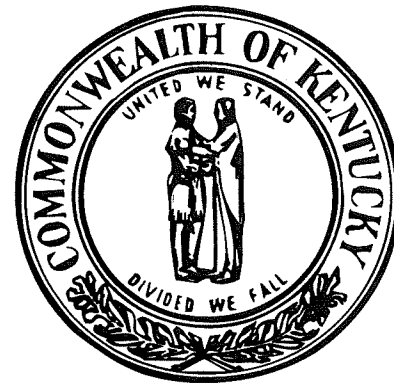


# ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION  
Frankfort, Kentucky

VOLUME 26, NUMBER 3  
WEDNESDAY, SEPTEMBER 1, 1999

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#### **MEETING NOTICE**

The Administrative Regulation Review Subcommittee is **tentatively** scheduled to meet on September 14, 1999, at 10:30 a.m. in Room 149 of the Capitol Annex. See **tentative agenda** on pages 517-520 of this Administrative Register.

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

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

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

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

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

(ISSN 0096-1493)

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

POSTMASTER: Send address changes to Administrative Register of Kentucky, Room 64, State Capitol, Frankfort, Kentucky 40601.

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**VOLUME 26, NUMBER 3 – SEPTEMBER 1, 1999**

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
TENTATIVE AGENDA – September 14, 1999 at 10:30 a.m. in Room 149, Capitol Annex**

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY**

**Kentucky Educational Savings Plan Trust**

11 KAR 12:020. General rules for investments and fund transfers. (Amended After Hearing)

**GENERAL GOVERNMENT CABINET  
Kentucky State Treasurer**

**State Treasury**

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

**DEPARTMENT OF STATE  
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**Reports and Forms**

32 KAR 1:180. Twenty-four (24) hour gubernatorial slate reporting.

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**Classified**

101 KAR 2:160. Kentucky Employee Assistance Program (KEAP).

**Unclassified**

101 KAR 3:050. Unclassified service; promotion, transfer and disciplinary actions.

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**Sales and Use Tax; General Exemptions**

103 KAR 30:091. Sales to farmers.  
103 KAR 30:096. Repeal of 103 KAR 30:095.

**DEPARTMENT FOR LOCAL GOVERNMENT  
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**Training Incentives**

109 KAR 2:020 & E. Training incentive.

**County Budget**

109 KAR 15:020 & E. State Local Finance Officer Policy Manual.

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

**Travel Expense and Reimbursement**

200 KAR 2:006E. Employees' reimbursement for travel.

**Office of the Secretary**

**Purchasing**

200 KAR 5:340. Process for evaluating information for use in determining whether to approve privatization of a government service. (Deferred from June)

**State Investment Commission**

200 KAR 14:011. Qualified investments.  
200 KAR 14:081. Repurchase agreement.  
200 KAR 14:091. Guidelines for money market instruments.

**BOARDS**

**Board of Pharmacy (Deferred from July)**

201 KAR 2:010. Schools approved by the board.  
201 KAR 2:020E. Examinations.  
201 KAR 2:095. Dispensing responsibilities.

**Board of Medical Licensure**

201 KAR 9:175. Physician assistants; certification and supervision. (Deferred from June)  
201 KAR 9:310. Continuing medical education. (Deferred from June)

**Kentucky Board of Veterinary Examiners**

201 KAR 16:015. Fees  
201 KAR 16:080. Certified animal control agencies.  
201 KAR 16:090. Certification as an animal euthanasia specialist.

**Board of Registration for Professional Engineers and Land Surveyors (Deferred from July)**

201 KAR 18:010. Classes of applicants and licensure requirements.  
201 KAR 18:050. Branches of professional engineering for testing.  
201 KAR 18:071. Repeal of 201 KAR 18:070.  
201 KAR 18:080. Licensing certificates and cards.  
201 KAR 18:091. Repeal of 201 KAR 18:090.  
201 KAR 18:100. Seals.  
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201 KAR 18:120. Reissuance of license certificate.

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**Kentucky Board of Social Work** (Deferred from August)

201 KAR 23:075. Continuing education.

**Board of Certification of Marriage and Family Therapists**

201 KAR 32:010. Definitions. (Deferred from August)

201 KAR 32:020. Equivalent course of study.

201 KAR 32:025. Marriage and family therapist associate.

201 KAR 32:041. Coursework in psychopathology.

201 KAR 32:045. Examination. (Deferred from August)

201 KAR 32:050. Code of ethics. (Deferred from August)

201 KAR 32:060. Continuing education requirements.

**Board of Certification for Professional Counselors**

201 KAR 36:060. Qualifying experience under supervision. (Deferred from August)

**KENTUCKY LOTTERY CORPORATION**

**Corporation**

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**Department of Fish and Wildlife Resources**

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**Department for Environmental Protection**

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**Petroleum Storage Tank Environmental Assurance Fund**

415 KAR 1:080 & E. Claims procedures.

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

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**Department of Corrections**

**Division of Local Facilities**

**Jail Standards for Full-Service Facilities** (Deferred from August)

501 KAR 3:010. Definitions.

501 KAR 3:040. Personnel.

501 KAR 3:060. Security; control.

501 KAR 3:070. Safety; emergency procedures.

501 KAR 3:110. Classification.

501 KAR 3:120. Admission; release.

501 KAR 3:140. Inmate rights.

**Restricted Custody Center** (Deferred from August)

501 KAR 7:010. Definitions.

501 KAR 7:020. Administration; management.

501 KAR 7:040. Personnel.

501 KAR 7:050. Physical plant.

501 KAR 7:060. Security; control.

501 KAR 7:080. Sanitation; hygiene.

501 KAR 7:120. Admission; release.

501 KAR 7:140. Inmate rights.

**Direct Supervision for Full-Service Jails** (Deferred from August)

501 KAR 10:010. Definitions.

501 KAR 10:040. Personnel.

501 KAR 10:060. Security; control.

501 KAR 10:070. Safety; emergency procedures.

501 KAR 10:110. Classification.

501 KAR 10:120. Admission; release.

501 KAR 10:140. Inmate rights.

**Department of State Police**

**Sex Offender Registration System**

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

**EDUCATION PROFESSIONAL STANDARDS BOARD**

**Board**

704 KAR 20:011. Repeal of 704 KAR 20:065, 704 KAR 20:085, 704 KAR 20:090, 704 KAR 20:110, 704 KAR 20:150, 704 KAR 20:240,



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704 KAR 20:021. Planned Fifth-year Program.  
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### **EDUCATION, ARTS AND HUMANITIES CABINET Department for Libraries and Archives Division of Public Records**

#### **Archives**

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### **KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM**

#### **Board of Regents**

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### **CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance**

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787 KAR 1:201. Repeal of 787 KAR 1:200.

### **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 (Deferred from August)**

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803 KAR 2:414E. Motor vehicles, mechanized equipment, and marine operations.  
803 KAR 2:500E. Maritime employment.

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

#### **Miner Training, Education and Certification (Deferred from August)**

805 KAR 7:010. Miner training, education and certification.  
805 KAR 7:020. Training and certification of inexperienced miners.  
805 KAR 7:030. Annual retraining.  
805 KAR 7:040. Training of newly employed miners.  
805 KAR 7:050. Training of miners for new work assignments.  
805 KAR 7:060. Program approval.  
805 KAR 7:070. Record maintenance.  
805 KAR 7:090. Hazard training.

#### **Department of Insurance**

#### **Agents, Consultants, Solicitors and Adjusters**

806 KAR 9:190. Disclosure requirements for financial institution authorized to engage in insurance agency activities.

#### **Health Insurance Contracts**

806 KAR 17:066 & E. Medicare supplement insurance policies.  
806 KAR 17:205E. High-cost condition codes and severity questionnaire.

#### **Department of Charitable Gaming**

#### **Charitable Gaming**

820 KAR 1:001. Definitions for 820 KAR Chapter 1. (Deferred from August)  
820 KAR 1:010. Temporary licensure. (Deferred from August)  
820 KAR 1:015. Permanent licensure. (Deferred from August)  
820 KAR 1:025. Quarterly reports of a licensed charitable organization. (Deferred from August)  
820 KAR 1:030. Charity game ticket standards. (Amended After Hearing)  
820 KAR 1:040. Bingo standards. (Amended After Hearing)  
820 KAR 1:070. Exempt activities. (Deferred from August)  
820 KAR 1:081. Repeal of 820 KAR 1:080. Charity fundraising event. (Deferred from August)

### **CABINET FOR HEALTH SERVICES**

#### **Certificate of Need**

900 KAR 6:050 (& E). Certificate of need administrative regulation.

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### **Department for Public Health**

#### **State Health Plan**

902 KAR 17:041. State health plan for facilities and services.

#### **Health Services and Facilities**

902 KAR 20:160. Chemical dependency treatment services and facility specifications. (Deferred from July)

902 KAR 20:221. Repeal of 902 KAR 20:220.

902 KAR 20:240. Comprehensive physical rehabilitation hospital services. (Deferred from July)

902 KAR 20:275. Mobile health services.

### **Department for Medicaid Services**

#### **Medicaid Services**

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

907 KAR 1:011E. Technical eligibility requirements.

907 KAR 1:019. Pharmacy services. (Amended After Hearing) (Deferred from February)

907 KAR 1:021. Amounts payable for drugs. (Amended After Hearing) (Deferred from February)

907 KAR 1:155E. Payments for supports for community living services for individuals with mental retardation or developmental disabilities.

907 KAR 1:640E. Income standards for Medicaid.

#### **Kentucky Children's Health Insurance Program**

907 KAR 4:020E. Kentucky Children's Health Insurance Program Title XXI of the Social Security Act.

### **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) (Deferred from May 1998)

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 1998)

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 1998)

### **CABINET FOR FAMILIES AND CHILDREN**

#### **Department for Community Based Services**

#### **Division of Policy Development**

#### **Family Support**

#### **Child Support**

921 KAR 1:020. Child Support Program; confidentiality, program administration contracts, and agreements. (Amended After Hearing)

921 KAR 1:410. Child support collection and distribution. (Deferred from August)

#### **Food Stamp Program**

921 KAR 3:050. Claims and additional administrative provisions. (Deferred from August)

#### **Protection and Permanency**

#### **Day Care**

922 KAR 2:160. Child day care assistance program. (Amended After Hearing)

**VOLUME 26, NUMBER 3 – SEPTEMBER 1, 1999**  
**ADMINISTRATIVE REGULATION REVIEW PROCEDURE**  
**(See KRS Chapter 13A for specific provisions)**

**Notice of Intent**

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

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

**Filing and Publication**

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

**Public Hearing**

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

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

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

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

**Review Procedure**

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

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**NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS  
RECEIVED AS OF NOON, AUGUST 13, 1999**

**FINANCE AND ADMINISTRATION CABINET  
Division of Occupations and Professions**

August 13, 1999

- (1) **20 KAR 7:015**. Fees.
- (2) The Board for Specialist in Hearing Instruments 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 September 27, 1999 at 10 p.m., EST, at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to September 27, 1999 the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should file their written request with the director at the following address: Ms. Nancy Black, Director, Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Phone: (502) 564-3296, Fax: (502) 564-4818.
- (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 Nancy Black at Divisions of Occupations and Professions at the address above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to fees is KRS 334.050, 334.080, 334.090, 334.110, 334.150 and KRS Chapter 13A.
- (b) The administrative regulation the Board for Specialist in Hearing Instruments intends to promulgate will amend 201 KAR 7:015, Fees. The regulation sets the fees which must be paid in connection with the application licensure.
- (c) The necessity and function of the proposed amendment to the administrative regulation is to increase the examination fee for the National Institute for Hearing Instrument Studies Examination from \$35 to \$45 for tests administered prior to December 15, 1999, and to \$95 for tests administered after December 15, 1999 to reimburse the Board for Specialist in Hearing Instruments its cost to provide and administer that examination to its applicants.
- (d) The benefit expected from this administrative regulation is it will provide the necessary funding for the Board for Specialist in Hearing Instruments to administer examinations to its applicants and meet its statutory mandate.
- (e) The regulation will be implemented by the Board for Specialist in Hearing Instruments. The implementing body will merely adhere to the provisions as outlined in the regulation.

**CABINET FOR ECONOMIC DEVELOPMENT**

August 10, 1999

- (1) **306 KAR 1:010**, Definitions.
- (2) The Cabinet for Economic Development intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral or written comments on the proposed administrative regulation has been scheduled for September 21, 1999, at 10 a.m. (Eastern Standard Time), at the Capital Plaza Tower, 500 Mero Street, first floor, Room G-1, 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 1 person representing an administrative body or association, agrees, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to September 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: Phyllis Bruning, Director, Kentucky Enterprise Zone Program, Cabinet for Economic Development, Capital Plaza Tower, 24th Floor, Frankfort, Kentucky 40601, (502) 564-7670, fax (502) 564-7697.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Cabinet for Economic Development 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 154.45-070(1).
- (b) The administrative regulation that the Cabinet for Economic Development intends to promulgate will amend 306 KAR 1:010, Definitions. It will amend some current definitions and include new definitions relating to the program.
- (c) The necessity and function of the proposed administrative regulation is as follows: To establish definitions that will apply to this chapter.
- (d) The benefits expected from this administrative regulation are: The establishment of definitions relating to the operation of the Kentucky

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Enterprise Zone Program.

(e) The administrative regulation will be implemented as follows: The staff of the Kentucky Enterprise Zone Authority will implement the administrative regulation.

August 10, 1999

(1) **306 KAR 1:020**, Application process.

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

(3) A public hearing to receive oral or written comments on the proposed administrative regulation has been scheduled for September 21, 1999, at 10 a.m. (Eastern Standard Time), at the Capital Plaza Tower, 500 Mero Street, first floor, Room G-1, 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 1 person representing an administrative body or association, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to September 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: Phyllis Bruning, Director, Kentucky Enterprise Zone Program, Cabinet for Economic Development, Capital Plaza Tower, 24th Floor, Frankfort, Kentucky 40601, (502) 564-7670, fax (502) 564-7697.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Cabinet for Economic Development 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 154.45-070(1).

(b) The administrative regulation that the Cabinet for Economic Development intends to promulgate will amend 306 KAR 1:020, Application process. It will add language regarding the process and forms for application for a new or existing business applying to be certified as a qualified enterprise zone business.

(c) The necessity and function of the proposed administrative regulation is as follows: To establish the conditions for which an application for certification as a qualified business shall be submitted. This administrative regulation also incorporates the application forms that be completed and submitted to the Kentucky Enterprise Zone Authority.

(d) The benefits expected from this administrative regulation are: The benefits expected from the administrative regulation are to establish procedures for submitting an application to be certified as a qualified business. The administrative regulation will provide notice to applicants of the procedures.

(e) The administrative regulation will be implemented as follows: The staff of the Kentucky Enterprise Zone Authority will implement the administrative regulation.

August 10, 1999

(1) **306 KAR 1:030**, Eligibility requirements.

(2) The Cabinet for Economic Development intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral or written comments on the proposed administrative regulation has been scheduled for September 21, 1999, at 10 a.m. (Eastern Standard Time), at the Capital Plaza Tower, 500 Mero Street, first floor Room G-1, 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 1 person representing an administrative body or association, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to September 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: Phyllis Bruning, Director, Kentucky Enterprise Zone Program, Cabinet for Economic Development, Capital Plaza Tower, 24th Floor, Frankfort, Kentucky 40601, (502) 564-7670, fax (502) 564-7697.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Cabinet for Economic Development 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 154.45-070(1).

(b) The administrative regulation that the Cabinet for Economic Development intends to promulgate will amend 306 KAR 1:030, Eligibility requirements. It will include additional criteria for determining the eligibility requirements for designation and/or expansion of an enterprise zone.

(c) The necessity and function of the proposed administrative regulation is as follows: To establish the eligibility criteria of an area for designation as an enterprise zone.

(d) The benefits expected from this administrative regulation are: The establishment of specific criteria relating to the designation of an area as an enterprise zone.

(e) The administrative regulation will be implemented as follows: The staff of the Kentucky Enterprise Zone Authority will implement the administrative regulation.

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August 10, 1999

- (1) **306 KAR 1:040**, Qualification.
- (2) The Cabinet for Economic Development intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral or written comments on the proposed administrative regulation has been scheduled for September 21, 1999, at 10 a.m. (Eastern Standard Time), at the Capital Plaza Tower, 500 Mero Street, first floor, Room G-1, 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 1 person representing an administrative body or association, agrees, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to September 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: Phyllis Bruning, Director, Kentucky Enterprise Zone Program, Cabinet for Economic Development, Capital Plaza Tower, 24th Floor, Frankfort, Kentucky 40601, (502) 564-7670, fax (502) 564-7697.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Cabinet for Economic Development 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 154.45-070(1).
  - (b) The administrative regulation that the Cabinet for Economic Development intends to promulgate will amend 306 KAR 1:040, Qualifications. It will delete the language about fulfillment of the contract and add language about other qualifications relating to the program.
  - (c) THE necessity and function of the proposed administrative regulation is as follows: To establish specific qualifications for a business to be certified as a qualified business.
  - (d) The benefits expected from this administrative regulation are: The establishment of qualification criteria for a qualified business.
  - (e) The administrative regulation will be implemented as follows: The staff of the Kentucky Enterprise Zone Authority will implement the administrative regulation.

August 10, 1999

- (1) **306 KAR 1:045**, Monitoring.
- (2) The Cabinet for Economic Development intends to promulgate the administrative regulation cited above.
- (3) A public hearing to receive oral or written comments on the proposed administrative regulation has been scheduled for September 21, 1999, at 10 a.m. (Eastern Standard Time), at the Capital Plaza Tower, 500 Mero Street, first floor, Room G-1, 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 1 person representing an administrative body or association, agrees, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to September 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: Phyllis Bruning, Director, Kentucky Enterprise Zone Program, Cabinet for Economic Development, Capital Plaza Tower, 24th Floor, Frankfort, Kentucky 40601, (502) 564-7670, fax (502) 564-7697.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Cabinet for Economic Development 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 154.45-070(1).
  - (b) The administrative regulation that the Cabinet for Economic Development intends to promulgate will not amend an existing administrative regulation. It will explain the process for monitoring a qualified enterprise zone business to insure compliance with the criteria set forth in the statutes and regulations.
  - (c) The necessity and function of the proposed administrative regulation is as follows: To establish the monitoring criteria for a qualified business.
  - (d) The benefits expected from this administrative regulation are: The establishment of monitoring criteria for a qualified business to insure compliance with the statutes and this administrative regulation.
  - (e) The administrative regulation will be implemented as follows: The staff of the Kentucky Enterprise Zone Authority will implement the administrative regulation.

August 10, 1999

- (1) **306 KAR 1:070**, Duties of the authority.
- (2) The Cabinet for Economic Development intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral or written comments on the proposed administrative regulation has been scheduled for September 21, 1999, at 10 a.m. (Eastern Standard Time), at the Capital Plaza Tower, 500 Mero Street, first floor, Room G-1, Frankfort, Kentucky, 40601.
- (4)(a) The public hearing will be held if:

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1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or 1 person representing an administrative body or association, agrees, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to September 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: Phyllis Bruning, Director, Kentucky Enterprise Zone Program, Cabinet for Economic Development, Capital Plaza Tower, 24th Floor, Frankfort, Kentucky 40601, (502) 564-7670, fax (502) 564-7697.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Cabinet for Economic Development 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 154.45-070(1).
- (b) The administrative regulation that the Cabinet for Economic Development intends to promulgate will amend 306 KAR 1:070, Duties of the authority. It will amend and clarify the duties of the authority.
- (c) The necessity and function of the proposed administrative regulation is as follows: To establish the functions of the authority.
- (d) The benefits expected from this administrative regulation are: The establishment of specific functions of the authority as it relates to the Kentucky Enterprise Zone Program.
- (e) The administrative regulation will be implemented as follows: The staff of the Kentucky Enterprise Zone Authority will implement the administrative regulation.

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

August 12, 1999

- (1) **405 KAR 20:060**, Steep slopes. The subject matter of this administrative regulation is special performance standards and limited variance procedures for operations conducted on steep slopes.
- (2) The Natural Resources and Environmental Protection Cabinet intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 29, 1999 at 10 a.m. (Eastern Time), in Room D-16 (Training Room) of the Department for Surface Mining Reclamation and Enforcement at 2 Hudson Hollow, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if it is requested at least 10 calendar days prior to September 29, 1999, in writing, by 5 persons, or by an administrative body, or by an association having at least 5 members; provided that a minimum of 5 persons, or 1 person representing an administrative body or association, agree to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) calendar days prior to September 29, 1999, the public hearing will be canceled.
- (c) Consideration will be given to all comments received or made prior to the adjournment of the public hearing, or prior to the cancellation of the public hearing. Written comments may be submitted to the address listed in (5)(a) below.
- (d) The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the public hearing, should be made to the contact person listed in (5)(a) below at least 10 calendar days prior to the public hearing.
- (5)(a) Persons wishing to request a public hearing should mail or FAX this information to Jim Villines, Department for Surface Mining, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321. The FAX number is (502) 564-5698. The phone number is (502) 564-6940, extension 436.
- (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 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 Surface Mining at the following address: Teri Welch, Department for Surface Mining, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321. Telephone (502) 564-6940, extension 417.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of this administrative regulation is KRS 350.028, 350.093, 350.100, 350.445, 350.450, 350.465, 30 CFR Parts 730-733, 735, 785.16, 917, 30 USC 1253, 1255, 1257, 1258, 1265(d), (e).
- (b) The administrative regulation that the Department for Surface Mining intends to promulgate will amend an existing regulation. The proposed administrative regulation will amend 405 KAR 20:060, Section 3(3) regarding the criteria for obtaining a variance from the requirement to return a nonmountaintop removal mined area on steep slopes to its approximate original contour.
- (c) The necessity and function of the proposed administrative regulation are as follows: KRS 350.028(1), (5), 350.151(1), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation sets forth special performance standards and limited variance procedures for operations conducted on steep slopes.
- The proposed administrative regulation will differ from the corresponding federal regulation. 30 CFR 785.16(a)(3) includes two criteria that are not now included in this administrative regulation:
1. The total volume of flow from the proposed permit area, during every season of the year, will not vary in a way that adversely affects any existing or planned use of surface or ground water; and
  2. The appropriate state environmental agency approves the plan. The proposed administrative regulation will include the first criterion. However, the second criterion includes language that is indefinite and therefore would not comply with the drafting rules of KRS 13A.222(4)(a). Since the cabinet presumably is the "appropriate state environmental agency" to "approve the plan," the cabinet will either omit the second

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criterion as redundant or will propose alternative language regarding the scope and nature of review and approval.

(d) The expected benefit from this administrative regulation is additional criteria for variances from approximate original contour requirements on steep slopes and consistency with the corresponding federal requirements. The proposed administrative regulation will address the program condition imposed at 30 CFR 917.16(d)(5).

(e) The proposed administrative regulation will be implemented as follows: After this administrative regulation takes effect, additional criteria must be met before the cabinet may approve a variance from approximate original contour for a nonmountaintop removal operation on steep slopes.

### JUSTICE CABINET Department of Corrections

August 12, 1999

(1) **501 KAR 6:030**, Kentucky State Reformatory.

(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 September 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 September 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 6:030, as follows:

1. Public Information and News Media Relations (KSR 01-00-09) shall be amended to conform policy with required LRC language and include the public information officer's responsibility to work in conjunction with the central office spokesperson in releasing information protected by federal or state privacy laws.

2. Entry Authorization for All Cameras and Tape Recorders Brought into the Institution (KSR 01-00-10) shall be amended to conform policy with required LRC language and to include the alternative public information officer on the list of staff who can approve the media access to the institution.

3. Cooperation and Coordination with Oldham County Courts (KSR 01-00-15) shall be amended with minor word changes to clarify the duties and responsibilities of the Internal Affairs Office when working with the Oldham County Courts.

4. Personal Service Contract Personnel (KSR 01-00-19) shall be amended to update the reference section, accurately reflect staff titles and comply with required LRC language.

5. Inmate Master File (KSR 06-00-01) shall be amended to conform policy with required LRC language with minor word changes to better clarify the process.

6. Asbestos Abatement (KSR 07-00-06) shall be amended to update the reference section and standardize some procedures by making appropriate reference to CPP 7.2.

7. Discharge Monitoring Report (DMR)-Waste Water Treatment Plant (KSR 07-00-07) shall be amended to conform with required LRC language with minor word changes to better clarify the process.

8. Control of Hazardous Energy (Lockout or Tagout) (KSR 07-00-08) shall be amended to include the definitions of "energized" and "energy isolating device" with minor word changes to better clarify the process.

9. Inventory Control of Underground Storage Tanks (KSR 07-00-09) shall be amended to change the procedure for inventory of underground fuel storage tanks and set forth the use of a 24 hour monitor at the institutional gas station to detect possible leakage.

10. Correctional Psychiatric Treatment Unit-Inmate Tracking System and Record System (KSR 10-02-07) shall be established to ensure inmates housed in the new mental health unit at the Kentucky State Reformatory are regularly reviewed and classified and that staff maintain accurate records documenting the review, classification, case support, security and treatment of those inmates assigned to the unit.

