR 9:310			As Amended	823	9-16-98
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Amended	1681	4-14-99	As Amended	828	9-16-98
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Amended	1683		As Amended	829	9-16-98
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Amended	2429		202 KAR 3:030		
201 KAR 14:090			Amended	584	
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Amended	592		Amended	409	
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As Amended	834	10-16-98	Amended	1437	
301 KAR 1:201			401 KAR 51:001		
Amended	411	10-16-98	Amended	1442	4-14-99
301 KAR 2:020			Amended	2662	
Repealed		4-6-95	401 KAR 51:100	2712	
301 KAR 2:049			401 KAR 51:110	2713	
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Amended	2651		401 KAR 51:140	2721	
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301 KAR 2:140			401 KAR 57:019	2039	
Amended	1690		Amended	2584	
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301 KAR 2:142			Amended	1446	
Amended	1692		401 KAR 60:005	2042	
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301 KAR 2:144			401 KAR 61:001		
Amended	1693		Amended	1450	
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301 KAR 2:172			Amended	1454	
Amended	2653		401 KAR 63:002	2046	
301 KAR 2:174			Amended	2591	
Amended	2655		401 KAR 63:021		
301 KAR 2:178			Amended	603	1-19-99
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Amended	2661		401 KAR 63:105	1483	
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301 KAR 2:223			401 KAR 68:048	1750	
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301 KAR 2:225			401 KAR 68:065	1751	
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301 KAR 2:251			Amended	2405	
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Amended	600		401 KAR 68:150	1756	
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Amended	1912		Amended	2669	
Withdrawn		4-12-99	501 KAR 6:060		
415 KAR 1:090			Amended	2670	
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415 KAR 1:100			501 KAR 6:110		
Amended	1112		Amended	126	10-12-98
415 KAR 1:110			Amended	2438	
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Amended	1919		Amended	2672	
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415 KAR 1:114			Amended	1948	
Amended	1119		Amended	2440	4-14-99
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415 KAR 1:120			501 KAR 6:190	2054	
Amended	1122		501 KAR 6:200	2057	
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Amended	1128		501 KAR 6:999		
415 KAR 1:135	1274		Amended	1463	2-18-99
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500 KAR 11:001			Repealed	490	10-12-98
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500 KAR 11:040			As Amended	1871	2-18-99
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500 KAR 11:050			Amended	1951	
Recodified as 820 KAR 1:050		2-23-99	Withdrawn		4-12-99
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501 KAR 1:030			As Amended	1872	2-18-99
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600 KAR 6:060			702 KAR 7:065		
As Amended	837	10-6-98	Amended	127	
600 KAR 6:065	2067		As Amended	1046	11-5-98
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As Amended	2560		Amended	1137	
600 KAR 6:070			As Amended	1597	1-19-99
Amended	1954		703 KAR 4:021	2240	
Amended	2413		703 KAR 5:010	1281	1-19-99
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Amended	350		Amended	2602	
As Amended	839	10-6-98	703 KAR 5:050	2242	
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Amended	2190		Amended	2603	
As Amended	2565		703 KAR 5:070	2731	
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Amended	2194		Amended	1141	1-19-99
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Amended	418		Amended	2200	
Amended	871		704 KAR 3:420	2244	
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Amended	420		Amended	1143	1-19-99
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Amended	352		As Amended	2569	
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601 KAR 9:135			Amended	2205	
Amended	425		704 KAR 20:305		
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603 KAR 4:050	1765		Amended	129	9-3-98
Amended	2419		704 KAR 20:700		
As Amended	2568		Amended	910	
603 KAR 4:055	1767		As Amended	1357	12-3-98
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603 KAR 7:080	1492		Amended	619	
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Amended	1149	1-19-99	Amended	1158	1-19-99
735 KAR 2:010	951		Amended	2447	
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735 KAR 2:020	953		Amended	2448	
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735 KAR 2:030	954		Amended	1159	1-19-99
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735 KAR 2:040	955		Amended	1161	1-19-99
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735 KAR 2:060	958	1-19-99	Amended	2451	
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Amended	1959		Amended	2457	
As Amended	2369	4-5-99	803 KAR 2:403		
750 KAR 2:010			Amended	1168	1-19-99
Amended	912		Amended	2458	
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772 KAR 1:040	142	9-3-98	Amended	1173	1-19-99
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781 KAR 1:070			Amended	1667	
Amended	913		As Amended	1879	2-18-99
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Amended	133		As Amended	1362	11-18-98
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782 KAR 1:040			Amended	1180	
Amended	136		As Amended	1883	2-18-99
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Amended	2673		As Amended	2371	4-14-99
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802 KAR 1:010			Amended	1467	
Amended	434		Withdrawn		3-3-99
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Repealed	1048	11-20-98	Amended	1187	2-18-99
806 KAR 9:241	492		815 KAR 35:015		
As Amended	1048	11-20-98	Amended	1193	2-18-99
806 KAR 14:130	1496		815 KAR 45:025		
Withdrawn		2-1-99	Amended	1196	
806 KAR 15:040	1772		As Amended	1603	1-8-99
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806 KAR 17:140			Amended	1197	
Repealed by 806-17:141E		4-15-98	As Amended	1604	1-8-99
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806 KAR 17:160	960		As Amended	1606	1-8-99
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As Amended	2156	3-19-99	As Amended	1608	1-8-99
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