11. Meal Planning and Procedure (KSR 11-00-01) shall be amended to include the correctional psychiatric treatment unit and the nursing care facility, establish the procedures governing meals for staff, and minor word changes to better clarify the process.

12. Food Service Inspections (KSR 11-00-03) shall be amended to implement the weekly inspection of all food service areas by administrative, medical, or dietary personnel, and detail required training for all food service staff in accident prevention, first aid, use of safety devices, floor care, knife storage and use of fire extinguishers.

13. Dining Room Rules and Dress Code for Inmates (KSR 11-00-04) shall be amended to conform with required LRC language with minor word changes to clarify the policy.

14. Health Standards and Regulations for Food Service Employees (KSR 11-00-06) shall be amended to update the reference section and to make appropriate reference to CPP 13.10.

15. Use of Tobacco Products for Inmates and Staff (KSR 15-00-09) shall be amended to update the reference section and to clarify the use of tobacco products at the institution.

16. On-The-Job Training Program (KSR 19-00-02) shall be amended to update the reference section, include educational program assignments, provide program opportunities for inmates with a disability, and minor word changes to clarify the policy.

17. Safety Inspections of Inmate Work Assignment Locations (KSR 19-00-03) shall be amended to conform policy to required LRC lan-



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guage and make minor word changes to reflect the appropriate name of the locations that shall be inspected.

18. Technical and Adult Basic Level Learning Center Programs (KSR 20-00-01) shall be amended to clarify the application process and ensure nondiscrimination in the application process into academic and technical programs including the procedure for utilizing student record file cards.

19. English as a Second Language (KSR 20-00-06) shall be amended to delete the section pertaining to those non-English speaking inmates who refuse to participate in the program.

(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 State Reformatory 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.

### JUSTICE CABINET Kentucky Law Enforcement Council

August 10, 1999

(1) **503 KAR 1:110**, Basic training: graduation requirements; records.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 21, 1999, at 9 a.m., in Room 314, Funderburk Building, Richmond, Kentucky 40475-3137.

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

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Stephanie C. Bingham, Funderburk Building, Richmond, Kentucky 40475-3137; Phone - (606) 622-5897; FAX- (606) 622-3162.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 15A.160.

(b) The administrative regulation that the Kentucky Law Enforcement Council intends to promulgate will amend 503 KAR 1:110, as follows:

1. Clarify that the regulation is applicable to the Department of Criminal Justice Training basic training course;

2. Implement basic training participation and graduation requirements which are consistent with the 640 hour curriculum, including passing scores, reexamination procedures, absences, after-hours assignments, and physical training requirements for recruits complying with peace officer certification requirements;

3. Include "agency emergency" as an extenuating circumstance when a recruit cannot complete the present basic training course but may be allowed to return at a later date to complete basic training;

4. Limit a recruit's option to complete basic training if his participation in the present course was interrupted by his termination as a police officer, if that termination was a result of disciplinary action taken against him by the Department of Criminal Justice Training.

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

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

2. This administrative regulation codifies procedures approved by the Kentucky Law Enforcement Council as they relate to the Department of Criminal Justice Training basic training graduation requirements and maintenance of records.

(d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to codify necessary basic training requirements to improve and assure the quality of law enforcement services provided to the citizens of the Commonwealth.

(e) This administrative regulation will be implemented as follows: The Department of Criminal Justice Training, law enforcement agencies, and recruits will comply with basic training procedures and standards as established in policy.

August 10, 1999

(1) **503 KAR 5:090**. Participation: requirements; application; withdrawal.

(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 September 21, 1999, at 9 a.m., in room 314, Funderburk Building, Richmond, Kentucky 40475-3137.

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

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Stephanie C. Bingham, Fun-

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derburk Building, Richmond, Kentucky 40475-3137; Phone - (606) 622-5897; FAX - (606) 622-3162.

- (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 15.450(1).
  - (b) The administrative regulation that the Justice Cabinet intends to promulgate will amend 503 KAR 5:090, as follows:
    1. Eliminate the basic training valuation examination as a means to obtain credit for the Kentucky Law Enforcement Foundation Program Fund (KLEFPF) basic training requirement;
    2. Reflect the present Department of Criminal Justice Training 640 hour basic training curriculum;
    3. Include "agency emergency" as an extenuating circumstance when an officer cannot complete KLEFPF training requirements;
    4. Amend the requirements for completion of basic training when an officer has previously completed basic training but has experienced a break in law enforcement service.
  - (c) The necessity and function of the proposed administrative regulation is as follows:
    1. KRS 15.450 authorizes the Secretary of the Justice Cabinet or his designee to promulgate any administrative regulations necessary to administer KLEFPF. KRS 15.330(h) authorizes the Kentucky Law Enforcement Council to monitor KLEFPF as provided in KRS 15.410 to 15.510;
    2. This administrative regulation codifies procedures approved by the Kentucky Law Enforcement Council as they relate to KLEFPF training requirements.
    - (d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to codify KLEFPF training requirements to provide more effective and efficient training to the participating agencies and officers.
    - (e) This administrative regulation will be implemented as follows: The KLEFPF administrator and support staff, and law enforcement agencies and officers participating in KLEFPF will comply with participation procedures and training requirements as established in the regulation.

### EDUCATION, ARTS, AND HUMANITIES CABINET Board of Education

August 9, 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 September 24, 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 September 24, 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 form 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.

August 9, 1999

- (1) **704 KAR 5:051**. Repeal of 704 KAR 5:050, Public school kindergarten programs.
- (2) The Kentucky Board of Education intends to promulgate an administrative regulation repealing an obsolete regulation.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 24, 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.

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(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to September 24, 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 promulgation of an administrative regulation relating to public school kindergarten programs is KRS 156.160.

(b) The administrative regulation that the Kentucky Board of Education intends to promulgate is 704 KAR 5:051.

(c) The necessity, function, and conformity of the proposed administrative regulation is repeal the current regulation, 704 KAR 5:050, Public school kindergarten programs since all information in that regulation is either obsolete or redundant with current legislation or other regulations.

(d) The benefits expected from the administrative regulation are clearer, simplified procedures.

(e) The administrative regulation will be implemented as follows: Information about the obsolete regulation will be distributed to each local school district, with relevant current information from existing legislation and regulation provided.

### EDUCATION PROFESSIONAL STANDARDS BOARD

August 1999

(1) **704 KAR 20:300.** Adjunct instructor certificate.

(2) The Education Professional Standards 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 September 23, 1999, at 10 a.m. in the Local District Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

1. It is requested, in writing, by at least 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 September 23, 1999, the hearing will be canceled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the establishing of standards and requirements for obtaining and maintaining a teaching certificate is KRS 161.028 and 161.030. The authority to promulgate administrative regulations regarding the requirements for an adjunct instructor certificate is KRS 161.046.

(b) The administrative regulation that the Education Professional Standards Board intends to amend is 704 KAR 20:300, Adjunct instructor certificate. The amendment will delete sections which have been superseded by statute and further define requirements for this certificate including education and experience levels, as well as district employment practices for individuals possessing this certificate.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030 grants the Education Professional Standards Board certification authority. KRS 161.046 directs the Education Professional Standards Board to establish eligibility requirements for adjunct instructors.

(d) The benefits expected from administrative regulation are: This amendment will clarify who can receive an adjunct instructor certificate and under what terms a district may hire such an individual. These clarifications will assist the local districts in recruiting individuals with special expertise for part-time employment as an adjunct instructor.

(e) The administrative regulation will be implemented as follows: Local districts, teacher training institutions, and private education associations will be notified of the changes, and publications of the Education Professional Standards Board and the Office of Teacher Education and Certification will be updated to reflect the changes.

August 1999

(1) **704 KAR 20:475.** Probationary certificate for teachers of technology education.

(2) The Education Professional Standards 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 September 23, 1999, at 10 a.m. in the Local District Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

1. It is requested, in writing, by at least 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 September 23, 1999, the hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Dr. Susan Leib, Education

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Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606, fax (502) 573-1610.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the establishing of standards and requirements for obtaining and maintaining a teaching certificate is KRS 161.028 and 161.030.

(b) The administrative regulation that the Education Professional Standards Board intends to amend is 704 KAR 20:475, Probationary certificate for teachers of technology education. The amendment will decrease the number of continuing education hours a certificate holder must complete per year, amend orientation requirements, add the possible of a waiver from the student teaching requirement, and require that the appropriate assessments be successfully completed before issuance of the professional certificate.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030 grants the Education Professional Standards Board certification authority.

(d) The benefits expected from administrative regulation are: Amending the requirements will allow more individuals to successfully complete the program while maintaining high standards for technology teachers.

(e) The administrative regulation will be implemented as follows: Local districts, teacher training institutions, and private education associations will be notified of the changes, and publications of the Education Professional Standards Board and the Office of Teacher Education and Certification will be updated to reflect the changes.

### August 1999

(1) **704 KAR 20:590.** Alternative training program eligibility requirements for middle grade and secondary classroom teachers.

(2) The Education Professional Standards 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 September 23, 1999, at 10 a.m. in the Local District Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

1. It is requested, in writing, by at least 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 September 23, 1999, the hearing will be canceled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the establishing of standards and requirements for obtaining and maintaining a teaching certificate is KRS 161.028 and 161.030. KRS 161.048 directs the Education Professional Standards Board to set requirements for and approve local district training programs.

(b) The administrative regulation that the Education Professional Standards Board intends to amend is 704 KAR 20:590, Alternative training program eligibility requirements for middle grade and secondary classroom teachers. The amendment will delete the "core battery" tests from the entrance requirements and delete reference to eligibility requirements superseded by statute.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030 grants the Education Professional Standards Board certification authority. KRS 161.048 requires the Education Professional Standards Board establish eligibility requirements and approve local district training programs.

(d) The benefits expected from administrative regulation are: This amendment will further streamline and bring into conformity the various alternative certification options.

(e) The administrative regulation will be implemented as follows: Local districts, teacher training institutions, and private education associations will be notified of the changes, and publications of the Education Professional Standards Board and the Office of Teacher Education and Certification will be updated to reflect the changes.

### August 1999

(1) **704 KAR 20:610.** Kentucky Primary Alternative Certification Program.

(2) The Education Professional Standards 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 September 23, 1999, at 10 a.m. in the Local District Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

1. It is requested, in writing, by at least 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 September 23, 1999, the hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the establishing of standards and requirements for obtaining and maintaining a teaching certificate is KRS 161.028 and 161.030. KRS 161.048 directs the Education Professional Standards Board to set requirements for and approve local district training programs.

(b) The administrative regulation that the Education Professional Standards Board intends to amend is 704 KAR 20:610, Kentucky Primary Alternative Certification Program. The amendment will delete the "core battery" tests from the entrance requirements, delete reference to eligibility requirements superseded by statute, and update program requirements in relation to the New Teacher Standards adopted by the Education Professional Standards Board.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030 grants the Education Professional Standards Board certification authority. KRS 161.048 requires the Education Professional Standards Board establish eligibility requirements and approve local district training programs.

(d) The benefits expected from administrative regulation are: This amendment will further streamline and bring into conformity the various alternative certification options.

(e) The administrative regulation will be implemented as follows: Local districts, teacher training institutions, and private education associations will be notified of the changes, and publications of the Education Professional Standards Board and the Office of Teacher Education and Certification will be updated to reflect the changes.

August 1999

(1) **704 KAR 20:690. Kentucky Teacher Internship Program.**

(2) The Education Professional Standards 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 September 23, 1999, at 10 a.m. in the Local District Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

1. It is requested, in writing, by at least 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 September 23, 1999, the hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the establishing of standards and requirements for obtaining and maintaining a teaching certificate is KRS 161.028 and KRS 161.030. KRS 161.030 directs the Education Professional Standards Board in the development and oversight of the teacher internship program.

(b) The administrative regulation that the Education Professional Standards Board intends to amend is 704 KAR 20:690, Kentucky Teacher Internship Program. The amendment will clarify procedures for judging the evaluation and successful completion of the internship, create an appeals process, add reporting deadlines, define "half-time basis" and "instructional day", detail resource teacher responsibilities and conditions for compensation, set a policy for resignation from the internship, and clarify language of disputed sections regarding the timing of committee meetings and failure of the internship.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030 establishes the teacher internship program.

(d) The benefits expected from administrative regulation are: This amendment will more clearly define the internship program and direct its participants in its successful completion.

(e) The administrative regulation will be implemented as follows: Local districts, teacher training institutions, and private education associations will be notified of the changes, and publications of the Education Professional Standards Board and the Office of Teacher Education and Certification will be updated to reflect the changes.

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

August 13, 1999

(1) **815 KAR 20:020; Parts or materials list.**

(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, September 21, 1999, in the Department's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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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 September 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: 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 318.130.

(b) The department intends to amend Section 5 of this administrative regulation by including a new product approved by the State Plumbing Code Committee, i.e., Plastic Productions PVCX "Quick Stub" approved as a solvent weld transition between tubular PVC and schedule 40 PVC.

(c) The necessity and function of the proposed administrative regulation is as follows: The function of this administrative regulation is to allow the department to promptly permit the use of new parts or materials.

(d) The benefits expected from this administrative regulation are: To allow the use of newly approved products.

(e) This administrative regulation will be implemented by state plumbing inspectors.

July 1999

(1) **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, September 21, 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 September 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: 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 not to penalize the electrical inspectors 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: Assure that the health department requirements for subsurface sewage disposal systems are met while allowing electrical inspections to be made.

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

### CABINET FOR HEALTH SERVICES Department for Medicaid Services

August 15, 1999

(1) **907 KAR 1:013.** Payments for inpatient hospital services.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1999 at 9 a.m., in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.

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

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or 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 September 30, 1999, the public hearing will be canceled.

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(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kevin Devlin, 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 inpatient hospital services are KRS 194A.030, 194A.050 and 205.640.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will comply with provisions of 42 USC 1396r-4 to adjust the hospital annual reimbursement methodology and intensity operating allowance payments and the provisions of HB 785 of the 1998 GA, to clarify the method by which outpatient costs for a hospital are determined, and to make minor policy clarifications.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the method for determining the amount payable by the Medicaid Program for a hospital inpatient service.

(d) The benefits expected from administrative regulation are: Compliance with provisions of 42 USC 1396r-4 to amend the acute care and rehabilitation hospital annual reimbursement methodology and intensity operating allowance payments and comply with the provisions of HB 785 of the 1998 GA, removal of obsolete policy regarding nondisproportionate share hospitals, and clarification of the method by which outpatient costs for a hospital are determined.

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

August 15, 1999

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

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1999 at 9 a.m., in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.

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

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or 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 September 30, 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: Kevin Devlin, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:025 to:

1. Incorporate:

- (a) The \$534,600,000 budget cap for state fiscal year 2000; and
- (b) Establish a methodology for setting, monitoring, and adjusting payment rates;
2. Revise ventilator payment provisions to comply with a Franklin County Circuit Court order;
3. Revise distinct part requirement, 20 bed nursing facility unit, 15 bed census requirements for payments purposes for ventilator rate;
4. Revise the requirements for the Preadmission Screening and Resident Review (PASRR) Program;
5. Establish an extenuating circumstance pool and eligibility criteria to provide an add-on to the calculated rate;
6. Amend the schedule-J capital cost instructions. This amendment is necessary to implement the use of the RS Means Construction Index that is required to calculate the capital cost add-on July 1, 1999 rate setting; and
7. Ensure that there is no conflicting information between the regulation and the manual.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for nursing facility services and intermediate care facility for the mentally retarded services.

(d) The benefits expected from administrative regulation are:

1. Ensure that a nursing facility does not incur a nonrecoupable extraordinary loss due to an event outside the usual and ordinary course of business; and



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2. Ensure that the extraordinary loss affects the facility as a whole.
3. Medicaid eligibles will benefit by being provided access to and payments for additional facility sites offering ventilator services.
4. Ensure the nursing facilities receive the funding that is necessary to maintain safe buildings.
- (e) The administrative regulation will be implemented as follows: By the Division of Long Term Care, Department for Medicaid Services, Cabinet for Health Services.

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

August 15, 1999

- (1) **922 KAR 1:100**, Agency adoptions.
- (2) Cabinet for Families and Children, Department for Community-Based Services, intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 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 1 person representing the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 calendar days prior to September 30, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Judy H. Trigg, Regulation Coordinator, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4<sup>th</sup> Floor West, Frankfort, Kentucky 40621, Phone (502) 564-7900, (502) 564-7573 (fax).
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Community Based Services, Division of Policy Development, Third Floor West, CHR Building, 275 East Main, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children's regulations may call toll free 1-800-372-2973 (V/TTY).
- (7) Information relating to the proposed new administrative regulation.
  - (a) The statutory authority for the promulgation of an administrative regulation relating to agency adoption is KRS 194B.050(1) and 199.472.
  - (b) The administrative regulation that the Department for Community-Based Services intends to promulgate is a new administrative regulation that will establish procedures to follow when Cabinet for Families and Children staff:
    1. Recruit adoptive families for children for whom the cabinet has wardship;
    2. Consider out-of-state adoptive placement;
    3. Prepare adoptive families for placement of children;
    4. Prepare children for adoptive placement by the cabinet;
    5. Secure and supervise adoptive placement;
    6. Provide post-placement services;
    7. Secure alternative placement when disruption occurs;
    8. Maintain confidentiality of adoption records;
    9. Release information requested from adoption records; and
    10. Implement changes or new policies recommended by various taskforces regarding the adoption of children awaiting placement by the cabinet.
  - (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The agency adoptions administrative regulation is required by KRS 199.472. This administrative regulation will set forth procedures Cabinet for Families and Children staff shall follow from the initial planning stage of adoptive placement through finalization.
  - (d) The benefit expected from this administrative regulation is: Establish criteria for the adoption of children placed by the Cabinet for Families and Children.
  - (e) The administrative regulation will be implemented as follows: By the Department for Community-Based Services, Cabinet for Families and Children.

August 15, 1999

- (1) **922 KAR 2:090**, Child care facility licensure.
- (2) Cabinet for Families and Children, Department for Community-Based Services, intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1999 at 9 a.m., in the Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky, 40621.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or 1 person representing the administrative body or an 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 September 30, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Judy Trigg, Cabinet for Families and Children.



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lies and Children, Cabinet Regulation Coordinator, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to child care facility licensure are KRS 194B.050(1), 199.896(2) and (4), and EO 98-731.

(b) The administrative regulation that the Department for Community-Based Services intends to promulgate will amend 922 KAR 2:090, Child care facility licensure, due to the implementation of HB 583 which amends KRS 199.892 - 199.8982. These amendments include:

1. Expanding the requirements for criminal and substantiated abuse records checks;
2. Allowing public access to:
  - a. Information about child care regulatory standards; and
  - b. Records relating to denials, suspensions, and revocations of licenses;
3. Clarifying the processes dealing with provisional licenses;
4. Bringing the fee requirements into compliance with statutory limitations; and
5. Updating the administrative regulation to comply with current KRS Chapter 13A requirements.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 199.896(2) and (4) grants authority to the Cabinet for Families and Children to promulgate administrative regulations and establish standards for the day care of children. This administrative regulation establishes licensure requirements for child day care facilities.

(d) The benefits expected from this amended administrative regulation are: Broader protection for children, improved public access and better quality licensed child care, as passed by the 1998 General Assembly.

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

## EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, AUGUST 13, 1999

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

STATEMENT OF EMERGENCY  
503 KAR 1:110E

This emergency administrative regulation amends the requirements for Department of Criminal Justice Training basic training graduation and maintenance of records, to implement basic training participation and graduation requirements which are consistent with the current 640 hour curriculum, including scoring, reexamination, absences, after-hours assignments, and physical training requirements; and to amend instances when a recruit may return to complete basic training when his participation is interrupted. An ordinary administrative regulation will not suffice since law enforcement training is a necessary and on-going need for officers to comply with peace officer certification requirements and to participate in the Kentucky Law Enforcement Foundation Program Fund. It is essential that officers are properly trained in all aspects of law enforcement so that public safety is safeguarded and the laws of the Commonwealth are appropriately enforced. The Department of Criminal Justice Training basic training course prepares officers in the fundamental and essential job tasks associated with law enforcement. Therefore it is necessary that the associated regulations reflect current training needs for qualified officers. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler on August 10, 1999.

PAUL E. PATTON, Governor  
PAMELA J. MURPHY, Deputy Secretary

JUSTICE CABINET  
Kentucky Law Enforcement Council

503 KAR 1:110E. Department of Criminal Justice Training, basic training: graduation requirements; records.

RELATES TO: KRS 15.330[(1)(e)], 15.386, 15.440(4)  
STATUTORY AUTHORITY: KRS 15A.160  
EFFECTIVE: August 10, 1999

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(e) authorizes the Kentucky Law Enforcement Council to approve law enforcement officers as having met the requirements for completion of law enforcement training. [KRS 15.440(4) requires local units of government participating in the Law Enforcement Foundation Program Fund to require all police officers employed on or after July 1, 1972, to successfully complete at least 400 hours of basic training within one (1) year of the date of employment at a school certified or recognized by the council.] This administrative regulation prescribes requirements for graduation from the Department of Criminal Justice Training [a] basic training course required for peace officer certification and participation in the Kentucky Law Enforcement Foundation Program Fund, and for maintenance of basic training records.

Section 1. Basic Training Graduation Requirements. (1) [A trainee in a basic training course shall participate in a minimum of 400 hours of training:

(2) A trainee may have excused absences from the course with approval of the director of the certified school or his designee. An excused absence from the course which causes a trainee to miss any of the 400 hours of basic training shall be made up through an additional training assignment.

(3) To graduate from the department's basic training course, a recruit shall:

(a) Successfully complete a [basic training course; a trainee must:  
(a) Participate in a] minimum of 640 [400] hours of council-approved training.

(b) Attain a seventy (70) percent overall score [passing overall grade. Fifty (50) percent of the overall grade shall be the grade on the final examination; the other fifty (50) percent shall be the grade] on all graded training areas covered during the course for which a numerical score is assigned. A recruit who does not achieve a seventy (70) percent overall score shall be considered to have failed basic training. [A trainee may not take the final examination until he has passed all such graded training areas. A trainee who, after taking the final examination, does not have a passing overall grade must repeat the entire course.]

(c) Pass all training areas covered during the course for which a pass-or-fail designation is assigned. A recruit who does not pass all pass-or-fail training areas shall be considered to have failed basic training.

(d) Successfully complete all other assignments, exercises, and projects included in the course. After-hours assignments may be required, and shall be successfully completed in order to pass the training area for which they were assigned.

(e) Physical training requirements. A recruit who is required to complete basic training in order to fulfill the peace officer certification provisions as found in KRS 15.380 to 15.402, shall meet the physical training entry and graduation requirements.

1. Physical training entry requirements. Within five (5) days from the first date of the basic training course, the recruit shall successfully complete each of the following events as instructed and evaluated by qualified department instructors:

- a. Sixteen (16) inch vertical jump;
- b. One (1) repetition maximum (RM) bench press equal to sixty-four (64) percent of the recruit's body weight;
- c. Eighteen (18) sit ups in one (1) minute;
- d. 300 meter run in sixty-five (65) seconds;
- e. Twenty (20) push ups;
- f. One and five-tenths (1.5) mile run in seventeen (17) minutes twelve (12) seconds.

2. If a recruit passes all events when participating in the physical training entry test, he shall have met the physical training entry requirements.

3. Retest. If a recruit fails to pass all events when participating in the physical training entry test:

a. He shall retest in the failed events no earlier than forty-eight (48) hours from the date of the entry test. If the retest may not be attempted due to unsuitable weather conditions, the period shall be extended until the conditions are acceptable for completion of the retest, but shall not exceed five (5) days from the date of the entry test.

b. All failed events shall be retested on the same date.  
c. If the recruit passes all previously failed events on the date of the retest, he shall have met the physical training entry requirements.

d. If the recruit does not pass all previously failed events on the date of the retest, he shall be unqualified to participate in the department's basic training course for which he is currently enrolled, and may reapply to participate in a future department basic training course. The recruit shall receive no credit for the part of the basic training course which he has completed.

4. Physical training graduation requirements. Within five (5) days from the final date of the basic training course the recruit shall successfully complete each of the following events as instructed and evaluated by qualified department instructors:

- a. Seventeen (17) inch vertical jump;
- b. One (1) repetition maximum (RM) bench press equal to seventy-three (73) percent of the recruit's body weight;
- c. Eighteen (18) sit ups in one (1) minute;
- d. 300 meter run in sixty-five (65) seconds;
- e. Twenty-five (25) push ups;
- f. One and five-tenths (1.5) mile run in sixteen (16) minutes

fifteen (15) seconds.

2. If a recruit passes all events when participating in the physical training graduation test, he shall have met the physical training graduation requirements.

3. Retest. If a recruit fails to pass all events when participating in the physical training graduation test:

a. He shall retest in the failed events no earlier than forty-eight (48) hours from the date of the graduation test, but not later than the final date of the basic training course.

b. All failed events shall be retested on the same date.

c. If the recruit passes all previously failed events on the date of the retest, he shall have met the physical training graduation requirements.

d. If the recruit does not pass all previously failed events on the date of the retest, he shall be considered to have failed basic training.

(2) A recruit who has failed a basic training course shall be permitted to repeat one (1) basic training course in its entirety during the following twelve (12) months. The recruit or his agency must pay the tuition for the repeated basic training course.

(3) Reexamination.

(a) A recruit shall only be permitted one (1) reexamination in an academic area, and one (1) reexamination in a skills area. Upon failure of any two (2) academic examinations, including a reexamination, a recruit shall be considered to have failed basic training. Upon failure of any two (2) skills examinations, including a reexamination, a recruit shall be considered to have failed basic training.

(b) A recruit who fails a skills or academic examination may be permitted to be reexamined in that area no earlier than twenty-four (24) hours but no later than thirty (30) days after the failure.

(4) Absence. A recruit may have excused absences from the course with approval of the director of the certified school or his designee. An excused absence from the course which causes a recruit to miss any of the 640 hours of basic training shall be made up through an additional training assignment.

(5) Successfully complete all graded training areas covered during the course:

1. Only upon failure of an examination and a reexamination shall a trainee be considered to have failed a training area:

2. Only one (1) reexamination in each graded area shall be permitted and it must be completed in not less than twenty-four (24) hours nor more than thirty (30) days of the failure. However, a trainee who fails a skills graded area examination may be permitted to be reexamined in that area sooner than twenty-four (24) hours upon execution of a written request and waiver. A trainee who has failed a graded training area must arrange with the school to repeat, and must successfully complete, that training area during a later basic training course:

3. A graded training area that is failed must be repeated and passed within 180 days of the initial failure. If the graded training area that is failed is M.A.R.C. (the mechanics of arrest, restraint, and control), the repeating of the training in that area at facilities of the Department of Criminal Justice Training at Richmond, Kentucky, is optional with the trainee's agency head, but in any event the trainee must pass an examination on the failed area consisting of a test and if necessary a retest within 180 days of the initial failure.

4.] In the event of extenuating circumstances beyond the control of the recruit including [trainee such as] injury, illness, [or] personal tragedy, or agency emergency, which occurs during a basic training course which prevents a recruit [trainee] from completing a basic training course, a recruit [trainee] shall complete the unfinished areas within 180 days after the termination of the extenuating circumstances, provided the duration of the extenuating circumstances [or failed graded area within 180 days after return to duty provided the break in service] does not exceed one (1) year. This right to [repeat a failed graded training area or] complete a basic training course [which was caused by injury or illness] shall not be applicable wherein the failure to [pass or] complete is caused by a preexisting physical injury, or an existing or a preexisting physiological condition. This right to [repeat a failed graded area or] complete a basic training course shall be limited to one (1) attempt per calendar year.

[5.-If a trainee fails to successfully pass a repeated graded training area he must repeat the entire basic training course:

(d) Successfully complete all other assignments, exercises, and projects included in the course.]

(6) [(e)] If a recruit's [trainee's] employment as a police officer is terminated [(f) by resignation or dismissal)] while enrolled and prior to completion of a basic training course and later becomes reemployed as a police officer, [or if a trainee because of extenuating circumstances beyond his control (illness, personal injury or personal tragedy)] is unable to complete a basic training course, he shall complete the unfinished [or failed graded] areas within one (1) year after a return to duty or reemployment as an officer, provided, however, the break in employment or duty may not exceed one (1) year. This right to complete basic training shall not be applicable when the termination is a result, directly or indirectly, of disciplinary action taken by the department against the recruit while enrolled in the basic training course.

Section 2. Maintenance of Records. The department [A-certified school] shall, at the conclusion of each basic training course, complete [in-triplicate] the Department of Criminal Justice Training Form 68-1 (Application for Training Credit), and the Department of Criminal Justice Training Form 29 (Agency Training Authorization) for each recruit [; "Application for Training Credit," a copy of which is made a part hereof by reference KLEG Form 29, "Application for Basic Training," for each trainee] who has attended the course. Form 68-1 [The forms] shall be sent to the council. After verification by the council, a [one (1)] copy of the form shall be sent to the fund administrator [; one (1) copy shall be sent to the head of the trainee's agency; and one (1) copy shall be retained by the council]. All training records required for fund purposes shall be retained by the department, [certified school] but a copy of pertinent facts shall be sent to the fund administrator upon written request. All such records shall be available to the council, the secretary, and the fund administrator for inspection or other appropriate purposes. All records shall be maintained in accordance with standards established by the State Archives and Records Commission pursuant to [(see) KRS 171.410 to 171.740)].

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Department of Criminal Justice Training Form 68-1 - Application for Training Credit; and

(b) Department of Criminal Justice Training Form 29 - Agency Training Authorization.

(2) This material may be inspected, copied, or obtained at the Department of Criminal Justice Training, 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, Deputy Secretary  
STEPHANIE C. BINGHAM, General Counsel  
APPROVED BY AGENCY: August 10, 1999  
FILED WITH LRC: August 10, 1999 at 3 p.m.

## REGULATORY IMPACT ANALYSIS

Contact Person: Stephanie c. Bingham

(1) Type and number of entities affected: the Department of Criminal Justice Training, all peace officers in the Commonwealth who are required or may choose to complete the Department of Criminal Justice Training basic training course, and their agencies.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
- (b) Reporting and paperwork requirements: None
- (4) Assessment of anticipated effect on state and local revenues: None
- (5) Source of revenue to be used for implementation and enforcement of administrative regulation is the Department of Criminal Justice Training budget, including money received from the Kentucky Law Enforcement Foundation Program Fund.
- (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
  - (a) Geographical area in which administrative regulation will be implemented: None
  - (b) Kentucky: None
- (7) Assessment of alternative methods; reasons why alternatives were rejected: None
- (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. If no, please explain why tiering was not 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.

# STATEMENT OF EMERGENCY 503 KAR 5:090E

This emergency administrative regulation amends the participation and training requirements for the Kentucky Law Enforcement Foundation Program Fund (KLEFPF), to reflect the present Department of Criminal Justice Training basic training curriculum of 640 hours, and to change the training requirements for those officers who have previously completed basic training but have experienced a break in law enforcement employment. An ordinary administrative regulation will not suffice since law enforcement training is a necessary and on-going need for officers to participate in the Kentucky Law Enforcement Foundation Program Fund. It is essential that officers are properly trained in all aspects of law enforcement so that public safety is safeguarded and the laws of the Commonwealth are appropriately enforced. Those agencies participating in KLEFPF may experience hardships in providing adequate law enforcement services to their communities when officers are participating in mandatory training. In certain defined circumstances, this emergency administrative regulation allows those officers who have previously completed basic training to fulfill KLEFPF training requirements with fewer numbers of hours of training instead of repeating the entire basic training course. This will result in officers being appropriately trained with less risk to the agency and the community due to shorter periods of officer absence. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler on August 10, 1999.

PAUL E. PATTON, Governor  
PAMELA J. MURPHY, Deputy Secretary

## JUSTICE CABINET Kentucky Law Enforcement Foundation Program Fund

**503 KAR 5:090E. Participation: requirements; application; withdrawal.**

RELATES TO: KRS 15.440

STATUTORY AUTHORITY: KRS 15.450(1)

EFFECTIVE: August 10, 1999

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.440 prescribes requirements to be met by a local unit of government in order to be eligible to receive salary supplement funds from the Law Enforcement Foundation Program Fund. This administrative regulation expands on the statutory requirements for eligibility and establishes the procedure to be followed by a local unit in applying for admission to, or withdrawing from, the fund.

Section 1. (1) Education requirements.

(a) To demonstrate that an officer has completed the education requirement pursuant to KRS 15.440(3), the local unit shall send to the fund administrator:

1. A copy of the high school diploma; or

2. A copy of a general education diploma issued by a state department of education. [-of its equivalent (e.g., a general education diploma) shall be sent to the fund administrator, by the local unit, or the officer shall be deemed ineligible to receive a salary supplement.]

(b) If a police officer who is "grandfathered" into the fund without having to meet the educational requirement of KRS 15.440(3) has his police service terminated ~~{[due to resignation or ]}~~ dismissal, ~~[etc.]~~; he must meet the educational requirement in order to become eligible to reparticipate in the salary supplement program upon reemployment as a police officer by a local unit which is participating in the fund.

(2) Basic training requirement.

(a) time limit. A local unit that elects to participate in the fund shall require all police officers employed as of the date of the initial participation to demonstrate compliance with [meet] the basic training requirement ~~{[or obtain credit for meeting it]}~~ within one (1) year of the date of initial participation. An officer ~~[All officers]~~ employed thereafter shall demonstrate compliance with [meet] the basic training requirement ~~{[or obtain credit for meeting it]}~~ within one (1) year of the date of employment. ~~[The local unit shall not be considered to be in violation of this paragraph] If an officer fails to demonstrate compliance with [officer's failure to meet] the basic training requirement {[or obtain credit for meeting it]} within one (1) year [is] due to extenuating circumstances beyond his control including serious injury or illness, personal tragedy, or agency emergency; the local unit shall not be considered to be in violation of this paragraph. The officer shall be required to demonstrate compliance with the basic training requirement within a reasonable time [-such as injury, illness, or personal tragedy; in this situation, the officer shall be required to meet the basic training requirement {or obtain credit for meeting it} within a reasonable time {not to exceed one (1) year from the termination of the extenuating circumstances}; as determined by the fund administrator or his designee. The reasonable time shall not exceed one (1) year from the termination of the extenuating circumstance. [-or] The local unit shall be in violation of this paragraph if:~~

1. An officer fails to complete training during the one (1) year period and has not experienced an extenuating circumstance; or

2. an officer fails to complete training during the time limit established by the fund administrator following proof of an extenuating circumstance.

(b) Compliance. A police officer shall demonstrate compliance with the basic training requirement by:

1. If the officer has never completed basic training, the officer shall successfully complete:

a. The Department of Criminal Justice Training 640 hour basic training course; or

b. A basic training course approved and recognized by the Council which consists of a minimum of 640 hours with a course content equivalent to the Department of Criminal Justice Training 640 hour basic training course;

2. If the officer has successfully completed a Department of Criminal Justice Training basic training course, or another council

approved and recognized basic training course, no additional basic training shall be required if he has:

a. Been continuously employed as a police officer since the completion of that basic training; or

b. Experienced a separation of employment as a police officer for no more than twelve (12) months prior to his present eligibility to participate in the fund;

3. If the officer has successfully completed a Department of Criminal Justice Training basic training course, or another council approved and recognized basic training course; and has experienced a separation of employment as a police officer for more than twelve (12) months but less than thirty-six (36) months prior to his present eligibility to participate in the fund, he shall successfully complete the Department of Criminal Justice Training forty (40) hour penal code update course;

4. If the officer has experienced a separation of employment as a police officer for more than thirty-six (36) months prior to his present eligibility to participate in the fund; and:

a. The officer's total number of months of service as a police officer is equal to or exceeds the total number of months of separation from service as a police officer. The officer shall successfully complete the Department of Criminal Justice Training forty (40) hour penal code update course; and one (1) of the following Department of Criminal Justice Training forty (40) hour courses which is most appropriate for the officer's duty assignment as determined by the fund administrator:

- (i) Police officer basic skills; or
- (ii) Orientation for new police chiefs; or
- (iii) Mandatory training for sheriffs or chief deputies;

b. The officer's total number of months of service as a police officer is less than the total number of months of separation from service as a police officer, the officer shall successfully complete:

(i) The Department of Criminal Justice Training 640 hour basic training course; or

(ii) A basic training course approved and recognized by the council which consists of a minimum of 640 hours with a course content equivalent to the Department of Criminal Justice Training 640 hour basic training course;

5. When calculating the total number of months of separation and service described in paragraph 4 of this subsection:

a. Calculation shall begin effective the first date employed as a police officer, and include all subsequent months.

b. For the first or last month of a continuous period of employment or separation:

(i) If the number of days of service for a specific month is less than the maximum possible number of regular service days for that month, the officer shall receive credit for a full month of service;

(ii) If the number of days of separation for a specific month is less than the maximum possible number of regular service days for that month, the month shall not be calculated as a month of separation. [Obtaining credit for basic training; valuation examination. A police officer who, as of his date of employment, has already successfully completed a law enforcement basic training course may, for the purpose of obtaining credit for some or all of the basic training requirement, apply to the fund administrator to take a basic training evaluation examination. Upon receipt of an evaluation examination request, the fund administrator or his designee shall verify that the officer has successfully completed a basic training course. The officer and his local unit shall be responsible for providing such proof as is needed for verification. Upon verification, the fund administrator or his designee shall notify the officer that he is eligible to take a basic training evaluation examination. The fund administrator or his designee shall administer and evaluate the examination. The examination shall test the officer in the areas required for successful completion of a council-approved basic training course. The fund administrator or his designee shall then decide what training, if any, the officer must successfully complete in order to meet the basic training requirement. An officer who passes less than fifty (50) percent of the examination areas shall obtain no basic training credit at all and shall be required to take and successfully complete a basic training course. An officer who passes at least fifty (50) percent of the examination areas shall obtain basic training credit for the areas which he passes. If the officer fails a graded area the officer shall take and successfully complete that por-

tion of a basic training course that corresponds to the failed area. If the graded training area that is failed is M.A.R.C. (the mechanics of arrest, restraint, and control) the repeating of the training in that area at the training facilities of the training agency is optional with the officer's agency head, but in any event the officer must pass an examination on that failed area consisting of a test and retest within one (1) year of employment. The fund administrator or his designee shall notify the officer of his decision. If an officer is given credit for all or a part of a previously attended basic training course of less than 400 hours, the officer shall be required to make up the difference in hours by completing subject areas of a current basic training course, as determined by the fund administrator or his designee, that equal the hours deficient. The officer shall be responsible for arranging any required basic training at a council-approved school.

(c) If a police officer who is qualified to participate in the fund has his police service terminated due to resignation or dismissal, and he remains separated from employment as a police officer for more than twenty-four (24) continuous months; he must, if reemployed as a police officer, meet the basic training requirement (or obtain credit for meeting it) before he shall be eligible to participate in the fund. This rule shall also be applicable to officers who are members of an agency which participates in the fund but which agency withdraws from or becomes ineligible to participate in the fund and later applies for reparticipation in the fund if the period of nonparticipation exceeds twenty-four (24) consecutive months. If an officer of an agency which withdraws from the fund maintains his/her in-service training on a current basis that officer shall be immediately eligible to reparticipate in the fund if his/her agency elects to reparticipate in the fund or if said officer transfers to and becomes employed by another agency that is a participant in the fund.]

(3) In-service training requirement.

(a) A local unit that elects to participate in the fund shall require all police officers employed as of the date of initial participation, and all officers employed thereafter, to successfully complete the forty (40) hour in-service training requirement each calendar year. The local unit shall not be considered to be in violation of this paragraph if an officer's failure to meet the in-service training requirement in a calendar year is due to an extenuating circumstance including serious injury or illness, personal tragedy, or agency emergency. [Circumstances beyond his control, such as injury, illness, or personal tragedy, in this situation.] The officer shall be required to meet the in-service training requirement within a reasonable time [(not to exceed one (1) year from the termination of the extenuating circumstances); as determined by the fund administrator or his designee. The reasonable time shall not exceed one (1) year from the termination of the extenuating circumstance [-or the local unit shall be in violation of this paragraph]. If an officer, under circumstances that are not extenuating, fails to successfully complete forty (40) hours of in-service training in a calendar year; the fund administrator or his designee shall notify the local unit that the officer must complete [make-up] the in-service training for the year of delinquency within a reasonable time, as determined by the fund administrator or his designee, or else the local unit, if it continues to employ the officer full time, shall be in violation of this paragraph and shall lose its eligibility to participate in the fund. If an officer, under circumstances that are not extenuating, fails to successfully complete forty (40) hours of in-service training in a calendar year, he shall receive no salary supplement until he makes up the in-service training for the year of delinquency and shall not be entitled to receive back pay supplement for the period of nonpayment caused by the delinquency in training.

(b) A police officer who successfully completes a [meets the] basic training course approved and recognized by the council [requirement (or obtains credit for meeting it)] shall be considered to have fulfilled the in-service training requirement for the calendar year in which the basic training is completed when that completion occurs in the calendar year of the present application for participation in the fund. An officer who demonstrates compliance with the basic training requirement by completion of a course approved and recognized by the council prior to the calendar year of the present application for participation in the fund, the officer shall [successfully completed (or the credit is obtained)]. However, an officer who passes an entire basic evaluation examination and therefore receives full credit for a prior basic training course that officer shall be required to] complete a forty

(40) hour in-service training course for that calendar year in order to remain eligible to participate in the fund. An officer who demonstrates compliance with the basic training requirement by completion of a course approved and recognized by the council prior to the calendar year of the present application for participation in the fund, and is required to take a minimum of forty (40) hours of additional training pursuant to Section 1(2) of this administrative regulation, shall be considered to have fulfilled the in-service training requirement for the calendar year in which the additional training was completed.

(c) If a police officer who is qualified to participate in the fund has his police service terminated [(Due to resignation or [;] dismissal [; etc.]] before he meets his in-service training requirement for the calendar year, he shall still be eligible to participate in the fund for that part of the calendar year during which he was employed as a police officer.

(d) ~~If a police officer who is qualified to participate in the fund or if a law enforcement officer would be qualified to participate in the fund were his agency eligible to participate in the fund, i.e., has met and maintained all training requirements has his police service terminated due to resignation or dismissal but is reemployed as a police officer by an agency which is participating in the fund, he shall retain eligibility to participate in the fund unless the reemploying is not within twenty-four (24) months, in which event he must meet the basic training requirement (or obtain credit for meeting it); see paragraph (c) of this subsection. This rule shall also be applicable to officers who are members of an agency which participates in the fund but which agency withdraws from or becomes ineligible to participate in the fund and later applies for reparticipation in the fund. If the officer has maintained a current status in in-service training such officer shall retain eligibility to participate in the fund upon his employing agency regaining eligibility to participate or upon employment by a participating agency.~~

(e) A police officer may not, for fund eligibility purposes, take the same in-service training course that he has successfully completed in a previous year for fund eligibility purposes unless at least three (3) years have passed since the earlier course was completed.

(4) Local ordinance requirement. To be eligible to participate in the fund, a local unit shall enact an ordinance or resolution requiring the local unit and police department to comply with KRS 15.410 to 15.510 and with these administrative regulations. A certified copy of this local ordinance or resolution shall be submitted by the local unit to the fund administrator along with the application for participation in the fund. If the local unit has withdrawn from, or lost eligibility to participate in the fund, the previously enacted local ordinance or resolution shall no longer be recognized by the fund administrator, and a new ordinance or resolution shall be submitted with a new application for participation in the fund.

Section 2. Application. A local unit desiring to apply for admission to the fund shall submit an application form to the fund administrator.

Section 3. Withdrawal. To withdraw from the fund, a local unit shall send a written notice of withdrawal to the Fund administrator. The fund administrator or his designee shall acknowledge in writing the receipt of the withdrawal notice; the withdrawal shall be effective as of the date the withdrawal notice is received by the fund administrator. Upon withdrawal, a local unit shall be obligated to return all salary supplement funds received from the fund for which its police officers have not yet become qualified.

Section 4. Audits. A participating agency shall comply with audits when requested by the fund administrator's designee, to demonstrate [agencies are subject to periodic audits of police attendance, payroll and KLEFPF records to determine] compliance with all rules and administrative regulations governing participation. The audit shall include examination of records of police officer training attendance, and payroll and KLEFPF records. [Audits do not have to be annual or scheduled.]

PAMELA J. MURPHY, Deputy Secretary  
STEPHANIE C. BINGHAM, General Counsel  
APPROVED BY AGENCY: August 10, 1999  
FILED WITH LRC: August 10, 1999 at 3 p.m.

## REGULATORY IMPACT ANALYSIS

Contact Person: Stephanie C. Bingham

(1) Type and number of entities affected: The Kentucky Law Enforcement foundation Program Fund (KLEFPF) administrator and support staff, law enforcement agencies and officers in the Commonwealth who participate in the KLEFPF.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Savings (amount unknown) to the Department of Criminal Justice Training for decreased number of officers who will be required to complete the 640 hour basic training course.

2. Continuing costs or savings: Savings (amount unknown) to the Department of Criminal Justice Training for decreased number of officers who will be required to complete the 640 hour basic training course.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: It is anticipated that local units of government which participate in KLEFPF may experience savings based upon the reduction of officers who may be required to complete the 640 hour basic training course, thereby reducing the time and resulting cost when law enforcement agencies must compensate for the officer's absence from duty due to training.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the Kentucky Law Enforcement Foundation Program Fund.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: More effective and efficient training which shall increase the quality 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. If no, please explain why tiering was not 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.



**STATEMENT OF EMERGENCY  
815 KAR 35:015**

This administrative regulation establishes the procedures for achieving and maintaining certification pursuant to KRS 227.489. The amendment to this administrative regulation is necessary to assure that occupancy of buildings is withheld until subsurface sewage systems are provided. This is an emergency necessary to protect human health and the environment and an ordinary administrative regulation will not suffice because this administrative regulation is needed to take effect immediately. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor  
CHARLES A. COTTON, Commissioner  
RONALD B. MCCLOUD, Secretary

**CABINET FOR PUBLIC PROTECTION AND REGULATION  
Department of Housing, Buildings and Construction  
Office of State Fire Marshal**

**815 KAR 35:015E. Certification of electrical inspectors.**

RELATES TO: KRS 227.450, 227.489, 227.490, 227.4901  
STATUTORY AUTHORITY: KRS 227.489, 227.490(6)  
EFFECTIVE: July 30, 1999

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.489 requires the Commissioner of the Department of Housing, Buildings and Construction to certify electrical inspectors based on standards of the National Electrical Code. This administrative regulation establishes the procedures for achieving and maintaining the certification. This amendment is necessary to establish a minimum number of continuing education hours each inspector shall attend each year and clarify that the use of a temporary sticker is at the discretion of the inspector.

Section 1. Definitions. (1) "Applicant" means the person seeking to be certified as an electrical inspector.

(2) "Authority having jurisdiction" means the Department of Housing, Buildings and Construction.

(3) "Certified electrical inspector" means a person who has:

(a) Met the requirements established in this administrative regulation; and

(b) Received a certificate of compliance.

(4) "Code" means the National Electrical Code (NEC), which is incorporated by reference in 815 KAR 7:105 as part of the Kentucky Building Code.

(5) "Commissioner" means the Commissioner of the Department of Housing, Buildings and Construction.

(6) "Department" is defined by KRS 227.450(5).

(7) "Electrical" is defined by KRS 227.450(3).

(8) "Electrical industry" means the industry engaged in the generation, transmission and distribution of electricity and the design, manufacture, construction, installation, alteration or repair of electrical wiring facilities and apparatus for the utilization of electricity.

(9) "Employee" means a person who is employed on a full-time, part-time, or contractual basis.

(10) "Temporary certification" means a certificate issued by the department under the provisions of Section 4 of this administrative regulation which is valid for a limited period of time.

(11) "NCPCCI" means National Certification Program for Construction Code Inspectors which administers examinations developed by national code enforcement organizations in collaboration with the Educational Testing Service for the purpose of providing nationally recognized evidence of competence in construction code enforcement.

Section 2. Applicability. This administrative regulation shall apply to an electrical inspector in Kentucky and to an applicant for certification as an electrical inspector.

Section 3. Categories of Certified Electrical Inspectors. A certified electrical inspector shall be classified as an electrical inspector one (1) and two (2) family or an electrical inspector general.

(1) An electrical inspector one (1) and two (2) family shall:

(a) Be a person who:

1. Has passed the applicable NCPCCI examination; or

2. Was classified as a residential inspector; and

(b) Be qualified to perform an electrical inspection and approve an electrical installation related to a:

1. One (1) or two (2) family dwelling; or

2. Mobile home.

(2) An electrical inspector general shall:

(a) Be a person who:

1. Has passed the applicable NCPCCI examination; or

2. Was classified as a commercial inspector; and

(b) Be qualified to inspect and approve all types of residential, commercial, industrial, or other property which requires electrical inspection.

Section 4. Applications Requirements for Temporary Certification.

(1) Before an applicant may sit for the examination for temporary certification as an electrical inspector, the applicant shall:

(a)1. Have at least five (5) years of experience immediately preceding the application in the installation and design of all types of:

a. Residential wiring systems installed in accordance with the National Electrical Code, if the applicant is applying for certification as an electrical inspector one (1) and two (2) family; or

b. Residential, commercial, and industrial wiring systems installed in accordance with the National Electrical Code, if the applicant is applying for certification as an electrical inspector general; or

2. Be a registered professional electrical engineer engaged in his profession for at least three (3) years;

(b) Possess:

1. The ability to read and write the English language; and

2. A general educational level satisfactory to perform his duties;

(c) Submit a completed Form SFM-EL-1, Application for Electrical Inspector, which shall be:

1. Notarized; and

2. Received by the department at least thirty (30) days prior to the next scheduled Electrical Advisory Committee meeting; and

(d) Submit with the application:

1. A written statement of need for certification from the local official responsible for the electrical or building inspection program; and

2. A fee of twenty-five (25) dollars in the form of a check or money order payable to the State Treasurer, Commonwealth of Kentucky.

(2) If an applicant is not able to demonstrate compliance with the experience requirements established in subsection (1)(a) of this section, the applicant may request to appear before the Electrical Advisory Committee to establish his background in electrical construction familiarity through other means. The Electrical Advisory Committee shall:

(a) Review the documentation; and

(b) Approve the applicant if it is satisfied that the level of exposure to construction practices is substantially equivalent.

(3) An applicant shall receive credit earned for an electrical course satisfactorily completed from an accredited vocational school or college on a year-for-year basis. Credit for education to replace an applicant's experience requirements shall be limited to a total of two (2) years.

(4) The electrical advisory committee shall review an applicant for temporary certification to determine his eligibility to sit for the examination.

(5) Temporary certification shall expire at the end of nine (9) months from the time of initial certification and shall not be reissued.

Section 5. Examinations for Temporary Certification. (1) Following the review and acceptance of the applicant's qualifications by the electrical advisory committee, the applicant shall pass the department's written examination for the class of temporary certification.

(2) An examination shall be:

(a) Administered within thirty (30) days after acceptance by the Electrical Advisory Committee at the department's office in Frankfort, Kentucky, unless another location is specifically designated; and

(b) Open book based on the National Electrical Code, which is incorporated by reference in 815 KAR 7:105 as part of the Kentucky Building Code.

(3) A grade of seventy (70) percent shall be considered passing. An applicant, otherwise qualified, who fails to make a passing score may reapply to be scheduled for the next examination date upon payment of an additional fee of ten (10) dollars.

(4) An applicant shall not be permitted to retake the examination more than three (3) times.

Section 6. Requirements for Full Certification as an Electrical Inspector: General and One (1) and Two (2) Family. (1) An applicant for full certification as an electrical inspector shall:

(a) 1. Have at least five (5) years of experience immediately preceding the application in the installation and design of all types of residential, commercial and industrial wiring systems installed in accordance with the National Electrical Code;

2. Be a registered professional electrical engineer engaged in his profession for at least three (3) years;

(b) Possess:

1. The ability to read and write the English language; and  
2. A general educational level satisfactory to perform his duties;

(c) Submit a completed Form SFM-EL-1, Application for Electrical Inspector, which shall be:

1. Notarized; and

2. Received by the department at least thirty (30) days prior to the next scheduled Electrical Advisory Committee meeting; and

(d) Submit with the application:

1. A fee of twenty-five (25) dollars in the form of a check or money order payable to the State Treasurer, Commonwealth of Kentucky; and

2. Proof of successful completion of the NCPCCI examination for:

a. Electrical inspector general; or  
b. Electrical inspector one (1) and two (2) family.

(2) If an applicant is not able to demonstrate compliance with the experience requirements established in subsection (1)(a) of this section, the applicant may request to appear before the Electrical Advisory Committee to establish his background in electrical construction familiarity through other means. The Electrical Advisory Committee shall:

(a) Review the documentation; and

(b) Approve the applicant if it is satisfied that the level of exposure to construction practices is substantially equivalent.

(3) Following the review and approval of an applicant's qualifications and examination results by the electrical advisory committee, the department shall issue certification for the appropriate electrical inspector classification and the inspector shall be authorized to conduct inspections as specified in Section 3 of this administrative regulation.

(4) A certificate issued pursuant to this section shall be valid from July 1 to June 30.

(5) A fully-certified inspector shall, upon request, be placed on "inactive" status upon payment of fees and otherwise complying with this administrative regulation, including keeping current with continuing education hours. A person holding an inactive certificate shall not make an electrical inspection while his certificate is in inactive status.

(6) Each certified electrical inspector holding a valid certification under a previous law shall be exempt from the testing requirements of this administrative regulation.

Section 7. Renewals of "General" and "One (1) and Two (2) Family" Certificates. (1) Certification shall:

(a) Be issued to an individual; and

(b) Not issued to a corporation, partnership, company, or other entity.

(2) Each applicant seeking to renew his electrical inspector certification shall submit the Renewal Application for Electrical Inspector Certification on Form SFM-EL-1A.

(3) Each electrical inspector certification, except a temporary certificate, shall expire on June 30 every year. The department shall mail each certified inspector, prior to the date of expiration, a renewal application form and the certification shall be renewed subject to the provisions of this administrative regulation.

(4) A renewal fee of twenty-five (25) dollars shall be paid by each certified electrical inspector before June 30 in each succeeding year to maintain certification.

(5) Delinquent renewal fee. A certified electrical inspector who

fails to submit the application for renewal on or before July 1 of each year shall pay a delinquent fee of fifty (50) dollars in addition to the renewal fee. If both fees are not paid and all required continuing education completed by January 1 of the following year, the certification shall be canceled and shall not be renewed.

(6) Reinstatement. A certificate that has been revoked or canceled may be reinstated upon petition to the commissioner for good reason.

(7) An applicant for reinstatement shall pay a reinstatement fee of \$100; and shall:

(a) 1. Pay the delinquent renewal fees; and

2. Submit proof of continuing education for each year the certificate was revoked or cancelled; or

(b) Pass the NCPCCI examination within the current year.

Section 8. Duties and Responsibilities of a Certified Electrical Inspector. (1) Each certified electrical inspector shall attend at least one (1) continuing education program of a minimum of twelve (12) hours each year. The program shall be approved by the electrical advisory committee.

(2) Each electrical inspection shall be made in compliance with the edition of the National Electrical Code, which is incorporated by reference in 815 KAR 7:105 as part of the Kentucky Building Code.

(3) In addition to the National Electrical Code, the electrical inspector shall familiarize himself with the applicable building codes or fire safety codes governing buildings in the area in which he performs an inspection to determine the occupancy load of a facility.

(4) The electrical inspector shall make an inspection upon request of the electrical contractor.

(5) Temporary construction service approvals shall receive a green sticker and a certificate of compliance; except that, for installations subject to KRS 211.350, the electrical inspector shall not issue a certificate of compliance or otherwise release the property for the supply of electricity until he has received the local health department's "Initial Notice of Release" (Notice of Release for Temporary Electrical Service, Form PHPS-001) and has recorded its number upon the certificate of compliance.

(6) Temporary service approval shall require a red sticker.

(5) The electrical inspector shall make a rough-in and final inspection on a building's electrical system installation and other inspections necessary to approve the installation.

(a) Upon completion of the rough-in inspection, the inspector shall attach a red sticker with his signature and certification number on the main service equipment or at some other appropriate location.

(b) A "service only" approval may be issued by the inspector to provide temporary power for heating and lighting for the building during completion of construction and shall not authorize occupancy of the facility. The sticker issued for "service only" approval shall be yellow.

(c) Upon final approval of an electrical installation, the inspector shall:

1. Attach a green sticker to the main service equipment:

a. With his signature and certification number, name of the project and location; and

b. Stating that the system has been inspected for compliance with the National Electrical Code; and

2. Provide the owner or the owner's agent with a certificate of compliance; except that, for installations subject to KRS 211.350, the electrical inspector shall not issue a certificate of compliance or otherwise release the property for the supply of electricity until he has received the local health department's "Final Notice of Release" (Notice of Release for Permanent Electrical Service, Form PHPS-002) and has recorded its number upon the certificate of compliance.

(7) [(6)] A red, yellow or green sticker or a certificate of compliance to be used by the electrical inspector shall be issued or approved by the department.

(8) [(7)] Each electrical inspector shall make and retain for a minimum of three (3) years a complete record of each inspection and make them available to the department upon request. The record shall contain, as a minimum, the following information:

(a) Sufficient information to identify the location of the structure inspected;

(b) The date of the inspection;



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- (c) The type of structure, whether residential, commercial, industrial or other;
  - (d) The designation of a required permit and the agency granting the permit;
  - (e) The size and complexity of the structure;
  - (f) Deficiencies in meeting code requirements and the action required to comply; and
  - (g) Other pertinent information considered necessary to allow for a review of the inspection.
- (9) [(8)] Violation of KRS 211.350(4) by a certified electrical inspector shall constitute misconduct.

Section 9. Complaints and Grievance Procedures. (1) A person may file a complaint against a certified electrical inspector if the person believes that an act or omission of the inspector in the performance of his duties caused an undue hardship to the person.

(2) A complaint or allegation of misconduct shall be submitted in writing to the commissioner and shall:

- (a) Include the nature of the alleged misconduct, with specific details as to acts, names, dates and witnesses; and
  - (b) Specify the action requested of the commissioner.
- (3) Following an investigation, the commissioner shall:
- (a) Cause the matter to be heard and recommendation rendered by the Electrical Advisory Committee;
  - (b) Set the matter for public hearing; or
  - (c) Take other appropriate action to resolve or correct the matter.

Section 10. Suspension and Revocation of Certification. The commissioner shall revoke, suspend or refuse to renew the certificate of an electrical inspector who is determined, by the commissioner after a departmental hearing, to have:

- (1) Engaged in an activity which constitutes a conflict of interest, including:
  - (a) Work as an electrical contractor or electrician;
  - (b) Involvement in an activity in the electrical industry; or
  - (c) Having a pecuniary or associational interest;
- (2) Engaged in fraud, deceit or misrepresentation in obtaining certification;
- (3) Been guilty of negligence, incompetence or misconduct as established by this administrative regulation in the field of electrical inspection;
- (4) Affixed or caused to be affixed a seal of approval or issued a certificate of approval for an electrical installation subject to his inspection if he has not personally inspected the installation and found it to be satisfactory in accordance with the code;
- (5) Operated as an electrical inspector in a locality where a court of competent jurisdiction has adjudged him to be in conflict with state or local laws, ordinances, or regulations;
- (6) Knowingly overruled the proper findings of another electrical inspector or attempted to supplant, overrule or otherwise invalidate the judgment of another electrical inspector without first obtaining express written consent from the original inspector; or
- (7) Maintained inaccurate or inadequate recordkeeping as required by Section 8 of this administrative regulation.

Section 11. Electrical Inspections by State Employed Certified Electrical Inspectors. (1) State-owned property including each building being constructed by the state under the authority of the Finance and Administration Cabinet shall be inspected by a certified electrical inspector who is an employee of the state.

(2) A state employed certified electrical inspector shall inspect, for a fee, if a certified electrical inspector has not been made available by the local government.

(3) A state employed certified electrical inspector shall assert jurisdiction for the electrical inspection of a project subject to state plan review under the Kentucky Building Code.

(4) A state employed certified electrical inspector may inspect a state leased facility, upon request.

Section 12. Interpretations. If a provision of the National Electrical Code can be shown to be unreasonable or impractical as applied to a particular installation and if deviation from strict compliance would not create a safety hazard because of a particular use or condition, an

individual may request to appear before the electrical advisory committee of the Department of Housing, Buildings and Construction to request a variance from the code. Upon advice from the committee, the department shall render its decision in the matter and the decision shall be appealable to the Board of Housing, Buildings and Construction.

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

(a) Form SFM-EL-1, "Application for Electrical Inspectors (April 1996 Edition)", Department for Housing, Buildings and Construction; [and]

(b) Form SFM-EL-1A, "Renewal Application for Electrical Inspector Certification (April 1996 Edition)", Department for Housing, Buildings and Construction;

(c) Form PHPS-001, "Notice of Release for Temporary Electrical Service", (May 1998 Edition), Department for Public Health; and

(d) Form PHPS-002, "Notice of Release for Permanent Electrical Service", (May 1998 Edition), Department for Public Health.

(2) This material may be inspected, copied, or obtained at the Department of Housing, Buildings and Construction, Electrical Section, 1047 US 127 South, Suite 1, Frankfort, Kentucky 40601, between 8 a.m. and 4:30 p.m., Monday through Friday.

CHARLES A. COTTON, Commissioner

RONALD B. MCCLOUD, Secretary

JUDITH G. WALDEN, General Counsel

APPROVED BY AGENCY: July 27, 1999

FILED WITH LRC: July 30, 1999 at 2 p.m.

### REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden

(1) Type and number of entities affected: There are approximately 283 certified electrical inspectors in Kentucky.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: This amendment will have no impact on either cost of living or employment in the state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: This administrative regulation is implemented statewide but does not affect the cost of doing business within the state.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: The amendment itself will not increase costs or paperwork. The paperwork is the same as before; a green sticker and a certificate of compliance is required.

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: If the property owner fails to obtain approval for a subsurface sewage system when one is required by law, the owner may incur additional costs or delay in obtaining electrical services.

1. First year: No monetary effect.

2. Continuing costs or savings: No monetary effect.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional paperwork requirements created by this amendment.

(4) Assessment of anticipated effect on state and local revenues: State or local revenues should not be affected with the implementation of this amendment.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Certification fees will cover the administrative costs of this amendment.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on: There will be no economic impact with implementation of this amendment.

(a) Geographical area in which administrative regulation will be implemented: Affects rural areas without sewers and building inspectors.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Allowing electrical inspectors to not make inspections unless KRS 211.350 is complied with is too costly in delays and contractors cannot get paid timely.

(8) Assessment of expected benefits: This method will assure that the health department requirements for subsurface sewage disposals system are met while allowing electrical inspections to be made, contractors paid and electricity withheld until the subsurface sewage disposal system is approved.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Enforce KRS 211.350 and protect rivers from sewage by prohibiting electricity until septic tanks are installed.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes, if electrical inspectors do not enforce.

(c) If detrimental effect would result, explain detrimental effect: Homes in rural areas could be occupied without adequate sewage treatment.

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

(a) Necessity of proposed regulation if in conflict: No known statute, regulation or policy in conflict with this proposed amendment.

(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? Yes. Applies only in rural areas that do not have building officials.

#### STATEMENT OF EMERGENCY 907 KAR 1:013E

This emergency administrative regulation is being promulgated to comply with provisions of 42 USC 1396r-4 to adjust the hospital annual reimbursement methodology and intensity operating allowance payments. This action must be taken on an emergency basis to ensure that acute care and rehabilitation hospitals are provided with all available federal funds. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Kentuckians because there is the potential for hospitals to not continue to participate in the Medicaid Program due to low reimbursement for services provided to eligible persons. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on April 21, 1999 as follows: This emergency administrative regulation contains the reimbursement methodology for fiscal year 2000. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor  
JOHN H. MORSE, Secretary

#### CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Member and Provider Services

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

RELATES TO: KRS 205.520, 205.565, 205.640[; 1996 Ky. Acts ch. 380, Part 1, GB, 51, 5]

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 205.560(2), 205.637, 205.640, 20 CFR 405.402 through 405.488, 42 CFR 440.10, 440.140, 447.250 through 447.280, 42 USC 1396a, b, d, r-4, 902 KAR 20:180, 902 KAR 20:240 [; EO 96-862]

EFFECTIVE: July 21, 1999

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 the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining the amount payable by the Medicaid Program for a hospital inpatient service.

Section 1. Definitions. (1) "Acute care hospital" means a hospital licensed and certified to provide acute care hospital services in accordance with 902 KAR 20:016.

(2) "Base year" means the cost reporting period upon which a rate is based.

(3) "Calculated rate" means the per diem rate effective July 1, 1999 for acute care and rehabilitation hospitals.

(4) "Capital costs" means capital related expenses including insurance, taxes, interest, and depreciation related to plant and equipment.

[4] "Charity care" means a service provided to a recipient by a provider without expectation on the part of the provider to receive payment, but shall not include bad debt.]

(5) "Cost basis" means the total allowable Medicaid inpatient cost incurred by the provider in the base year.

(6) "Department" means the Department for Medicaid Services or its agent.

(7) "Disproportionate share hospital" (DSH) means a hospital that:

(a) Has an inpatient Medicaid utilization rate of one (1) percent or higher; and

(b) Meets the criteria established in 42 USC 1396r-4(d)[; and (b)1. Meets the criteria established in 42 USC 1396r-4(b); or 2. Has a Medicaid utilization of one (1) percent or higher].

(8) "DRI" means Data Resources, Incorporated.

(9) "Indexing factor" means the amount that the cost of providing a service is expected to increase during the universal rate year.

(10) "Indigent care" means hospital charges attributable to Medicaid recipients in excess of fourteen (14) covered days and to individuals eligible for the Kentucky Hospital Care Program [days" means days in excess of fourteen (14) covered days for a Medicaid recipient and days of service provided to an individual eligible for the Kentucky Hospital Care Program, including outpatient equivalent care days], with eligibility determined in accordance with criteria established in 907 KAR 1:635[; and which are uninsured or unreimbursed by another source].

(11) "Inflation factor" means the amount that the cost of providing a service has increased, or is expected to increase, for a specific period of time.

(12) "Pediatric teaching hospital" is defined in KRS 205.565.

(13) "Professional component cost" means a physician compensation cost paid by the provider for a service to a patient and includes the following categories of practice:

- (a) Anesthesiology;
- (b) Cardiology;
- (c) Electroencephalography;
- (d) Pathology;
- (e) Radiology; and
- (f) Psychiatry in a psychiatric hospital.

(14) "Psychiatric hospital" means a hospital which meets the minimum licensure requirements established in 902 KAR 20:180.

(15) "Rate on rate" means the methodology of establishing a reimbursement rate by multiplying an existing rate by a percent of increase as specified in Section 2 of this administrative regulation.

(16) "Rehabilitation hospital" means a hospital meeting the minimum licensure requirements established in 902 KAR 20:240.

(17) [(16)] "State university teaching hospital" means:

(a) A hospital which is owned or operated by a Kentucky state supported university with a medical school; or

(b) A hospital in which three (3) or more departments or major divisions of the University of Kentucky or University of Louisville medical school are physically located and which are used as the primary (greater than fifty (50) percent) medical teaching facility for the medical students at the University of Kentucky or the University of Louisville; however, this shall not include a hospital having a residency program

or rotation agreement.

(18) [(17)] "Trending factor" means the inflation factor as applied to that period of time between a facility's base fiscal year end and the beginning of the universal rate year.

(19) [(18)] "Type I hospital status" means an in-state disproportionate share hospital with 100 beds or less that participates in the Medicaid Program.

(20) [(19)] "Type II hospital status" means an in-state disproportionate share hospital with 101 beds or more that participates in the Medicaid Program, except for a hospital that meets the criteria established in this administrative regulation for a Type III or Type IV status hospital.

(21) [(20)] "Type III hospital status" means an in-state disproportionate share state university teaching hospital, owned and operated by either the University of Kentucky or the University of Louisville medical school, that has requested a Type III status which has been approved by the Department for Medicaid Services.

(22) [(21)] "Type IV hospital status" means an in-state disproportionate share hospital participating in the Medicaid Program that is a state owned psychiatric hospital.

~~[(22)] "Type V hospital status" means an out-of-state disproportionate share hospital participating in the Medicaid Program.]~~

(23) "Universal rate year" means the twelve (12) month period under the prospective payment system, beginning July 1 of each year for which payment rates are established for a hospital regardless of the hospital's fiscal year end.

(24) "Upper payment limit" means the maximum amount the Medicaid program shall pay for an inpatient day of care with the maximum varying based on specified circumstances as follows:

- (a) Utilization factors;
- (b) Teaching hospital status; and
- (c) Age of patient.

(25) "Weighted median" means the cost per diem associated with the median point of cumulative inpatient days calculated by arraying cost per diems within a specified peer group from lowest to highest.

Section 2. Acute Care Hospital and [.] Rehabilitation Hospital [and Psychiatric Hospital] Inpatient Services. The reimbursement rate for an acute care and rehabilitation hospital for the rate year beginning July 1, 1999 shall be determined by utilizing a rate-on-rate methodology as follows:

(1) The calculated rate shall be determined by the department as follows:

(a) The department shall utilize a hospital's June 30, 1998 per diem rate that includes operating, professional and capital cost components; and

(b) The per diem rate shall be multiplied by the rate of increase of three (3) percent.

(2) Payments for children with exceptionally high cost or long lengths of stay shall be made in accordance with Section 11(11) of this administrative regulation.

Section 3. Psychiatric Hospital Inpatient Services. The Department for Medicaid Services shall pay for inpatient hospital services provided to an eligible Medicaid recipient through the use of a rate that meets the requirements of 42 USC 1396a(a)(13) [is reasonable and adequate to meet the cost that is required to be incurred by an efficiently and economically operated hospital to provide a service in conformity with applicable state and federal laws, regulations, and quality and safety standards].

Section 4. [3:] Use of a Prospective Rate Prior to July 1, 1999. (1) A hospital shall be paid using a prospective payment rate based on allowable Medicaid inpatient costs and Medicaid inpatient days.

(a) The prospective rate shall include both routine and ancillary costs.

(b) If a base year is selected for setting a rate, that base year shall not change.

(c) The prospective rate shall not be subject to retroactive adjustment, except for a facility with a rate based on unaudited data. This facility shall have its rate appropriately revised for the rate year when the audited cost report for the base year becomes available to the department.

(d) Total prospective payments shall not exceed the total customary charges in the prospective year.

(2) An overpayment shall be recouped by:

(a) Payment from the provider for the amount of the overpayment; or

(b) The withholding of the overpayment amount from a future payment due the provider.

Section 5. [4:] Use of a Universal Rate Year. (1) A universal rate year shall be set for a facility with the universal rate year established as July 1 through June 30 of each year to coincide with the state fiscal year.

(2) A hospital shall not be required to change its fiscal years to conform with a universal rate years.

Section 6. [5:] Trending of a Cost Report. The following policies shall be used for the trending of a cost report:

(1) An allowable Medicaid cost, excluding capital cost, as shown in a cost report on file in the department, both audited and unaudited, shall be trended to the beginning of the rate year to update a hospital's Medicaid cost.

(2) The trending factor to be used shall be the inflation factor prepared by DRI for the period being trended.

Section 7. [6:] Indexing for Inflation. (1) After an allowable cost has been trended to the beginning of the rate year, an indexing factor shall be applied to project inflationary cost in the universal rate year.

(2) The indexing factor to be used shall be the inflation factor prepared by DRI for the universal rate year.

Section 8. [7:] Peer Grouping. For rate setting purposes, a hospital shall be grouped with other hospitals in accordance with the following provisions:

(1) The peer grouping shall be based on the number of beds licensed, as of May 1 preceding the universal rate year, which provide Medicaid covered services and shall meet minimum licensure requirements in accordance with 902 KAR 20:009, 902 KAR 20:006, 902 KAR 20:170, 902 KAR 20:180, 902 KAR 20:230 and 902 KAR 20:240.

(2) The peer groupings shall be: 0-50 beds, 51-100 beds, 101-200 beds, 201-400 beds, and 401 beds or more.

(3) A Type III hospital shall not be included in the array for a facility with 401 beds or more, but shall be subject to the upper limit for a facility with 401 beds or more.

(4) A psychiatric hospital shall not be peer grouped but shall be in a separate array of psychiatric hospitals.

(5) A rehabilitation hospital and an acute care hospital that is restricted to providing rehabilitation services shall not be:

- (a) Peer grouped;
- (b) Arrayed; or
- (c) Subject to the operating cost upper limit.

Section 9. [8:] Minimum Occupancy Factor. Allowable Medicaid capital cost shall be reduced if one (1) of the following minimum occupancy factors are not met:

(1) A sixty (60) percent occupancy factor shall apply to hospitals with 100 or fewer beds; or

(2) A seventy-five (75) percent occupancy factor shall apply to a hospital with 101 or more beds.

Section 10. [9:] Reduced depreciation allowance shall be applicable, as follows:

(1) The allowable amount for depreciation on building and fixtures, excluding major movable equipment, shall be sixty-five (65) percent of the reported depreciation amount as shown in the hospital's cost reports.

(2) The use of a reduced depreciation allowance shall not be applicable with regard to a psychiatric hospital.

Section 11. [10:] Upper limits and payment principles shall apply to a hospital, with additional limitations for a disproportionate share hospital established in Section 12 [11] of this administrative regulation, as follows:

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(1) An acute care hospital with 101 beds or more shall have an upper limit established on all costs (except Medicaid capital costs and professional component costs) at the weighted median per diem cost for a hospital in each peer group.

(2) An acute care hospital with 100 beds or less shall have the upper limit on all costs (except Medicaid capital costs and professional component costs) established at 110 percent of the weighted median per diem for a hospital in its peer group.

(3) A state university teaching hospital shall have an upper limit on all costs (except Medicaid capital costs and professional component costs) established at 106 percent of the weighted median per diem for a hospital in its peer group;

(4) A psychiatric hospital:

(a) Shall have an upper limit established on all costs (except Medicaid capital costs and professional component costs) at the weighted median per diem cost for a hospital in the array;

(b) Designated by the department as a primary referral and services resource for a child in the custody of the Cabinet for Families and Children shall be exempt from the upper limit for the array and shall be paid at actual projected cost with no year end settlement to actual cost; and

(c) May have the projected cost adjusted for usual cost of living increases using the DRI Index.

(5) Except as provided in subsection (10) of this section and Section 2 of this administrative regulation, the following principles shall apply:

(a) The most recent Medicaid cost report available as of May 1 of each year preceding the universal rate year shall be used for rate setting.

(b) If a desk review or audit of the most current cost report is completed after May 1, but prior to the universal rate setting for the year, the desk review or audited data shall be utilized for rate setting.

(c) An audit and desk review shall be conducted in accordance with the Medicaid Reimbursement Manual for Hospital Inpatient Services.

1. Except as provided in subparagraph 2 of this paragraph, the manual shall govern the Medicaid reimbursement for a hospital inpatient service.

2. If a reimbursement issue or area is not specified in the manual, the department shall apply Medicare standards and principles, excluding the Medicare inpatient routine nursing salary differential.

(6) After being set, the arrays and upper limits shall not be altered due to a revision or correction of data.

(7) Professional component costs shall be trended and indexed separately in the same manner as operating costs, except an upper limit shall not be established.

(8) A provider tax shall be considered an allowable cost. The portion attributable to Medicaid utilization shall be included in the per diem rate.

(9) Except as provided in subsection (10) of this section, the following controls shall be applied to the per diem rate increases for an acute care hospital excluding a hospital restricted to rehabilitative services:

(a) Allowable rate growth from the prior rate year to the new rate year shall be limited to not more than one and one-half (1 1/2) times the DRI inflation amount for the same time period;

(b) Limits shall be applied to the capital and operating cost per diem components;

(c) Rate growth beyond the allowable amounts shall be considered an unallowable cost for rate setting purposes; and

(d) Unallowable costs resulting from the use of control of rate increase limits shall not be included in the base for future rate setting purposes.

(10) For the rate period beginning July 1, 1997, the rate shall be the rate in effect for January 1, 1996 with the following modifications:

(a) The operating and professional components of the rate shall be indexed forward for the 1998 rate period using the inflation factor prepared by DRI for the same period;

(b) There shall be an add on to the rate, computed as fifteen (15) percent of the amount between the lesser of:

1. The operating cost per diem or the maximum operating per diem, whichever is less; or

2. The operating per diem as limited by the rate of increase control

(one and one-half (1 1/2) times the DRI); and

(c) The capital component shall not be indexed. The capital component of the rate shall be the amount computed for capital cost in the 1996 individual hospital rate notice, excluding the application of the rate of increase control (one and one-half (1 1/2) times the DRI).

(11) For a medically necessary hospital inpatient service provided for an exceptionally high cost or long length of stay, the payment rate shall be set at 110 percent of the per diem payment rate, without regard to length of stay or number of admissions of the infant. Exceptionally high cost or long length of stay shall be, in a nondisproportionate share hospital, those cost and days of stay for a child under age one (1) that:

(a) For a newborn, is thirty (30) days from the date of discharge for the mother; or

(b) For another child, is after thirty (30) days from the date of admission.

Section 12. [11.] The following upper limits and payment principles shall apply to a disproportionate share hospital:

(1) An acute care hospital with Medicaid utilization of twenty (20) percent or higher, or a hospital having twenty-five (25) percent or more nursery days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days, shall have an upper limit set at 120 percent of the weighted median per diem cost for a hospital in that peer grouping.

(2) A state university teaching hospital, having Medicaid utilization of twenty (20) percent or higher, or having twenty-five (25) percent or more nursery days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days, shall have an upper limit set at 126 percent of the weighted median per diem cost for a hospital of 401 beds and up.

(3) A designated state pediatric teaching hospital meeting the criteria in subsection (2) of this section shall:

(a) Have an upper limit set at 126 percent of the weighted median per diem cost of its appropriate peer group; and

(b) In addition to the hospital's base rate, be paid an amount which is equal to two (2) percent of the base rate for each one (1) percent of Medicaid occupancy but this amount shall not exceed the prospective reasonably determined uncompensated Medicaid cost to the hospital.

(4) A designated state pediatric hospital meeting the criteria in subsection (2) of this section and meeting the additional criteria of a Type III hospital status as defined in Sections 1(21) and 12(9)(b)2 of this administrative regulation shall:

(a) Have an upper payment limit set at 126 percent of the weighted median per diem cost of its appropriate peer group rate; and

(b) In addition to the hospital's base rate, be paid an amount which:

1. Is equal to two (2) percent of the base rate for each one (1) percent of Medicaid occupancy, not to exceed the payment limit as specified in 42 CFR 447.271;

2. For rate year 1998, shall be an end of the year adjustment applied to services provided by a qualifying hospital July 1, 1998 and thereafter; and

3. For payments subsequent to 1998, shall be prospectively determined quarterly amounts with an end-of-the-year settlement.

(c) Provide the state match necessary to obtain federal financial participation for funding under this section.

(5) A psychiatric hospital [hospitals] with Medicaid utilization of thirty-five (35) percent or higher shall have an upper limit set at 115 percent of the weighted median per diem cost for a hospital in the array.

(6) [(5)] An acute care hospital with 100 beds or less shall have an upper limit set at 110 percent of the weighted median per diem for a hospital in the array.

(7) [(6)] Another disproportionate share acute care hospital shall have its upper limit set at the weighted median per diem of the cost for a hospital in the peer grouping.

(8) [(7)] A hospital shall be reimbursed an additional amount equal to 110 percent of a hospital's per diem rate for medically necessary hospital inpatient days of service provided for an exceptionally high cost or long length of stay, without regard to length of stay or number

of admissions of the child. Exceptionally high cost or long length of stay shall be, in a disproportionate share hospital, those costs and days of stay for a child under the age of six (6) that:

(a) With the exception of a newborn, is after thirty (30) days from the date of admission [For a newborn, is thirty (30) days beyond the date of discharge for the mother]; or

(b) For a newborn, is thirty (30) days beyond the date of discharge for the mother [For another child, is after thirty (30) days from the date of admission].

(9) [(8)] The disproportionate share hospital payment [for the period beginning February 20, 1995] shall be made as follows:

(a) The disproportionate share hospital payment for a Type I or [and] Type II hospital shall be based on the costs of providing indigent care. [include a volume adjustment.]

1. Payment made to a hospital meeting the criteria in this paragraph shall be based on its proportion of the costs of providing inpatient and outpatient indigent care. [The adjustment shall be made by paying for each indigent care day, including equivalent days based on outpatient services actually provided, at the hospital's Medicaid per diem rate.]

2. Total disproportionate share hospital [volume adjustment] payments to a Type I and Type II hospital [for indigent care services] provided during the 1999 fiscal year shall not exceed \$93,000,000; and for the 2000 fiscal year, shall not exceed \$94,000,000. [1998 fiscal year shall not exceed \$91,900,000. If a payment will cause the limit to be exceeded, each hospital's volume adjustment amount shall be adjusted proportionately.]

a. The costs of indigent care for purposes of making payments to a Type II hospital with 200 beds or more licensed acute care beds [3: The inpatient equivalent care days for a hospital] shall be determined by:

(i) Calculating the costs of inpatient indigent care by multiplying each day of indigent care provided by the facility by its Medicaid rate; and

(ii) Calculating the costs of outpatient indigent care by applying the ratio determined by dividing a hospital's average Medicaid outpatient payment per visit by its Medicaid inpatient rate to the number of outpatient visits payable at its Medicaid rate.

b. Effective October 1, 1998, the costs of indigent care for a Type I or a Type II hospital with less than 200 licensed acute care beds shall be determined by applying the hospital's cost-to-charge ratio to allowable indigent charges as follows:

(i) By July 1 of each year, the department shall calculate the cost-to-charge ratio for a hospital by dividing the hospital's total allowable operating expenses by the hospital's total gross patient charges, using the Medicare cost report as of July 1 of that fiscal year.

(ii) To determine the cost-to-charge ratio, the department shall use the total cost from Worksheet B, Part 1, Column 25 and total charges from Worksheet C, Part 1, Column 8. The ratio is the total cost divided by the total gross patient charges.

3. If a payment made in accordance with this paragraph will cause the limit established in subsection (9)(a)2 of this section to be exceeded, each hospital's payment shall be adjusted proportionately prior to the final quarterly payment. [dividing the hospital's average Medicaid allowable outpatient payment per visit by the Medicaid allowable inpatient payment per day and multiplying the result by the number of indigent care outpatient visits for the specified period of time.]

(b) The disproportionate share hospital payment for a Type III [and IV] hospital shall be equal to 100 percent of the cost of services to a Medicaid patient, minus [less] the amount paid by Medicaid as a usual Medicaid per diem [payment], plus the cost of services to an uninsured patient, minus [less] any cash payment made by an uninsured patient.

1. Total disproportionate share hospital payments made to Type III hospitals in accordance with this paragraph shall be based upon available funds. Available funds shall not exceed the limits established in 42 USC 1396r-4(f), minus funds distributed in accordance with paragraph (a) of this subsection, minus funds distributed under paragraph (c) of this subsection. If payments made in accordance with this paragraph exceed available funds, payments shall be proportionately adjusted.

2. Type III status shall be granted to a state university teaching

hospital if the hospital agrees as a part of its request for a Type III status to[:

1. Forego a local or state government contribution for charity care; and

2.] provide up to 100 percent of the state matching funds necessary to secure federal financial participation for a Medicaid disproportionate share hospital payment to be made during the period of time the hospital is designated as a Type III status hospital.

(c) The disproportionate share hospital payment for a Type IV hospital shall be equal to 100 percent of the costs of services provided to Medicaid patients, minus the amount paid by Medicaid as a usual Medicaid per diem, plus the costs of services to uninsured patients, minus any cash payments made by an uninsured patient. Total disproportionate share hospital payments made to Type IV hospitals in accordance with this paragraph shall be based upon available funds. Available funds shall not exceed the limits established in 42 USC 1396r-4(h), minus funds distributed to psychiatric hospitals under paragraph (a) of this subsection. If payments made in accordance with this paragraph exceed available funds, payments shall be proportionately adjusted. [V-hospital shall be one (1) dollar per Medicaid day plus an earned adjustment which is equal to ten (10) cents for each one (1) percent of Medicaid occupancy above one (1) standard deviation.]

(d) Further adjustments shall not be made to payments described in this subsection except for errors identified by the department when computing the payment. A hospital shall be allowed thirty (30) days from the time that the payment calculation is finalized to submit verifiable data to correct the department's calculation.

[Section 12. In accordance with KRS 205.640, except for none-emergency care rendered through a hospital emergency room, an in-state nondisproportionate share hospital shall be compensated in the manner described in Section 11(8)(a) of this administrative regulation for services provided by the hospital to a Medicaid recipient beyond the covered days and to an individual and family with a total annual income and resources up to 100 percent of the federal poverty level.]

Section 13. Payment to a Participating Out-of-state Hospital. (1) A participating out-of-state hospital shall be reimbursed for covered inpatient services rendered to an eligible Kentucky Medicaid recipient at the lesser of seventy-five (75) percent of usual and customary charges or the in-state per diem upper limit for a comparable size hospital, plus a provision for capital cost. The capital cost provision shall be computed by using the mean value of the capital cost per diem paid per peer group for an in-state hospital.

(2) A participating out-of-state hospital shall be reimbursed at the lesser of eighty-five (85) percent of usual and customary charges or 110 percent of the in-state per diem upper limit for a comparable size hospital for an exceptionally high cost or long length of stay related to an infant under the age of one (1) in a nondisproportionate share hospital; or a child under age six (6) in disproportionate share hospitals, without regard to length of stay or number of admissions of the infant or child. Exceptionally high cost or long length of stay shall be those cost and days of stay:

(a) In a nondisproportionate share hospital, as defined in Section 10(11) of this administrative regulation; and

(b) In a disproportionate share hospital, as defined in Section 11(7) of this administrative regulation.

(3) [Except as provided in subsection (2) of this section, disproportionate status shall be reimbursed in accordance with Section 11(4) and (8)(c) of this administrative regulation.]

(4) Professional costs for covered days of stay shall be paid at seventy-five (75) percent of the usual and customary charges of the provider.

(4) The disproportionate share hospital payment for an out-of-state hospital shall be one (1) dollar per Medicaid day plus an earned adjustment which is equal to ten (10) cents for each one (1) percent of Medicaid occupancy above one (1) standard deviation

Section 14. Provider Appeal Rights. If appealed, negative action shall be appealed in accordance with 907 KAR 1:671.

Section 15. Incorporation by Reference. (1) "Medicaid Reim-

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bursement Manual for Hospital Inpatient Services", April 1999 [July 1997] edition, Department of Medicaid Services, is incorporated by reference.

(2) This material [H] 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: July 15, 1999

FILED WITH LRC: July 21, 1999 at 4 p.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: All hospitals with less than 200 acute care beds.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$0

2. Continuing costs or savings: \$0

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Although paperwork will need to be revised as a result of the change in distribution methodology for the affected hospitals, no additional paperwork is anticipated.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

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

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

(b) Kentucky: None

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Promulgation of this regulation would ensure that indigent Kentuckians who require medical services from hospitals which contain less than 200 acute care beds would be able to access these services since the affected hospitals would be ensured of receiving reimbursement for the provision of the services.

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

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of indigent Kentuckians because they would not be able to access indigent care from the affected hospitals since they would not be reimbursed for their costs.

(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: This regulation is considered budget neutral because current information available to the department indicates that the maximum funds allotted for the disproportionate share hospital program will be accessed. Therefore, the changes to this regulation will not affect the amount of funds expended.

(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.

### STATEMENT OF EMERGENCY 907 KAR 1:025E

This emergency administrative regulation is being established to amend the schedule-J capital cost instructions. This amendment is necessary to implement the use of the RS Means Construction Index to calculate the capital cost add-on for the July 1, 1999 rate setting. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety, or welfare of Medicaid recipients because nursing facilities would not receive funding that is necessary to maintain safe buildings. This emergency administration regulation has been amended to add a statement relating the public process for rates in order to comply with federal requirements. This emergency administrative language differs from the emergency administrative regulation on the same subject matter that was filed on January 15, 1999, because the department shall implement the use of the RS Means Construction Index that is required to calculate the capital cost add-on for the July 1, 1999 rate setting. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor

JOHN H. MORSE, Secretary

### CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Long-Term Care

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

RELATES TO: 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 42 USC 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s [KRS-205.520]



STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 205.520, 1998 Ky. Acts ch. 615 [ ~~194.050, 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456; 42 USC 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s;~~ ]

EFFECTIVE: July 21, 1999

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services [Human Resources] has responsibility to administer the Medicaid Program. KRS 205.520 authorizes [empowers] the cabinet by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the method for determining amounts payable by the Medicaid Program [cabinet] for nursing care facility services and intermediate care facility for the mentally retarded services.

Section 1. Definitions. (1) "All other costs" means other care-related costs, other operating costs, capital costs, and indirect ancillary costs.

(2) "Allowable cost" means that portion of the facility's cost which may be allowed by the department [cabinet] in establishing the reimbursement rate. Cost shall be considered allowable if the:

(a) Item of supply or service is necessary for the provision of the appropriate level of patient care; and

(b) [the] Cost incurred by the facility is within cost limits established by the department [cabinet], i.e., the allowable cost is "reasonable."

(3) "Ancillary services" means those direct services for which a separate charge is customarily made, and which, except for ventilator therapy services, and brain injury unit services are retrospectively settled on the basis of reasonable allowable cost at the end of the facilities' fiscal year. Ancillary services shall be limited to the following:

(a) Physical, occupational and speech therapy;

(b) Laboratory procedures;

(c) X-ray;

(d) Oxygen and other related oxygen supplies;

(e) Respiratory therapy (excluding the routine administration of oxygen);

(f) Psychological and psychiatric therapy (for intermediate care facilities for the mentally retarded only); and

(g) Ventilator therapy services, subject to the coverage limitations shown in the Nursing Facility Reimbursement Manual.

(4) "Basic per diem cost" means that for each major cost category (nursing services costs and all other costs), there shall be the:

(a) Computed rate arrived at; and

(b) After [when] otherwise allowable costs are trended and adjusted in accordance with the:

1. Inflation factor;

2. [the] Occupancy factor; and

3. [the] Median cost center per diem upper limits.

(5) "Calculated rate" means the rate effective July 1, 1999 for:

(a) Nursing facilities;

(b) Nursing facilities with mental retardation specialty; and

(c) Hospital-based facilities.

(6) "Department" means the Department for Medicaid Services or its designee.

(7) "Hospital based nursing facility [facilities]" means a [those] nursing facility [facilities] in the same building with or attached to an acute care hospital and shares [which share] common administration, nursing staff, and ancillary services with the hospital; however, a facility [those facilities] classified as hospital based skilled nursing facility [facilities] on June 30, 1989 shall remain classified as a hospital based nursing facility [facilities].

(8) [(6)] "Incentive factor" means the comparison of the basic per diem cost (for facilities qualifying for a cost savings incentive) with the upper limit for the appropriate cost arrays using the cost savings incentive (CSI) percentage (and taking into consideration the maximum allowable CSI amount for each cost array) to arrive at the actual dollar amount of cost savings incentive return to be added to the basic per diem cost.

(9) [(7)] "Inflation factor" means the comparison of allowable routine service costs, not including fixed or capital costs, with an inflation rate to arrive at projected current year cost increases, which when

added to allowable costs, including fixed or capital costs, yields projected current year allowable costs.

(10) [(8)] "ICF-MRs" means intermediate care facilities for the mentally retarded.

(11) [(9)] "Maximum allowable cost" means the maximum amount which may be allowed to a facility as reasonable cost for provision of an item of supply or service while complying with limitations expressed in related federal or state regulations.

(12) [(10)] "Necessary function" means that had the owner not rendered services pertinent to the operation of the institution, the institution would have had to employ another person to perform the service.

(13) [(11)] "Nursing facilities with waiver (NFs-W)" means a facility which:

(a) May not meet Medicare participation requirements;

(b) Has a license as a nursing facility; and

(c) Is certified to the Department for Medicaid Services [facilities certified to the Medicaid Program] by the state survey agency as meeting nursing facility [all-NF] requirements except for the nurse staffing requirement for which a Medicaid [an-NF] waiver has been granted by the survey agency.

(14) [(12)] "Nursing facility (NF [NFs])" means:

(a) A facility that is:

1. Licensed as a NF by the state survey agency; and

2. A facility certified to the Medicaid Program by the state survey agency as meeting NF standards; or [all-nursing facility]

(b) A hospital swing bed, that provides a service pursuant to:

1. 42 USC 1395TT;

2. 42 USC 1396.1; and

3. Is certified to the department as meeting the requirements of swing bed services pursuant to:

a. 42 USC 1396r(b), (c), (d);

(b) 42 CFR 447.280; and

(c) 42 CFR 482.66. [requirements, and in at least twenty (20) percent of the facility's Medicaid-participating beds (but not less than ten (10) beds) meeting all conditions of participation in the Medicare Program. The phrase "nursing facility" also includes a nursing facility with waiver, as provided for in 42 USC 1396r(b), (4)(c), (ii), unless the context specifies otherwise.]

(15) [(13)] "Nursing facility with a mental retardation specialty" (NF-MRS) means a nursing facility in which at least fifty-five (55) percent of the patients have demonstrated special needs relating to the diagnosis of mental retardation.

(16) [(14)] "Nursing services costs" means the direct costs associated with nursing services.

(17) [(15)] "Occupancy factor" means the imposition of an assumed level of occupancy used in computing unadjusted basic per diem rates.

(18) [(16)] "PRO" means peer review organization.

(19) [(17)] "Prospective rate" means a payment rate of return for routine services based on allowable costs and other factors, and includes the understanding that except as specified the prospective rate shall not be retroactively adjusted, either in favor of the facility or the department [cabinet].

(20) "Quarterly rate sheet" means the notice that is sent to a nursing facility each calendar quarter which provides information pertaining to the:

(a) Quarterly case mix; and

(b) Resultant prospective payment rate adjustment for a facility.

(21) "Rate on rate" means the methodology of establishing a reimbursement rate by:

(a) Multiplying an existing rate by one (1); plus

(b) A percent of increase as determined by the department in accordance with the biennial budget.

(22) [(18)] "Routine services" means the regular room, dietary, medical social services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Routine services shall include the following:

(a) All general nursing services, including administration of oxygen and related medications, handfeeding, incontinency care and tray services;

(b) Items which are furnished routinely and relatively uniformly to all patients, such as patient gowns, water pitchers, basins and bed

pans. Personal items such as paper tissues, deodorants, and mouth-washes shall be allowable as routine services if generally furnished to all patients;

(c) Items stocked at nursing stations or on the floor in gross supply and distributed or utilized individually in small quantities, such as alcohol, applicators, cotton balls, band-aids and tongue depressors;

(d) Items which are utilized by individual patients but which are reusable and expected to be available in an institution providing a nursing facility level of care, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment;

(e) Laundry services including personal clothing to the extent it is the normal attire for everyday facility use, but excluding dry cleaning costs; and

(f) Other items or services generally available or needed within a facility unless specifically identified as ancillary services. (Items excluded from reimbursement include private duty nursing services and ambulance services costs.)

(23) [(19)] "Upper limit" means the maximum level at which the department [cabinet] shall reimburse, on a facility by facility basis, for routine services.

Section 2. Reimbursement for Nursing Facilities, [(NFs)]-[]Including Nursing Facilities with Waiver, [] and Intermediate Care Facilities for the Mentally Retarded (ICF-MRs). (1) All nursing facilities, [(NFs)]-[]including nursing facilities with waiver, and []-or intermediate care facilities for the mentally retarded (ICF-MRs) participating in the Medicaid Program shall be reimbursed in accordance with this administrative regulation.

(2) Payments made shall be in accordance with the requirements established [set forth] in 42 CFR 447.250 through 42 CFR 447.280 and the coverage requirements specified in 907 KAR 1:022[-Nursing facility and intermediate care facility for the mentally retarded services].

(3)(a) A nursing facility desiring to participate in Medicaid shall be required to have at least twenty (20) percent of its Medicaid participating beds, [(but no [not] less than ten (10) beds, participate in the Medicare Program. [-for] A facility with less than ten (10) beds, shall have all beds)] participate in the Medicare Program unless the nursing facility has been granted a waiver of the nursing facility nurse staffing requirement and, as a result, cannot participate in Medicare.

(b) If a nursing facility with waiver chooses to participate in the Medicare Program, the facility shall be required to have at least twenty (20) percent of its Medicaid participating beds, [(but no [not] less than ten (10) beds. [-] If the facility has less than ten (10) beds, all beds shall [])] participate in the Medicare Program.

(4) The Medicaid Program does not recognize multilevel nursing facilities, and therefore all participating beds in nursing facilities (including nursing facilities with waiver but not including ICF-MRs) shall be reimbursed at the same rate established for the entire facility.

Section 3. Basic Principles of Reimbursement. (1) The department shall notify the public of the proposed rates of payment [Payment shall be on the basis of rates which have been determined by the cabinet to be reasonable and adequate to meet the costs which are required to be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards.] in accordance with the requirements established [set forth] in 42 USC 1396(a)(13)(A).

(2) Payment amounts shall be arrived at by application of the reimbursement principles developed by the department [cabinet] and contained in the [Kentucky-Medicaid-Program] Nursing Facility Reimbursement Manual[-, revised July 1, 1995 which is incorporated by reference in this administrative regulation and supplemented by the use of the Medicare reimbursement principles. The Kentucky Medicaid Program-Nursing-Facility-Reimbursement-Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m. eastern standard time) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of the appropriate fee allowed by 200 KAR 1:020].

Section 4. Implementation of the Payment System. The department's [cabinet's] reimbursement system shall be supported by the Medicare Principles of Reimbursement, with the system utilizing the principles as guidelines in unaddressed policy areas. The [cabinet's] reimbursement system shall include the following specific policies, components or principles:

(1)(a) Prospective payment rates for routine services shall be set by the department [cabinet] on a facility by facility basis, and shall not be subject to retroactive adjustment except as specified in this section of the administrative regulation, including the provisions contained in subsections (13) and (14) of this section.

(b) [(a)] Prospective rates shall be cost based annually, and may be revised on an interim basis in accordance with procedures set by the department [cabinet].

(c) [(b)] An adjustment to the prospective rate (subject to the maximum payment for that type of facility) shall be considered only if a facility's increased costs are attributable to one (1) of the following reasons:

1. Governmentally imposed minimum wage increases;

2. The direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in administrative regulation or written policy which affects all facilities within the class; or

3. Other governmental actions that result in an unforeseen cost increase.

(d) [(c)]1. The amount of any prospective rate adjustment shall not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs shall be classified into two (2) general areas, salaries and other.

2. The effective date of interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2)(a) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility as applicable (except that ICF-MRs shall have no administratively set upper limit).

(b)1. The state shall set a uniform rate year for NFs and ICF-MRs (July 1 - June 30) by taking the latest available cost data which are [is] available as of May 16 of each year and trending the facility costs to July 1 of the rate year. If the latest available cost report data has not been audited or desk-reviewed prior to rate setting for the universal year beginning July 1, the [with] prospective rates based on cost reports which are not audited or desk reviewed shall be subject to adjustment when the audit or desk review is completed.

2. [Appropriate cost report adjustments shall be made for the period between July 1, 1990 and October 1, 1990 to account for the fact a nursing facility rate adjustment related to nursing home reform shall be made effective October 1, 1990.

3-] Partial year, or budgeted cost data may be used if a full year's data is unavailable. Unaudited reports shall be subject to adjustment to the audited amount.

(c) Facilities paid on the basis of partial year or budgeted cost reports shall have their reimbursement settled back to allowable cost, with usual upper limits applied.

(d) Facilities whose rates are subject to settlement back to cost will not be included in the arrays until the facilities are no longer subject to cost settlement.

(e) The following specific policies shall be used with regard to determination, application, and exclusion from upper limits:

1. Nursing facility arrays. For the purpose [purposes] of setting upper limits, the freestanding NFs (exclusive of the NF-mental retardation specialty [MRs], NF-institutions for mental disease, and NF-pediatric facilities) shall be divided into urban and rural arrays.

a. The urban array shall include all facilities within a [standard] metropolitan statistical area, as defined by the U.S. Office of Management and Budget, Office of Management and Budget, Attachments to OMB Bulletin No. 93-05.

b. The rural array shall include all facilities that are not located in [nonstandard] metropolitan statistical area counties.

c. For purposes of arraying, current multilevel facilities (i.e., NF and ICF) shall be considered as one (1) facility, and the composite or



overall rate for the facility shall be paid for services rendered in either level during the period of time preceding the first survey agency occurring on or after October 1, 1990 (with separate levels ceasing to exist for Medicaid purposes at the time of the first survey).

d. The urban and rural arrays shall be further broken down into a nursing cost center array and an "other cost center" array for each.

2. Nursing facility upper limits. The following NF upper limits shall be applied:

a. The upper limit for nursing costs for freestanding NFs shall be set at 115 percent of the median of the array of each facility's cost per case-mix unit (urban or rural as applicable). The upper limit for "other costs" for freestanding NFs shall be set at 115 percent of the median of the allowable per diem cost array for the facilities (urban or rural as applicable);

b. The upper limit for hospital based nursing facilities shall be set at 125 percent of the appropriate upper limit for freestanding facilities; and

c. The upper limit for NF-MRSs shall be set at 120 percent of the appropriate upper limit for freestanding facilities.

3. Exclusions from nursing facility upper limits. The following exclusions from usual NF payment methodology and upper limits shall be applied.

a. Nursing facilities designated as institutions for mental diseases or as pediatric facilities shall be reimbursed at full reasonable and allowable prospective cost;

b. Hospital swing beds shall be paid at the average of NF payments for the preceding calendar year. The swing bed rates shall change effective January 1, 1991 and each January 1 thereafter;

c. ~~Hospital dual licensed beds shall be paid at the hospital-based facility upper limits;~~

d. ~~Facilities recognized as providing distinct part ventilator dependent care shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate. A distinct part ventilator unit shall have a minimum of twenty (20) beds and maintain a census of fifteen (15) patients. The patient census shall be based upon the quarter preceding the beginning of the rate year, or upon the quarter preceding the quarter for which certification is requested if the facility did not qualify for participation as a distinct part ventilator care unit at the beginning of the rate year. The fixed rate for hospital-based facilities shall be \$460 per day, and the fixed rate for freestanding facilities shall be \$250 per day. The rates shall be increased or decreased based on the Data Resources, Inc. rate of inflation indicator for the nursing facility services for each rate year beginning with the July 1, 1997 rate year. Costs of distinct part ventilator nursing facility units shall be excluded from allowable cost for purposes of rate setting and settlement of nursing facility cost reports; and~~

~~d. [which shall be equal to projected costs; and~~

e. ~~Facilities which are Medicaid certified head injury units providing preauthorized specialized rehabilitation services for persons with brain injuries shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate which shall be set at \$360 per diem. Facilities providing preauthorized specialized rehabilitation services for persons with brain injuries with rehabilitation complicated by neurobehavioral sequelae shall be paid an all-inclusive (excluding drugs) negotiated rate which shall not exceed the facilities' usual and customary charges.~~

4. Other factors relating to costs and upper limit determination shall be:

a. If the department [cabinet] has made a separate rate adjustment as compensation to the facilities for minimum wage updates, the department [cabinet] shall then adjust downward trending and indexing factors to the extent necessary to remove from the factors costs relating to the minimum wage updates already provided for by the separate rate adjustment. The purpose of the adjustment to the factors shall be to avoid paying the facilities twice for the same costs. If the trending and indexing factors include costs related to a minimum wage increase, the department [cabinet] shall not make a separate rate adjustment, and the minimum wage costs shall not be deleted from the trending and indexing factors.

b. The allowable per diem cost for NFs (excluding swing beds; ~~dual licensed hospital beds;~~) and facilities with all inclusive rates) shall include (through June 30, 1991) thirty-eight (38) cents for nurse aide

training; and one (1) dollar and thirty-eight (38) cents for implementation of universal precautions for disease control; and four (4) cents for medical director costs; these allowable cost amounts shall not be subject to adjustment or cost settlement.

c. A special access and treatment fee shall be added to the facility per diem (without regard to upper limits) for each individual identified as having care needs associated with high infectious or communicable diseases with limited treatment potential, such as hepatitis B, methicillin-resistant staphylococcus aureus (MRSA), acquired immune deficiency syndrome (AIDS), or who test positive for human immunodeficiency virus (HIV).

d. The maximum payment amounts for the prospective universal [uniform] rate year shall be adjusted each July 1 so that the maximum payment amount in effect for the rate year shall be related to the cost reports used in setting the facility rates for the rate year.

e. For purposes of administrative ease in computations, normal rounding may be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents. Upon being set, the arrays and upper limits shall not be altered due to revisions or corrections of data except as specified in this subsection.

(3) The reasonable direct cost of ancillary services provided by the facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate except for ventilator therapy and brain injury unit services which shall be paid on the basis of all-inclusive rates.

(a) Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement.

(b) Ancillary costs may be subject to maximum allowable cost limits under federal regulations.

(c) A [Any] percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except:

1. In the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the department [cabinet] exceeding twenty-five (25) percent of billed charges; or

2. If [Where] an evaluation by the department [cabinet] of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent.

(4) Interest expense used in setting the prospective rate shall be an allowable cost if permitted under Medicare principles and if it meets these additional criteria:

(a) It represents interest on long-term debt existing at the time the vendor enters the program or represents interest on any new long-term debt, the proceeds of which are used to purchase fixed assets relating to the provision of the appropriate level of care. If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates shall be allowable. The form of indebtedness may include mortgages, bonds, notes and debentures when the principal is to be repaid over a period in excess of one (1) year; or

(b) It is other interest for working capital and operating needs that directly relate to providing patient care. The form of the indebtedness may include notes, advances and various types of receivable financing;

(c) For both paragraphs (a) and (b) of this subsection, interest on a principal amount used to purchase goodwill or other intangible assets shall not be considered an allowable cost.

(5) Compensation to owner/administrators shall be considered an allowable cost provided that it is reasonable, and that the services actually performed are a necessary function.

(a) Compensation shall include the total benefit received by the owner for the services he renders to the institution, excluding fringe benefits routinely provided to all employees and the owner/administrator.

(b) Payment for services requiring a licensed or certified professional performed on an intermittent basis shall not be considered a part of compensation. Reasonableness of compensation shall be based on total licensed beds (all levels).

(c) Compensation for owners and nonowner administrators (except for nonowner administrators of intermediate care facilities for the mentally retarded and dual licensed pediatric facilities) shall not exceed the amounts specified in the Nursing Facility Reimbursement

Manual.

(6) The allowable cost for services or goods purchased by the facility from related organizations shall be the cost to the related organization, except if [when] it can be demonstrated that the related organization is in fact equivalent to any other second party supplier, i.e., a relationship for purposes of this payment system is not considered to exist. A relationship shall be considered to exist if [when] an individual (or individuals) possesses five (5) percent or more of ownership or equity in the facility and the supplying business. However, an exception to the relationship shall be determined to exist if [when] fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(7) The amount allowable for leasing costs shall not exceed the amount which would be allowable based on the computation of historical costs, except that for nursing facilities entering into lease/rent arrangements as intermediate care facilities prior to April 22, 1976, intermediate care facilities for the mentally retarded entering into lease/rent arrangements prior to February 23, 1977, and nursing facilities entering into lease/rent arrangements as skilled nursing facilities prior to December 1, 1979, the department [cabinet] shall determine the allowable costs of these arrangements based on the general reasonableness of the costs.

(8) Certain costs not directly associated with patient care shall not be considered allowable costs. Costs which shall not be allowable include political contributions, travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), specified vehicle costs as shown in the ~~(Kentucky Medicaid Program)~~ Nursing Facility Reimbursement Manual, and legal fees for unsuccessful lawsuits against the department [cabinet]. However, costs (excluding transportation costs) for training or educational purposes outside the state shall be [are] allowable costs unless the costs are incurred by administrators or owners.

(9) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods shall be used for changes of ownership occurring before July 18, 1984:

(a) Determine the actual gain on the sale of the facility.

(b) Add to the seller's depreciated basis two-thirds (2/3) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis.

(c) Gain shall be defined as any amount in excess of the seller's depreciated basis as computed under program policies at the time of the sale, excluding the value of goodwill included in the purchase price.

(d) A sale shall be any bona fide transfer of legal ownership from an owner [owner(s)] to a new owner [owner(s)] for reasonable compensation, which shall usually be fair market value. Lease-purchase agreements or other similar arrangements which do not result in transfer of legal ownership from the original owner to the new owner shall not be considered sales until legal ownership of the property is transferred.

(e) If an enforceable agreement for a change of ownership was entered into prior to July 18, 1984, the purchaser's cost basis shall be determined in the manner set forth in paragraphs (a) through (d) of this subsection.

(10) Valuation of capital assets.

(a) An [No] increase in valuation in relation to depreciation and interest costs shall not be allowed for changes of ownership occurring after July 18, 1984 and before October 1, 1985 except as shown in subsection (9)(e) of this section with regard to enforceable agreements for a change of ownership entered into prior to July 1, 1984.

(b) For bona fide changes of ownership entered into on or after October 1, 1985 the depreciation and interest costs shall be increased in valuation in accordance with 42 USC 1396a(a)(13)(C) and the Nursing Facility Reimbursement Manual at pages 350.03 - 350.10 and 352.08-352.09 effective for services provided on or after July 1, 1995. Schedule J capital cost forms (MAP-NF3) and instructions are contained in the Nursing Facility Reimbursement Manual on pages 900.27-900.34.

1. The payment increases resulting from the increases in valuation shall be limited to a projected annual amount of \$3,000,000, taking

into account Medicaid occupancy from the prior year Medicaid cost report, with the payments made as an add-on to the usual payment rates and not subject to the usual upper limits. If projected add-on payments would otherwise exceed \$3,000,000 on an annual basis the add-on amounts shall be reduced proportionately for each facility, i.e., the same percentage reduction shall be applied to all facilities qualifying for the rate add-on.

2. Facilities qualifying for the rate add-on shall be those facilities with a bona fide change of ownership on or after October 1, 1985 and before the beginning of the rate year for which the add-on is applicable. For the rate year beginning July 1, 1995, the notice of change of ownership and necessary cost data to compute the rate add-on shall be provided to the department by not later than September 30, 1995. For subsequent rate years, the notice of change of ownership and necessary cost data to compute the rate add-on shall be provided to the department by July 31 of the affected rate year.

(11) Each facility shall maintain and make available any records (in a form acceptable to the department [cabinet]) which the department [cabinet] may require to justify and document all costs to and services performed by the facility. The department [cabinet] shall have access to all fiscal and service records and data maintained by the provider, including unlimited on-site access for accounting, auditing, medical review, utilization control and program planning purposes.

(12) The following shall apply with regard to the annual cost report required of the facility:

(a) The year-end cost report shall contain information relating to prior year cost, and shall be used in establishing prospective rates and setting ancillary reimbursement amounts;

(b) New items or expansions representing a departure from current service levels for which the facility requests prior approval by the program shall be so indicated with a description and rationale as a supplement to the cost report;

(c) Department [Cabinet] approval or rejection of projections or expansions shall be made on a prospective basis in the context that if expansions and related costs are approved they shall be considered when actually incurred as an allowable cost. Rejection of items or costs shall represent notice that the costs shall not be considered as part of the cost basis for reimbursement. Unless otherwise specified, approval shall relate to the substance and intent rather than the cost projection; and

(d) If [When] a request for prior approval of projections or expansions is made, absence of a response by the department [cabinet] shall not be construed as approval of the item or expansion.

(13) The department [cabinet] shall perform a desk review of each year-end cost report and ancillary service cost to determine the necessity for and scope of a field audit in relation to routine and ancillary service cost. If a field audit is not necessary, the report shall be settled without a field audit. Field audits shall be conducted when determined necessary. A desk review or field audit shall be used for purposes of verifying cost to be used in setting the prospective rate or for purposes of adjusting prospective rates which have been set based on unaudited data; audits may be conducted annually or at less frequent intervals. An audit of ancillary cost shall be conducted as needed.

(14) Year-end adjustments of the prospective rate and a retroactive cost settlement shall be made if:

(a) Incorrect payments have been made due to computational errors (other than the omission of cost data) discovered in the cost basis or establishment of the prospective rate.

(b) Incorrect payments have been made due to misrepresentation on the part of the facility (whether intentional or unintentional).

(c) A facility is sold and the funded depreciation account is not transferred to the purchaser.

(d) The prospective rate has been set based on unaudited cost reports and the prospective rate is to be adjusted based on audited reports with the appropriate cost settlement made to adjust the unaudited prospective payment amounts to the correct audited prospective payment amounts.

(15) The department [cabinet] may develop and utilize methodology to assure an adequate level of care. Facilities determined by the department [cabinet] to be providing less than adequate care may have penalties imposed against them in the form of reduced payment rates.

(16) Each facility shall submit the required data for determination

of the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility (with the department's [cabinet's] concurrence).

(17) Allowable prior year cost, trended to the beginning of the rate year and indexed for inflation, shall be subject to adjustment based on a comparison of costs with the facility's occupancy rate (i.e., the occupancy factor) as determined in accordance with procedures set by the department [cabinet].

(a) The occupancy rate shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days (or ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates).

(b) The minimum occupancy rate shall be ninety (90) percent of certified bed days for facilities with less than ninety (90) percent certified bed occupancy.

1. The department [cabinet] may impose a lower occupancy rate for newly constructed or newly participating facilities, or for existing facilities suffering a patient census decline as a result of a competing facility newly constructed or opened serving the same area.

2. The department [cabinet] may impose a lower occupancy rate during the first two (2) full facility fiscal years an existing nursing facility participates in the program under this payment system.

(18) Qualifying nursing facilities (but not including swing beds, [dual-licensed hospital beds,] institutions for mental diseases, pediatric facilities, and facilities with all-inclusive rates) shall earn a cost savings incentive.

(a) Facilities qualifying for the cost savings incentive (except for NF-MRSs) shall be [those] facilities whose rate within the applicable cost array is not in excess of 110 percent of the median of the array.

(b) The cost savings incentive shall be computed at ten (10) percent of the difference between the facility's cost and the upper limit for the array with the cost savings incentive amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array.

(c) NF-MRS shall qualify for the cost savings incentive if the NF-MRS has costs less than the NF-MRS upper limit, and the cost savings incentive shall be ten (10) percent of the difference between the facility rate and the upper limit for the class of facility with the cost savings incentive amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array.

(19) Intermediate care facilities for the mentally retarded may qualify for a cost incentive and investment factor (CIIF) allowance based on a comparison of the facility rate with the CIIF schedule shown in this subsection. [No] Return for investment risk shall not be made to nonprofit facilities, and publicly owned and operated facilities shall not receive the incentive or investment return. Cost incentive and investment schedule for intermediate care facilities for the mentally retarded:

(Effective 10-1-90)		
Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
\$ 96.99 & below	\$1.38	\$.87
97.00 -102.99	1.29	\$.75
103.00 -108.99	1.18	\$.62
109.00 -114.99	1.06	\$.47
115.00 -120.99	.92	\$.31
121.00 -126.99	.76	\$.13
127.00 -133.49	*.53	--

\*There is no maximum payment limit for intermediate care facilities for the mentally retarded.

(20) Hold harmless. The NFs (but not including swing beds [or dual-licensed hospital beds]) shall be entitled to a "hold harmless" amount for the period from October 1, 1990 through June 30, 1992.

(a) This hold harmless amount shall be the amount, if any, by which the July 1, 1990 allowable facility rate plus an adjustment for ancillary costs shifted to routine costs (less a nurse aide training per diem allowance of one (1) dollar and twenty (20) cents) exceeds the allowable facility rate as computed on October 1, 1990 and July 1, 1991 (excluding the revised nurse aide training per diem allowance and other per diem add-ons in recognition of OBRA 87 requirements) under the revised reimbursement system.

(b) For hold harmless purposes, the July 1, 1990 rate shall be increased by an inflation allowance using the appropriate data resources, incorporated index for inflation.

(21) An adjustment shall be made to the usual rate for ICF-MRs, institutions for mental diseases, and pediatric facilities to account for those medical supplies, catheters, syringes, and diapers not payable under the pharmacy program (and no longer payable as ancillaries under the nursing facility payment system) which are thus included under the routine cost category.

(22) Case-mix. The nursing costs for each facility shall be divided by the average case weight (as measured by each patient's needs with regard to activities of daily living and special needs using a standardized measurement as shown in the Nursing Facility Reimbursement Manual with a range from one (1.0) (lowest level of intensity) to 4.12 (highest level of intensity) to derive the facility average case unit cost.

(a) [1. The average case weight for the period October 1, 1990 through June 30, 1991 shall be based on Medicaid patient level of care determinations made during the period July 1, 1990 through September 30, 1990 for each facility. (The peer review organization (PRO) shall first determine whether a patient is high-intensity, low-intensity, or neither. For patients meeting patient status (high or low intensity), the PRO will then determine the case weight).

2.] The average case weight [thereafter] shall be based on all level of care determinations made during the period covered by the cost report (or as appropriate the most recent period available or a projection if a fully or partial cost report is not available).

(b) The facility nursing rate shall be adjusted for each quarter throughout the year and shall be the product of the average case unit cost (subject to upper limits and with the cost savings incentive adjustment as appropriate) times the average case weight for the prior quarter (as determined using standard methodology and point-in-time analysis). The actual facility payment amount for nursing care shall thus be subject to adjustment each calendar quarter based on changes in facility average case weight, though the average case unit cost (based on prior year costs) remains the same.

(23) Nursing home reform costs.

(a) A facility [Effective October 1, 1990 and thereafter, facilities] shall be required to request preauthorization for costs that must be incurred to meet nursing home reform costs in order to be reimbursed for the costs.

1. The preauthorization request shall show the specific reform action that is involved and appropriate documentation of necessity and reasonableness of cost.

2. Upon authorization by the Medicaid agency, the cost shall be allowable.

3. A request for a payment rate adjustment may then be submitted to the Medicaid agency with documentation of actual cost incurred.

4. The allowable additional amount shall then be added on the facility's rate (effective with the date the additional cost was incurred) without regard to upper limits or the cost savings incentive factor (i.e., the authorized nursing home reform cost shall be passed through at 100 percent of reasonable and allowable cost).

(b) Preauthorization shall not be required for nursing home reform costs incurred during the period July 1, 1990 through September 30, 1990; however, the actual costs incurred shall be subject to tests of reasonableness and necessity and shall be fully documented at time of the request for rate adjustment.

(c) Facilities may request multiple preauthorizations and rate adjustments (add-ons) as necessary for implementation of nursing home reform.

(d) Facility costs incurred prior to July 1, 1990 shall not (except for the costs previously recognized in a special manner, i.e., the universal precautions add-on and the nurse aide training add-on) be recognized as being nursing home reform costs.

(e) The special nursing home reform rate adjustment shall be requested using forms and methods specified by the department [agency].

(f) A nursing home rate adjustment shall be included within the cost base for the facility in the rate year following the rate year for which the adjustment was allowed.

(g) Interim rate adjustments for nursing home reform shall not be allowed for periods after June 30, 1993.

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(24) The provider tax on nursing facilities shall be considered allowable cost; for the period of July 1, 1993 through June 30, 1994 appropriate rate adjustment shall be made as a rate add-on, with no offset against the inflation allowance. For subsequent rate periods, the cost basis shall be adjusted as appropriate to reflect the cost of the provider tax.

Section 5. Prospective Rate Computation. The prospective rate for each facility (taking into account the factors described in this administrative regulation and the case-mix methodology shown in the Nursing Facility Reimbursement Manual) shall reflect the following:

- (1) The adjusted allowable cost for the facility;
- (2) Adjustments to allowable cost related to occupancy;
- (3) Adjustments to allowable cost related to application of upper limits;
- (4) Adjustments to allowable cost related to application of the cost savings incentive factor, or for ICF-MRs, the cost incentive and investment schedule;
- (5) Rates shall be recomputed quarterly based on revisions in the case-mix assessment classification which affects the nursing services component as described in the Nursing Facility Reimbursement Manual. ~~[-however,]~~ The cost basis and the upper limits shall be revised annually using the latest available cost reports and assessments from each provider;
- (6) Adjustments as appropriate for costs shifted from ancillary to routine;
- (7) Nursing home reform adjustments; and
- (8) Hold harmless adjustments.

Section 6. Reimbursement Review and Appeal. Participating facilities may appeal ~~department~~ ~~[cabinet]~~ decisions as to application of the general policies and procedures in accordance with 907 KAR 1:671~~[- Conditions of Medicaid provider participation; enrollment; documentation of services; disclosure; claims processing; withholding overpayments; appeals process; and sanctions].~~

Section 7. Reimbursement for Required Services Under the Preadmission Screening Resident Review (PASRR). (1) Prior to an admission of an individual, the NF shall conduct a level I PASRR in accordance with 907 KAR 1:755, Section 4.

(2) The department shall reimburse an NF for service delivered to an individual if the NF complies with the requirements of 907 KAR 1:755.

(3) Failure to comply with 907 KAR 1:755 shall be grounds for termination of the NF's participation in the Medicaid Program.

Section 8. Reimbursement Provisions. (1) A nursing facility, including a nursing facility with a waiver, participating in the Medicaid Program shall be reimbursed in accordance with this administrative regulation except for:

(a) A nursing facility with a certified brain injury unit, as established in Section 4(2)(e)3e of this administrative regulation;

(b) A nursing facility with a distinct part ventilator unit, as established in Section 4(2)(e)3d of this administrative regulation;

(c) A nursing facility designated as an institution for mental diseases, as established in Section 1(15) of this administrative regulation and in Section 501 of the Nursing Facility Reimbursement Manual;

(d) A pediatric nursing facility, as established in Section 701 of the Nursing Facility Reimbursement Manual and 907 KAR 1:023; and

(e) An intermediate care facility for the mentally retarded, as defined in Section 400 of the Nursing Facility Reimbursement Manual and 907 KAR 1:022, Section 1(3).

(2) Payment shall be made in accordance with the requirements established in 907 KAR 1:022.

Section 9. Prospective Rate Methodology. (1) Nursing facility Medicaid expenditures during the rate year beginning July 1, 1999 and ending June 30, 2000 shall not exceed \$534,600,000, including appeal and ancillary settlements.

(2) In order to ensure that expenditures do not exceed the amount established in subsection (1) of this section, the department

shall:

(a) Compile a spreadsheet which contains actual data by facility, for each month and year beginning with July 1, 1999 and includes the following items:

1. Patient days paid;
2. Routine costs paid;
3. Ancillary costs paid;
4. Medicare crossovers paid;
5. Patient liability collected;
6. Third-party liability collected;
7. Appeal settlements; and
8. Year-end ancillary settlements.

(b) Compile a detailed listing of licensed nursing facility beds and current approved certificates of need that shall be included in the projected \$534,600,000 budgeted limit.

(c) Distribute monthly the Medicaid spreadsheets containing the data identified in this subsection to the:

1. Technical Advisory Committee on Nursing Home Care;
2. Advisory Council for Medical Assistance;
3. Budget Review Subcommittee on Human Resources; and
4. Upon request, to other interested parties.

Section 10. The final court order in West View Nursing Home, Inc. et al v. Commonwealth of Kentucky, Cabinet for Health Services and Cabinet for Human Resources, Franklin Circuit Court, No. 97-CI-00418, or extraordinary changes related to nursing facility beds in new or existing certificate of need administrative regulations or interpretations thereof was excluded from the state fiscal year end 1998-1999 budget target.

Section 11. The provisions of this administrative regulation shall be applicable to payments made for the state fiscal year 1999 and shall be applicable to payments made in the subsequent state fiscal year for claims with dates of service between January 1, 1998 and May 31, 1998.

Section 12. Reimbursement Methodology for State Fiscal Year 1999-2000. The provisions of this section shall be applicable to payments to nursing facilities made for the state fiscal year 1999-2000.

(1) The provisions of this section shall not apply to payments to the following:

(a) A nursing facility with a certified brain injury unit;

(b) A nursing facility with a distinct part ventilator unit;

(c) A nursing facility designated as an institution for mental diseases; and

(d) A pediatric nursing facility.

(2) Payments to facilities specified in subsection (1) of this section are included in the \$534,600,000 biennium budget cap for state fiscal year 1999-2000.

(3) Rates for nursing facilities and nursing facilities designated as mental retardation specialty for the rate year beginning July 1, 1999 and ending June 30, 2000 shall be determined by:

(a) Utilizing a rate on rate method; and

(b) Increasing the facility's June 30, 1999 rate by three (3) percent for state fiscal year 1999-2000, to achieve a rate of increase which shall cause total payments to nursing facilities to be at a maximum of \$534,600,000 in fiscal year 2000, based upon static utilization of beds by Medicaid recipients.

(4) The department shall remain at risk for increases in total nursing facility payments which result from higher utilization of beds by Medicaid recipients than the utilization used to establish the 1999 rate.

(5) The calculated rate shall be determined by the department as follows:

(a) The department shall use a facility's June 30, 1999, lesser of actual or maximum nursing facility cost per case mix unit, which is specified on line 11 of the nursing cost component on the most recent revised rate form MAP-NF1, as contained in the Nursing Facility Reimbursement Manual, with an effective date of December 1998.

(b) On the MAP-NF2, as contained in the Nursing Facility Reimbursement Manual, the number as specified on line 11 of the MAP-

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NF1 shall be multiplied by the department's approved facility case mix average for the quarter being calculated.

(c) To this product the department shall add the facility's June 30, 1999 cost-saving incentive per diem, as specified on line 15 of MAP-NF1.

(d) The calculation which is determined as specified in paragraphs (a) through (c) of this subsection shall be added to the department's approved "all other cost" per diem payment rate as indicated on line 16 of the "all other cost component" on the MAP-NF1.

(e) The sum arrived at in paragraph (d) of this subsection shall be multiplied by the rate of increase as specified in subsection (3)(b) of this section.

(f) The amount arrived at in paragraph (e) of this subsection plus Schedule J Capital Cost and other approved by the department add-ons shall yield the calculated nursing facility rate on MAP-NF2.

(6) A case mix adjustment shall be the only adjustment made by the department to the July 1, 1999 through June 30, 2000 rates except as specified in subsection (3) of this section.

(a) Other adjustments shall not be made to the rates in force from July 1, 1999 to June 30, 2000 except for errors identified by the department or provider when computing the rate.

(b) The case mix adjustment shall be made each quarter to the nursing component of the rates.

(7) The department shall establish an extenuating circumstance pool used to provide an add-on to the calculated rate. An add-on to the calculated rate shall be considered if a facility's increased costs are due to extenuating circumstances that affect one (1) or more facilities as approved by the department.

(8) The extenuating circumstance pool shall:

(a) Not exceed \$3,000,000;

(b) Be prorated among all nursing facilities qualifying for participation in the pool as determined by the department; and

(c) Be adjusted downward if the total Medicaid payments made to nursing facilities are projected to exceed, as a result of inflation, the biennium budget cap as specified in subsection (2) of this section. The biennium budget cap shall include all payments to nursing facilities including the following:

1. Certified brain injury unit;

2. Nursing facilities with a distinct part ventilator unit;

3. Nursing facilities designated as an institution for mental diseases;

4. Federally-defined swing beds; and

5. Pediatric nursing facilities.

(9) Applications for a Medicaid rate add-on shall be submitted to the department by July 31 of each rate year on a form MAP-NF4, as contained in the Nursing Facility Reimbursement Manual.

(10) To be eligible for the calculated rate add-on from the \$3,000,000 extenuating circumstance pool, pursuant to subsections (7) and (8) of this section, a facility shall meet the following criteria:

(a) The facility's July 1, 1999 Medicaid rate, as would have been calculated under the previous rate-setting methodology, shall exceed their current July 1, 1999 Medicaid rate, as calculated under the new rate-setting methodology.

(b) The add-on amount shall not cause the total per diem rate to exceed the rate as would have been calculated under the previous rate-setting methodology.

(c) If actual upper limit calculations do not exist, the upper limit shall be established by:

1. Increasing the upper limits in effect during 1997 by five and eight-tenths (5.8) percent; and

2. Increasing the upper limit in effect during 1998 by three (3) percent.

(d) The facility's rate, including the extenuating Schedule J add-on, shall not exceed the Medicaid rate upper limit.

(e) If actual upper limit calculations do not exist, the upper limit shall be established by:

1. Increasing the upper limits in effect during 1997 by five (5) and eight (8) tenths percent;

2. Increasing the upper limit in effect during 1998 by three (3) percent.

3. The request shall meet the true intent of the extenuating circumstance Schedule J as determined by the department.

(11) \$3,000,000 shall continue to be distributed through the

current capital cost Schedule J process as described in Section 4 of this administrative regulation.

(12) The ancillary payment methodology shall remain the same as that used on July 1, 1997 and as specified in Section 4 of this administrative regulation.

**Section 13. Newly Participating Facilities.** The rate for a facility that began participating in the Medicaid Program after July 1, 1998 shall be 115 percent of the median payment rate of the appropriate urban or rural array determined by the department subsequent to the application of the rate of increase applied effective July 1 of the applicable rate year. The median payment rate established shall not be subject to retroactive cost settlement.

(1) Nursing facility arrays. For purposes of setting the rate for a nursing facility newly participating after July 1, 1999, the rates for nursing facilities (exclusive of the nursing facility-mentally retarded services, nursing facility-institutions for mental disease, and nursing facility-pediatric facilities) shall be divided into urban and rural arrays.

(2) The urban array shall include all facilities within a metropolitan statistical area.

(3) The rural array shall include all facilities in nonmetropolitan statistical area counties.

(4) The urban and rural arrays shall be further broken down into a "nursing cost center" array and an "other cost center" array.

**Section 14. Incorporation by Reference.** (1) "Nursing Facility Reimbursement Manual", Department for Medicaid Services, 07/99 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, 6th Floor West, Frankfort, Kentucky, 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [Implementation Date. The provisions of this administrative regulation shall be effective with regard to payments for services provided on or after July 1, 1995.]

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: July 19, 1999

FILED WITH LRC: July 21, 1999 at 4 p.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: Approximately 350 Medicaid nursing facilities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

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

1. First year following implementation: None\*

2. Second and subsequent years: None\*

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: In FY 2000, the department anticipates increased payments to nursing facilities in the amount of \$15.5 million.

2. Continuing costs or savings: If additional funding is not appropriated during the 2000 session of the General Assembly, the continuing costs will be the same as the first year.

3. Additional factors increasing or decreasing costs: \*At this time the cabinet is not aware of additional factors that may increase or decrease costs. However, costs will be monitored on a monthly

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basis to determine anticipated costs to Kentucky Medicaid Program.

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None. This administrative regulation is consistent with the budgetary appropriations in HB 321 enacted by the 1998 General Session of the legislature.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds. \*Federal matching funds of 70.55% equaling \$10,935,250 and state matching funds of 29.45% equaling \$4,564,750 (will be expended). State revenues will come from biennial budget.

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

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

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Will ensure the Commonwealth will meet the health and welfare needs of Kentucky's Medicaid eligible individuals who are elderly and disabled.

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

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to public health, safety, and welfare of Medicaid recipients because nursing facilities would not receive the funding that is necessary to maintain safe buildings.

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

(a) Necessity of proposed regulation if in conflict: None

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

ernment? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will affect those counties operating nursing facilities.

3. State the aspect or service of local government to which this administrative regulation relates. County governments that own or operate nursing facilities.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. There is no impact.

### 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 gov-



ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY  
(As Amended at ARRS, August 10, 1999)

11 KAR 12:010. Definitions for 11 KAR Chapter 12.

RELATES TO: KRS 164A.300 to 164A.380

STATUTORY AUTHORITY: KRS 164A.325(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.325(9) authorizes the board to promulgate administrative regulations to implement the Kentucky Educational Savings Plan Trust. This administrative regulation establishes the definitions for 11 KAR Chapter 12.

Section 1. Definitions. (1) "Academic period" means one (1) semester or one (1) quarter or an equivalent period for a vocational technical institution.

(2) "Account" means the account in the program fund established and maintained under the trust for a beneficiary.

(3) "Account balance" means the fair market value of an account as of the accounting date.

(4) "Accounting date" means the date, not later than the last business day of each quarter as determined by the program administrator.

(5) "Administrative fund" is defined in KRS 164A.305(2).

(6) "Beneficiary" is defined in KRS 164A.305(3).

(7) "Benefits" is defined in KRS 164A.305(4).

(8) "Board" is defined by KRS 164A.305(5).

(9) "Dependent person" means a person who is unable to meet the criteria for an independent person as defined in subsection (12) of this section.

(10) "Designated date" means the date on which each beneficiary is eligible to be designated in a participation agreement.

(11) "Domicile" or "legal residence" 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.

(12) "Effective date" means the date which a participant may enter into a participation agreement with the trust, which is on or after July 1, 1989.

(13) "Higher education costs" is defined by KRS 164A.305(7).

(14) "Independent" means a person:

(a) Who has not been claimed by his parent as a dependent on a federal or state income tax return for the tax year preceding the date of application for reclassification of residency status;

(b) Who demonstrates no financial dependence upon a parent; and

(c) Whose parent's income is not taken into account by a private or governmental agency furnishing educational financial assistance to the person, including a scholarship, loan, or other assistance.

(15) "Institution of higher education" is defined in KRS 164A.305(8).

(16) "Kentucky ties" means a participant or beneficiary who has contact or ties with the Commonwealth, including current or former residence or employment in the Commonwealth, or a family member with current or former residence in the Commonwealth.

~~(15) "Minimum rate of return" means the minimum earnings of four (4) percent guaranteed by the trust on a payment made by the participant.]~~

(17) "Notice to authorize payroll deduction" means the participant's written instruction to the participant's employer to deduct payments from the participant's earnings and forward that amount to the trust.

(18) "Notice to delay benefits under participation agreement" means the participant's written instruction [the form which a participant submits] to the program administrator of the trust to delay benefits under a participation agreement, after the beneficiary has attained the age of eighteen (18).

(19) ~~[(18)]~~ "Notice to extend payments under participation agreement" means the participant's written instruction [the form which a participant submits] to the program administrator of the trust to extend payments under a participation agreement beyond the beneficiary's age of eighteen (18).

(20) ~~[(19)]~~ "Notice to increase or decrease payments under participation agreement" means the participant's written instruction [the form which a participant submits] to the program administrator of the trust to increase or decrease payments under a participation agreement.

(21) ~~[(20)]~~ "Notice to preauthorize debit" means the participant's written instruction to [the form which a participant completes to notify] the participant's financial institution to debit or charge the participant's checking or savings account for payments due under the participation agreement.

(22) ~~[(21)]~~ "Notice to substitute beneficiary" means the participant's written instruction [the form which a participant submits] to the program administrator of the trust to substitute a beneficiary.

(23) ~~[(22)]~~ "Notice to terminate the participation agreement" means the participant's written instruction [the form which a participant submits] to the program administrator of the trust to terminate a participation agreement under the trust.

(24) ~~[(23)]~~ "Notice to use trust benefits" means the participant's written instruction [the form which a participant submits] to the program administrator of the trust to notify the trust of the date benefits are to begin and level of benefits paid.

~~[(24)] "Notice to authorize payroll deduction" means the participant's written instruction [the form which a participant submits] to the [program administrator of the trust to direct the] participant's employer to deduct payments from the participant's earnings [payroll deduction check] and forward that amount to the trust.]~~

(25) "Parent" means one (1) of the following:

(a) A person's father or mother; or

(b) A court-appointed legal guardian if the guardianship was not established primarily to confer Kentucky residency on the person.

(26) "Participant" is defined in KRS 164A.305(10).

(27) "Participation agreement" is defined in KRS 164.305(11).

(28) "Payment book" means the book which contains individual coupons, designating the amount and due date of each payment.

(29) "Payments" means the money paid by the participant to the trust under the participation agreement.

~~[(29) "Payment book" means the book which contains individual coupons, designating the amount and due date of each payment.]~~

(30) "Program administrator" is defined in KRS 164A.305(12).

(31) "Program fund" is defined in KRS 164A.305(13).

(32) "Property settlement agreement" or "decree of dissolution by the court" means the agreement or judgment approved or entered by a court of competent jurisdiction which sets forth the participant's right, if any, to the participant's interest in the participation agreement.

(33) "Trust year" means the fiscal year beginning July 1 and ending the following June 30 of each year for purposes of the calculation of benefits.

(34) "Vested participation agreement" is defined in KRS 164A.305(15).

WAYNE STRATTON, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: April 26, 1999

FILED WITH LRC: June 14, 1999 at 1 p.m.



VOLUME 26, NUMBER 3 – SEPTEMBER 1, 1999

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY  
(As Amended at ARRS, August 10, 1999)

**11 KAR 12:070. Benefits payable from the Kentucky Educational Savings Plan Trust Program fund.**

RELATES TO: KRS 164A.310(8), 164A.330(5), 164A.335, 26 USC 529[; PL 105-34]

STATUTORY AUTHORITY: KRS 164A.325(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.310(8), 164A.330(5) and 164A.335 establish the statutory framework for payment of benefits from the program fund. This administrative regulation establishes the maximum benefits payable in an academic period, the duration of the payments, the payment of benefits for a beneficiary residing off campus and the notice provisions ~~for [in-the-event-of]~~ a refund of the payments for nonuse or unused benefits from the program fund.

Section 1. Distribution of Benefits. (1) Upon submission of a notice to use trust benefits, the participant shall specify the level of benefits to be paid. The participant shall elect distribution of an allotment of the account balance, calculated by dividing the account balance by the number of academic periods in the beneficiary's program of study, or a higher amount, which shall not exceed the beneficiary's higher education costs for each academic period. The participant may adjust the level of benefits paid in an academic period by notifying the program administrator in writing.

(2) Distribution of benefits shall begin after receipt by the program administrator of a notice to use trust benefits and shall continue throughout the beneficiary's period of enrollment at an institution of higher education, or until the account balance has been exhausted, whichever occurs first.

(3) If a participant transfers ownership rights pursuant to KRS Chapter 385, Uniform Transfers to Minors Act, notwithstanding KRS 385.202(1), which mandates the transfer of custodial property to the minor upon attainment of age eighteen (18), the property shall be distributed for postsecondary educational purposes in accordance with the terms of the participation agreement during each academic period of the beneficiary's educational program.

Section 2. Beneficiary Residing Off Campus. If a beneficiary resides off campus, upon written request of the participant, the program administrator shall pay to the beneficiary, ~~for [in-addition-to-the amounts paid to the institution, an amount equal to the cost of] room and board for an academic period, that portion of higher education costs not paid to the institution that [as established by the institution for an on-campus student. The amounts paid to the institution and the beneficiary] shall not exceed the amount of [payable in an academic period from the program fund or exceed] the beneficiary's higher education costs permitted for room and board pursuant to 26 USC 529 [for that institution].~~

Section 3. Nonenrollment. The program administrator shall refund the balance of payments and the earnings from the investments in the program fund remaining in the account in accordance with KRS 164A.350 if:

(1) ~~[(+)] [if]~~ The trust does not receive a completed notice to use trust benefits or a notice to delay trust benefits by the first academic period of the academic year, beginning July 1 and ending June 30 of the following year, that begins after the beneficiary attains the age of eighteen (18); ~~[-]; or~~

(2) ~~(a) [if]~~ The beneficiary interrupts enrollment (other than normal intersemester vacation periods); ~~[-]; and~~

~~(b) The trust does not receive a notice to delay benefits[-, the program administrator shall refund the balance of payments and the earnings from the investments in the program fund remaining in the account in accordance with KRS 164A.350].~~

~~[(2) A participant shall not delay distribution of benefits more than a total of eight (8) academic periods. After delay of distribution of benefits for eight (8) academic periods:~~

~~(a) Distributions shall be made each academic period until the beneficiary graduates from an institution of higher education or the account balance has been exhausted, whichever occurs first; or~~

~~(b) The balance shall be refunded to the participant pursuant to KRS 164A.350.]~~

Section 4. Unused Benefits. (1) During academic period. If a beneficiary's higher education costs are less than the benefits due for an academic period, that portion of the unused benefits shall accumulate to the beneficiary's account. The unused benefits plus the beneficiary's entitlement in the program fund in an academic period not exceeding the higher education costs may be paid for the beneficiary in the next succeeding academic period.

(2) After graduation. If the beneficiary graduates from an institution of higher education, and a balance remains in the beneficiary's account, the program administrator shall pay the balance of the payments and the earnings from the investments in the program fund remaining in the account to the participant pursuant to KRS 164A.350. The refund shall be made unless the beneficiary plans to continue at a higher education institution and the participant submits a completed notice to delay benefits or notice to use trust benefits.

WAYNE STRATTON, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: April 26, 1999

FILED WITH LRC: June 14, 1999 at 1 p.m.

**PERSONNEL CABINET  
(As Amended at ARRS, August 10, 1999)**

**101 KAR 2:020. Classification plan.**

RELATES TO: KRS 18A.005, 18A.030(2), 18A.032, 18A.110(1)(c), (7)

STATUTORY AUTHORITY: KRS 18A.030(2), ~~[Chapter 18A,]~~ 18A.110(1)(c), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(c) and (7) requires the Secretary [Commissioner] of Personnel to promulgate ~~[comprehensive]~~ administrative regulations; ~~consistent with the provisions of KRS Chapter 18A,~~ which govern the classification plan for all positions in the classified service so that the same qualifications may reasonably be required for, and the same schedule of pay equitably applied to, all positions in the same job classification. This administrative regulation establishes the classification plan for classified service ~~[is to assure uniformity and equity in administering the plan, in accordance with requirements of the statutes].~~

Section 1. Interpretation of Class Specifications. (1) Class specifications shall describe and explain the job duties and responsibilities typically assigned to a position within a particular class.

(2) Class specifications shall [are descriptive and explanatory. They are designed to] indicate the kinds of positions to [which should] be allocated to the various job classifications as determined by their characteristics and duties or responsibilities.

[(2)] Characteristics and duties or responsibilities of a class shall be [are] general statements indicating the level of responsibility and discretion of positions in that job classification.

(3) Examples of duties or responsibilities shall not [are not to] be construed as:

(a) Describing what the duties or responsibilities of an [any] individual position shall be; or [;] [and are not to be construed] [as] limiting the appointing authority's [authorities'] ability to temporarily take away from, add to, or otherwise alter the duties and responsibilities of an individual [a] position.

(4) The use of an individual expression or illustration describing the [as to] duties or responsibilities of a class shall not be regarded as excluding assignment of other duties or responsibilities [others] not mentioned which are of similar kind or quality.

(5) [(4)] Minimum requirements shall be [are] comprehensive statements of the minimum background as to education, experience and other qualifications which will be required in all cases as evidence of an appointee's ability to perform the work properly.

(6) Position descriptions shall state, in detail, the duties and responsibilities assigned to an individual position. If the duties and

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responsibilities assigned to a position are to be changed in a material and permanent way, the supervisor making the recommendation shall timely submit to the appointing authority for the agency a position description, stating the duties and responsibilities to be assigned. If the appointing authority approves the material and permanent assignment of the duties and responsibilities, the new position description shall be forwarded to the secretary with the appointing authority's recommendation for reclassification.

Section 2. Official Copy of Class Specifications. (1) The ~~[Department of]~~ Personnel Cabinet shall maintain a master set of all approved class specifications. These ~~[Such]~~ specifications shall constitute the official class specifications in the classification plan. The copies of the specification for each job classification shall indicate the date of adoption or the last revision of the specification.

(2) The ~~[Department of]~~ Personnel Cabinet shall provide each appointing authority with a set of ~~[the]~~ class specifications ~~[of those job classifications to which positions in his department are allocated and such other job classifications as it sees fit].~~ Class specifications shall be available for inspection by an ~~[any]~~ employee or the public under reasonable conditions during business hours.

Section 3. Title of Position and Classification. (1) The title of the job classification to which a position has been allocated shall be used to designate the ~~[such]~~ position in all payrolls and other official records, documents, vouchers, and communications in connection with all personnel processes. For purposes of internal administration or for a purpose ~~[any other purposes]~~ not involving the personnel processes, an ~~[any]~~ office title, abbreviation, or code symbol may be used in lieu of the class title.

(2) The Personnel Cabinet may change the title of a job classification to more accurately describe job functions that have been or may be assigned to a class.

PAUL E. PATTON, Governor  
CAROL M. PALMORE, Secretary  
DANIEL F. EGBERS, General Counsel  
APPROVED: May 21, 1999  
FILED WITH LRC: June 10, 1999 at 4 p.m.

**PERSONNEL CABINET**  
**(As Amended at ARRS, August 10, 1999)**

**101 KAR 2:034. Classified compensation administrative regulations.**

RELATES TO: KRS 18A.030(2), 18A.110, 18A.165

STATUTORY AUTHORITY: KRS 18A.110(1)(c), (d), (g), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 requires the Secretary of Personnel 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. This administrative regulation establishes requirements ~~[is]~~ to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements.

Section 1. New Appointments. (1) An appointing authority shall ~~[may]~~ appoint a new employee at a salary not to exceed the midpoint of the pay grade.

(2) The appointing authority shall adjust to that salary, an ~~[any]~~ employee who is earning less than the new appointee's salary if the appointing authority determines that the incumbent employee:

- (a) Is in the same class;
- (b) Is in the same work county; and
- (c) Has a similar combination of education and experience relating to the job classification.

Section 2. Reentrance to Classified Service. (1) Returning retirees. An employee who was formerly employed under KRS Chapter 18A and who is appointed to a position covered by the provisions of KRS Chapter 18A while receiving retirement payments through the Kentucky Retirement Systems or Kentucky Teachers Retirement

System shall be appointed in accordance with the provisions for new appointments.

(2) Other reentering employees.

(a) Former classified employees. An appointing authority shall ~~[may]~~ set the salary of a former classified employee, other than a returning retiree, who is being reemployed, reinstated, or probationarily appointed in one (1) of the following ways:

1. In accordance with the standards used for making new appointments;

2. Up to the same salary as that paid at the time of separation from the classified service, if that salary is within the current pay grade; or

3. Higher than the salary paid at the time of separation from the classified service, if the salary would have changed due to intervening changes in the salary schedule, or due to pay grade adjustments made on or after the effective date of this administrative regulation as amended.

(b) Former unclassified employees with prior classified service. An appointing authority shall ~~[may]~~ set the salary of a former classified employee who moved to the unclassified service and who is reinstated, reemployed or probationarily appointed to a position in the classified service in one of the following ways:

1. In accordance with the standards for making new appointments;

2. Up to the same salary as that paid at the time of separation from the classified service, if that salary is within the current pay grade;

3. Higher than the salary paid at the time of separation from the classified service, if the salary would have changed due to intervening changes in the salary schedule, or due to pay grade adjustments made on or after the effective date of this administrative regulation as amended; or

4. At a salary that is the same as the salary the employee last received in the classified service with adjustments for increases that would have been received if the employee had remained in the classified service prior to resignation.

(c) Former unclassified employees with no previous classified service. An appointing authority shall ~~[may]~~ set the salary of a former unclassified employee with no previous classified service, who is probationarily appointed or reemployed, in one of the following ways:

1. In accordance with the standards for making new appointments; or

2. At five (5) percent above the minimum salary for each year of service in the unclassified service, provided that the salary shall not exceed the range maximum.

(d) Laid off employees. A former employee ~~[Former employees]~~, separated from the classified service by layoff and reinstated or reemployed in the same or similar job classification within five (5) years from the date of layoff, may receive the salary they were receiving at the time of layoff, even if the salary is above the maximum of the pay grade.

(3) Probationary increments upon reentrance to state service.

(a) A former employee who is ~~[Former employees who are]~~ probationarily appointed at a salary below the midpoint of the pay grade shall receive a probationary increment upon successful completion of the probationary period.

(b) A former employee who is ~~[Former employees who are]~~ probationarily appointed at a salary that equals or exceeds the midpoint of the pay grade may, at the discretion of the appointing authority, receive a probationary increment at the time of successful completion of the probationary period. If the employee is not granted a probationary increment at the time of completion of the probationary period, an increment shall be awarded at the beginning of the month following completion of twelve (12) months of service from the date of appointment.

Section 3. Salary Adjustments. (1) Promotion. An employee who is promoted shall receive the greater of five (5) percent for each grade, or an increase to the minimum of the new grade.

(2) Demotion. If ~~[When]~~ an employee is demoted, the appointing authority shall ~~[may]~~ determine the salary in one (1) of the following ways:

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(a) The employee's salary shall ~~[may]~~ be reduced to a rate that is not below the minimum for the class to which the demotion is made; or

(b) The employee shall ~~[may be allowed to]~~ retain the salary received prior to demotion. If the employee's salary is not reduced upon demotion, the appointing authority shall explain the reason in writing and place the explanation in the employee's personnel files.

(3) Reclassification.

(a) An employee who is advanced to a higher pay grade through reclassification shall receive the greater of five (5) percent for each grade or the new grade minimum.

(b) An employee who is placed in a lower pay grade through reclassification shall receive the same salary received prior to reclassification.

(4) Reallocation.

(a) An employee who is advanced to a higher pay grade through reallocation shall receive the greater of five (5) percent for each grade or the new grade minimum.

(b) An employee who is placed in a lower pay grade through reallocation shall receive the same salary received prior to reallocation.

(5) Detail to special duty.

(a) An employee who is approved for detail to special duty shall receive, during the period of detail, the greater of five (5) percent for each grade or the new grade minimum.

(b) An employee who is approved for detail to the same or lower pay grade shall receive the same salary received prior to detail.

(6) Reversion.

(a) The salary of an employee who is reverted while serving a promotional probationary period, or following detail to special duty in a higher class, shall be adjusted to:

1. The salary received prior to the promotion or detail; and
2. All salary advancements and adjustments which would have been awarded if the promotion or detail had not occurred.

(b) The salary of an employee who is reverted from a position in the unclassified service to a position in the classified service shall be adjusted to:

1. The salary received prior to leaving the classified service; and
2. All salary advancements and adjustments which would have been awarded if the individual had remained in the classified service.

(7) Pay grade changes.

(a) If ~~[When]~~ a job classification is assigned to a higher pay grade, the appointing authority shall raise the salary of an ~~[any]~~ employee below the new grade minimum to the new grade minimum. If sufficient funds are available, an appointing authority may uniformly adjust the salary of all employees in that agency in that class to:

1. The greater of the new grade minimum or five (5) percent; or
2. The greater of the new grade minimum or ten (10) percent; or
3. The greater of the new grade minimum or a dollar amount approved by the secretary.

(b) If ~~[When]~~ a job classification is assigned to a lower pay grade, an employee ~~[employees]~~ in that class shall retain his ~~[their]~~ current salary.

(8) Special entrance rates. If ~~[When]~~ a special entrance rate is established for a job classification, an appointing authority shall adjust the salary of an ~~[any]~~ employee in that classification who is below the special entrance rate to the new rate. If sufficient funds are available, an appointing authority may uniformly grant to all employees in that class a salary adjustment equal to the difference between the former entrance rate and the new entrance rate.

(9) Other salary adjustments.

(a) On the 16th of a ~~[any]~~ month, an appointing authority may grant a salary adjustment to all employees in a class within an agency who were eligible for, but did not receive, a five (5) percent salary adjustment as a result of a grade change applicable to the class, on or after January 1, 1999. The total adjustment granted at the time of the grade change and under this paragraph ~~[provision]~~ shall equal five (5) percent of the employee's salary immediately prior to the grade change.

(b) On the 16th of a ~~[any]~~ month, an appointing authority may grant a salary adjustment based on the establishment of a special

entrance rate on or after the effective date ~~[adoption]~~ of this administrative regulation, under the following provisions:

1. The adjustment shall ~~[must]~~ be uniformly granted to all employees within the agency who were eligible for, but did not receive, a salary adjustment equal to the difference in the former entrance rate and the new entrance rate at the time a special entrance rate was established; and

2. The total adjustment granted at the time of the special entrance rate and under this paragraph ~~[provision]~~ shall equal the difference in the former entrance rate and the new entrance rate.

Section 4. Salary Advancements. (1) Initial probation increase. A full-time or part-time employee who completes ~~[Full-time and part-time employees who complete]~~ an initial probationary period shall be granted a five (5) percent salary advancement on the first of the month following completion of the probationary period, except as specified under Section 2(3) of this administrative regulation.

(2) Promotional probation increase. An employee shall receive a five (5) percent salary advancement on the first of the month following completion of the promotional probationary period.

(3) Annual increment dates shall be established as follows:

(a) Upon completion of an initial probationary period;

(b) When a former employee has been probationarily appointed and has completed a total of twelve (12) months of service without receiving an increment; or

(c) When an employee returns from leave without pay under the provisions of subsection (5) of this section.

(4) Annual increment dates shall ~~[will]~~ not change when an employee:

(a) Is in a position which is assigned a new or different pay grade;

(b) Receives a salary adjustment as a result of a reallocation;

(c) Is promoted;

(d) Is transferred;

(e) Is demoted;

(f) Is detailed to special duty;

(g) Receives an educational achievement award;

(h) Returns from military leave;

(i) Is reclassified; or

(j) Receives a promotional increase after completion of a promotional probationary period.

(5) Return from leave without pay. An employee returning to duty from leave without pay shall receive an annual increment on the first of the month after completing twelve (12) months of service since the last increment was received.

(6) Service computation. Full-time and part-time service shall be counted in computing service for the purpose of determining increment eligibility.

(7) Order of calculating increments and other salary increases which occur at the same time. If an employee's increment date occurs on the same date that a salary adjustment or advancement is granted, the increment shall be applied before the adjustment or advancement is added to the employee's ~~[employees]~~ salary except if ~~[when]~~ the adjustment is based on a pay grade change or a salary schedule change.

Section 5. Educational Achievement Award. (1) On the 16th of a ~~[any]~~ month, an appointing authority may grant a five (5) percent increase to an employee's base salary based on educational achievement as specified in this section.

(2) An agency may elect not to participate in the educational achievement program if sufficient funds are not available.

(3) An employee shall ~~[may]~~ not receive more than one (1) educational achievement award in a ~~[any]~~ fiscal year.

(4) An employee shall not receive an educational achievement award and an adjustment for continuing excellence (ACE) based on the same training.

(5) By submitting a personnel action to grant an educational achievement award, the appointing authority shall certify ~~[certifies]~~ that all of the qualifying conditions established by this section for the appropriate type of educational achievement award have been met:

(a) High school diploma, high school equivalency certificate, or a passing score on the GED test.

1. The employee has obtained the high school diploma, equivalency certificate, or passing score on the GED test:

- a. Outside of work hours;
- b. While in state service; and
- c. On or after January 1, 1984;

2. The employee has not previously attained a high school diploma, equivalency certificate, or passing score on the GED test; and

3. The employee has not completed college coursework on the undergraduate or graduate level prior to obtaining the high school diploma, equivalency certificate or a passing score on the GED test.

(b) Postsecondary education or training.

1. The employee has completed 260 hours of job related instruction (or the equivalent as determined by the Secretary of Personnel);

2. The employee began the course work after becoming a state employee and completed the course work after establishing an increment date;

3. The employee has completed the course work within five (5) years of the date on which it was begun;

4. The course work has not previously been applied toward an educational achievement award;

5. The agency has not paid for the course work or costs associated with it, in whole or in part; and

6. The employee was not on educational or extended sick leave when the courses were taken.

(c) Kentucky Certified Public Manager Program.

1. The employee has successfully completed the Kentucky Certified Public Manager Program offered by the Governmental Services Center at Kentucky State University; and

2. The employee has not previously received an educational achievement award for completing the Kentucky Certified Manager [Managers] Program.

Section 6. Salary Schedule Adjustment. If [When] the secretary authorizes an adjustment of all grades in the salary schedule, an appointing authority shall adjust the salaries of all employees below the new minimum rate to the new minimum rate. If sufficient funds are available, the secretary may authorize an appointing authority to grant a salary increase for all employees equal to the difference in the old schedule minimum for the grade and the new schedule minimum for the grade.

Section 7. Paid Overtime. (1) Overtime for which pay is authorized shall be in accordance with 101 KAR 2:102, Section 5, and the Fair Labor Standards Act, 29 USC Section 201, et seq., as amended.

(2) Eligibility for overtime pay shall be approved by the appointing authority, and shall be [is] subject to review by the Secretary of Personnel and the Secretary of the Finance and Administration Cabinet.

(3) An employee who is [Employees who are] eligible for overtime shall request permission from or be directed in advance by the supervisor to work overtime.

(4) An overtime payment [Overtime payments] shall not be added to base salary or wages.

Section 8. Maintenance and Maintenance Allowance. If [In each case where] an employee, or the employee and family, is [are] provided with full or partial maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, the [such] maintenance shall be treated as partial payment of wages. The value of those services shall be deducted from the employee's salary in accordance with a maintenance schedule developed by the appropriate appointing authority after consultation with the Secretary of the Finance and Administration Cabinet.

Section 9. Supplemental Premiums. (1) Shift premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a supplemental premium for an employee who is [employees who are] regularly assigned to work an evening or night shift in that agency.

(b) Once authorized, this premium shall apply to all employees in that agency who are regularly assigned to work an evening or night shift in a job classification for which the shift premium is approved.

(c) An employee shall not receive a shift premium after shift reassignment, transfer, promotion or demotion to a position that is ineligible for a shift differential premium.

(d) The secretary may rescind authorization to pay shift premium for a class at any time.

(e) Shift differential pay shall not be considered a part of base pay or wages.

(2) Weekend premium.

(a) Upon request by an appointing authority, the secretary shall [may] authorize the payment of a weekend premium for an employee in a specific class who is [employees in specific classes who are] regularly assigned to work on Saturdays, Sundays, and state holidays as part of the usual work week.

(b) Once authorized, the premium shall apply to all employees in the specified classes in that agency who are regularly assigned to work Saturdays, Sundays, and state holidays as part of their usual work week.

(c) An employee shall not receive a weekend premium after reassignment, transfer, promotion, or demotion to a position that is ineligible for weekend premium.

(d) The secretary may rescind authorization to pay weekend premium at any time.

(e) Weekend premium pay shall not be considered part of the employee's base salary or [and] wages.

(3) An agency may request, and be authorized for, both shift premium and weekend premium for the same job classes.

Section 10. Employee Recognition Award. (1) On the 16th day of a [any] month, an appointing authority may grant an employee an employee recognition award (ERA) in the form of a lump sum payment of up to five (5) percent of midpoint under the following conditions:

(a) The employee has established an annual increment date and has worked at least twenty-four (24) consecutive months in state service, twelve (12) consecutive months of which is in the department granting the award; and

(b) The employee has not received an ERA or a distinguished service award in the preceding twenty four (24) months, nor an Adjustment for continuing excellence (ACE) award in the preceding twelve (12) months; and

(c) 1. The appointing authority determines that the employee's acts or ideas have resulted in significant financial savings or improvements in services to the Commonwealth and its citizens; or [An employee is not eligible for an ERA under this provision for an act or idea that has been approved or submitted for consideration as an employee suggestion system award. An employee who has received an ERA shall not be eligible to be considered for an employee suggestion system award for those acts or ideas upon which the ERA is based.]

2. [(d)] The employee has exhibited distinguished performance during participation in special projects that have had a significant beneficial impact on the department or governmental operations.

(2) An employee shall not be eligible for an ERA under this section for an act or idea that has been approved or submitted for consideration as an Employee Suggestion System Award. An employee who has received an ERA shall not be eligible to be considered for an Employee Suggestion System Award for those acts or ideas upon which the ERA is based.

(3) The granting of an ERA shall be within the sole discretion of the appointing authority.

(4) If [(3)-When] an appointing authority grants an ERA, the justification for the award shall be stated in writing, and placed in the employee's personnel files.

(5) [(4)] An appointing authority shall not [may] grant an ERA to [no] more than twenty-five (25) percent of the total number of full-time employees in the department in a [any] calendar year.

(6) An appointing authority shall submit a letter or memorandum to the cabinet to award an ERA. The letter or memorandum shall:

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(a) Explain the reason or reasons for the granting of the award; and

(b) Include a certification by the appointing authority that:

1. Sufficient funds are available within the department; and

2. The criteria and limitations established in this section have been met.

~~[(5) By submitting the appropriate personnel documents to award an ERA, the appointing authority certifies that sufficient funds are available within the department, and that the criteria and limitations in this section have been met.]~~

Section 11. Adjustment for Continuing Excellence (ACE) Award.

(1) On the 16th day of a [any] month, an appointing authority may grant a salary adjustment of up to ten (10) percent of the grade mid-point to a full-time employee's base pay as an adjustment for continuing excellence award (ACE) under the following conditions:

(a) The employee has an established annual increment date;

(b) The employee has worked at least twenty-four (24) consecutive months, twelve (12) consecutive months of which shall have been served in the department granting the award;

(c) The employee has not received an ACE award or a distinguished service award in the preceding twenty-four (24) months or an employee recognition award (ERA) in the preceding twelve (12) months; and

(d) 1. The employee has demonstrated a sustained level of exceptional job performance; or

2. ~~[(e)]~~ The employee has assumed a significant level of additional job responsibilities or duties consistent with the assigned classification, and has performed them in an exceptional manner; or

3. ~~[(f)]~~ The employee has acquired professional or technical skills or knowledge through department directed or authorized attainment of a job related licensure, certification, or formal training that will substantially improve job performance.

(2) [(g)] An employee shall not be ~~[is-not]~~ eligible for an ACE award under this section ~~[provision]~~ if an educational achievement award has been granted for the same training.

(3) [(2)] The granting of an ACE award shall be within the sole discretion of the appointing authority.

(4) [(3)-No] More than twenty-five (25) percent of the total number of full-time employees in a department, in a [any] calendar year, shall not ~~[may]~~ receive an ACE award.

(5) An appointing authority shall submit a letter or memorandum to the cabinet to grant an ACE award. The letter or memorandum shall:

(a) Explain the reason or reasons for the granting of the award; and

(b) Include a certification by the appointing authority that:

1. The criteria and limitations established in this section have been met; and

2. Funds are available within the department's current recurring base budget to support the award.

~~[(4) When an appointing authority grants an ACE award, the appointing authority shall submit the appropriate personnel action and a memorandum certifying:~~

~~(a) The reason or reasons for the granting of the award; and~~

~~(b) That all criteria and limitations provided in this section for the award have been met; and~~

~~(c) That funds are available within the department's current recurring base budget to support the award.]~~

PAUL E. PATTON, Governor

CAROL M. PALMORE, Secretary

DANIEL F. EGBERS, General Counsel

APPROVED BY AGENCY: May 21, 1999

FILED WITH LRC: June 10, 1999 at 10 a.m.

PERSONNEL CABINET

(As Amended at ARRS, August 10, 1999)

101 KAR 2:037. Repeal of 101 KAR 2:036 and 101 KAR 2:100.

RELATES TO: KRS 18A.030, 18A.110, 18A.165, 18A.195, 61.394, 344.030, 29 CFR 778, et seq., 29 USC 201, et seq.

STATUTORY AUTHORITY: KRS 18A.030, 18A.110, 18A.155, 18A.195, 344.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 authorizes the Secretary of Personnel, with the approval of the Governor, to adopt administrative regulations for the classified service governing a pay plan for all employees in the classified service and for annual, sick and special leaves of absence. 101 KAR 2:036 which governs the classified service pay plan and 101 KAR 2:100 which governs leave for employees in the classified service are being repealed because of substantial revisions that are being simultaneously promulgated with this administrative regulation. 101 KAR 2:036 shall be replaced by 101 KAR 2:034. 101 KAR 2:100 shall be replaced by 101 KAR 2:102.

Section 1. The following administrative regulations are hereby repealed:

(1) 101 KAR 2:036, Compensation plan and pay incentive systems; and

(2) 101 KAR 2:100, Leave administrative regulations. ~~[Repealer-Administrative Regulation for 101-KAR 2:036. Administrative regulations governing the compensation plan and pay incentive systems for the classified service are hereby repealed.]~~

~~Section 2. Repealer-Administrative Regulation for 101-KAR 2:100. Administrative regulations governing leave for the classified service are hereby repealed.]~~

PAUL E. PATTON, Governor

CAROL M. PALMORE, Secretary

DANIEL F. EGBERS, General Counsel

APPROVED BY AGENCY: May 21, 1999

FILED WITH LRC: June 10, 1999 at 4 p.m.

PERSONNEL CABINET

(As Amended at ARRS, August 10, 1999)

101 KAR 2:046. Applications, qualifications and examinations.

RELATES TO: KRS 18A.030(2), 18A.032, 18A.110(1)(a), (7)(c), 18A.120, 18A.150

STATUTORY AUTHORITY: KRS ~~[Chapter 18A;]~~ 18A.030(2), 18A.110(1)(a), (7)(c) ~~[-18A-150]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(a) and (7)(c) requires the Secretary ~~[Commissioner]~~ of Personnel to promulgate ~~[comprehensive]~~ administrative regulations; consistent with the provisions of KRS Chapter 18A; which govern open competitive exams to test the relative fitness of applicants and for the rejection of candidates or eligibles who fail to meet reasonable requirements of the secretary ~~[commissioner]~~. This administrative regulation establishes the application and examination requirements. ~~[is necessary to implement these statutory requirements and to assure uniformity in administering exams.]~~

Section 1. Notices of Examinations. (1) An examination ~~[Examinations]~~ for entrance to the classified service shall be conducted on an open-competitive basis.

(2) For a ~~[those]~~ job classification ~~[classifications]~~ in which there is expected to be a considerable and recurring need of eligibles, the secretary ~~[commissioner]~~ shall establish a recruitment program which shall be both positive and continuous.

(3) The recruitment program shall:

(a) Accept an application at any time; and

(b) Hold an examination ~~[Under this [such] plan, applications]~~

may be:

(a) ~~Accepted at any time; and~~  
(b) ~~Examinations held~~ whenever and wherever the ~~secretary~~ [commissioner] deems it ~~to be in the best interests of~~ [desirable for] the Merit System [service].

(4) If [For those job classifications for which] continuous recruitment is not needed, a special **announcement shall** [announcements will] be used.

(5) Eligibles **shall** [will] be listed in rank order of score ~~without respect to the~~ [irrespective of] date on which the examination was taken.

(6) Notice of examinations shall be announced publicly ~~at least ten (10) [fifteen (15)] days prior to the certification of the register. An application [and applications] shall be accepted up to the date prior to certification of the register.~~

(7) Examinations may be advertised through the press, radio and other media.

(8) [opening and may be distributed to public officials, employment service offices, newspapers, radio stations, educational institutions, professional and vocational societies, other media and such other individuals and organizations as the commissioner may deem expedient.] The public notice of examination **required by KRS 18A.110(7)(c)** shall specify:

(a) The title and minimum salary of the job **classification** [classifications];

(b) The minimum qualifications required;

(c) The **opening** [final] date on which **an** application will be received for placement of the applicant on the register;

(d) The relative weights to be assigned to different parts of the examination; and

(e) ~~All other~~ pertinent information and requirements.

Section 2. Minimum Qualifications for Filing. **An open-competitive examination** [Open-competitive examinations] shall be open to **each applicant who meets** [all applicants who meet] the standards or requirements fixed by the ~~secretary~~ [commissioner] with regard to:

(1) Education;

(2) Experience;

(3) Training;

(4) licensure;

(5) Certification; or

(6) [age, physical condition, and] [Such] Other factors **that** [as may be held to] relate to the ability of the candidate to perform [with reasonable efficiency] the essential functions of the position **with reasonable efficiency**.

Section 3. Filing Applications. (1) **An application shall be submitted on an Application for Employment or Application Update, whichever is appropriate.** [All applications shall be made on forms prescribed by the ~~secretary~~ [commissioner].

(2) **An** [Such] application **shall** [may] require information concerning:

(a) Personal characteristics;

(b) Education;

(c) Experience;

(d) References; and

(e) Other pertinent information. [When the nature of the work is such that age limits are necessary, the commissioner after consultation with the appointing authority may approve the age limits, which shall be stated in the examination announcement.]

(3) **An application** [All applications] shall be signed **by the applicant personally or by electronic means.** [and] The truth of the statements contained in the **application shall be certified by the applicant's signature.** [therein certified by such signatures.]

(4) **An applicant** [Applicants] shall:

(a) [must] Meet the minimum qualifications ~~established~~ [specified] in the class specification [announcements] as to education and experience; **and** [but];

(b) **Not be guaranteed a passing grade by admission to an examination.** [In no case shall admittance to the examinations constitute assurance of a passing grade.]

(5) [(2)] For **a job classification** [those job classifications] for

which there is to be continuous recruitment, a statement shall be included in the announcement to the effect that **an application shall** [applications will] be received until further notice.

(6) **If a [When]** [(3) For those job classifications for which continuous recruitment is not needed;] special announcement **bulletin is** [bulletins are] [will be] used, [an applicant [applicants] shall have at least ten (10) [fifteen (15)] calendar days from the date of the announcement to apply and test for an opening [these [special] openings]. [The applications will be processed and those applicants who meet the minimum requirements will be notified of the testing dates.]

Section 4. Advance Examinations. (1) If **an** [Any] applicant [who] does not meet ~~the~~ minimum requirements as to education **at the time of application**, but [who] will meet these requirements as a result of the completion of **currently scheduled** [further] educational work **in three** (3) [which he has scheduled for the six (6)] months following the date of receipt of application, **he shall** [may] be allowed to take the examination **with the approval** [at the discretion] of the ~~secretary~~ [commissioner].

(2) An applicant taking the examination under **subsection (1) of this section** [this provision] shall have his [or her] name entered on the register up to thirty (30) days prior to completing the educational requirements.

Section 5. Character of Examinations. **An examination** [(1) Examinations] shall:

(1) Be practical in nature;

(2) Be constructed to reveal the capacity of the candidate for the particular job classification for which he is competing; **and**

(3) **Consider the applicant's** [his] general background and related knowledge; and

(4) [shall] Be rated impartially.

[(2) The ~~secretary~~ [commissioner] may use a rating of:

(a) Education and experience; and

(b) Any test of capacity, knowledge, manual skill, character, personal traits, [or] physical fitness, **or any combination of qualifications** which, in the ~~secretary's~~ [his] judgment, serves the need to discover the relative fitness of applicants.]

Section 6. Conduct of Examinations. (1) **An examination** [Examinations] shall be conducted in as many places in the Commonwealth as are found convenient for applicants and practicable for administration.

(2) Reasonable accommodation in testing **shall** [will] be provided upon timely request and receipt of verification of **need** [if required].

(3) [(2)] The ~~secretary~~ [commissioner] may designate monitors in various parts of the Commonwealth to:

(a) ~~Conduct~~ [take charge locally of] **an examination** [examinations] under instructions prescribed by **the secretary**;

(b) [him] Provide for the compensation of **the** [such] monitors; and

(c) Make arrangements for the use of **a public building** [buildings] in which to conduct **an examination** [the examinations].

(4) [(3)] Retest procedures.

(a) For open continuous testing, an applicant **shall not**:

1. [may] Be admitted to the same exam or its alternate [no] more than two (2) times within a regular workweek; **or** [;]

2. [(b) For open continuous testing an applicant shall not be permitted to] Take the same exam or its alternate more than twelve (12) times in a twelve (12) month period beginning with the original date **the** [such] test is taken.

(b) [(c)] [Retest procedures for examinations listed on special announcements shall be stated on the bulletin.]

(d) An eligible, who is removed from a register **for failure to report** [who fails to make himself available] to an appointing authority **or** appointing authority's designee for consideration or [who] declines appointment by an appointing authority shall not be allowed to retest for the job class from which **the eligible was** removed for **three** (3) [six (6)] months from the date of removal unless [he has been] restored for reasons satisfactory to the ~~secretary~~ [commissioner] or in accordance with the decision of the ~~Personnel~~ Board on appeal.

Section 7. Rating Examinations. (1) The ~~secretary~~ [commissioner] shall determine the rating or standing of **an applicant** [applicants] on



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the register for each examination [all examinations].

(2) A [Such] final rating shall be based upon a weighted average of the various parts of the total examination.

(3) All applicants for the same job classification shall be accorded uniform and equal treatment in all phases of the examination procedure.

Section 8. Rating Education and Experience. (1) If [When] the rating of education and experience forms a part of the total examination, the secretary [commissioner] shall determine a procedure for the evaluation of the education and experience qualifications of an applicant [the applicants].

(2) The formula used in appraisal shall give due regard to recentness [recency] and quality as well as quantity of experience and the pertinence [pertinency] of the education.

(3) [(2)] The secretary [commissioner] shall investigate the candidate's educational documentation [record form].

(4) The secretary [commissioner] may investigate the candidate's work history.

(5) If the results of this investigation disclose [bring out] information affecting the rating of education and experience, the secretary [commissioner] shall [may]:

(a) Rate the candidate accordingly; [or]

(b) Make the necessary revision of the rating; and

(c) [se] Notify the candidate.

(6) If [(3)-When] the knowledge [knowledges], skills and abilities necessary for a job classification [are those which] cannot [best] be accurately measured by written, performance, or training and experience examination, the secretary [commissioner] may determine the selection method for the classification to be "qualifying".

(a) If [When] a classification is determined to be qualifying the secretary [commissioner] shall notify the Personnel Board of the classification and the minimum requirements.

(b) The secretary [commissioner] shall maintain for public review a list of those classifications which are qualifying along with the minimum requirements for each classification [for public review].

Section 9. Oral Examinations. (1) If [When] an oral examination forms a part of the total examination for a position, the secretary [commissioner] shall appoint one (1) or more oral examination panels as needed.

(2) An oral examination panel shall:

(a) Consist of three (3) or more members [who shall be] known to be interested in the improvement of public administration and in the selection of efficient government personnel; and

(b) Including one (1) member who is [of whom one (1) shall be] technically familiar with the character of work in the position for which an applicant shall [the applicants will] be examined.

(3) If [Whenever] practicable, all candidates for the same job classification who qualify for the oral examination shall be rated by the same oral examination panel.

(4) A member of an oral examination panel shall:

(a) Disclose each instance in which the member [he] knows the applicant personally; and

(b) Shall [may] refrain from rating that [such] applicant.

Section 10. Notice of Examination Results. (1) Each applicant [competitor] shall be notified of the [his] final rating as soon as the rating of the examination has been completed.

(2) An eligible [Eligibles] shall be entitled to information concerning his [their] relative position on the register upon request and presentation of proper identification.

Section 11. Adjustment of Errors. (1) The secretary shall correct a clerical [An] error in the rating of an examination, if the error is called to the attention of the secretary [commissioner] within thirty (30) days after receipt [by the applicant] of the notice of examination results.

(2) A correction [Corrections] [shall be corrected by the commissioner provided, however, that such corrections] shall not invalidate a [any] certification and appointment previously made.

Section 12. Examination Records. The secretary shall maintain

[commissioner shall be responsible for the maintenance of] all records pertinent to an application or examination [applications and examinations] for a period of three (3) years [examination programs: Applications and other necessary examination records shall be kept during the life of the register].

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

(a) "Application for Employment", Form P-2, September 1999; and

(b) "Application Update", September 1999.

(2) This material may be inspected, copied, or obtained at the Personnel Cabinet, 200 Fair Oaks Lane, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

PAUL E PATTON, Governor

CAROL M. PALMORE, Secretary

DANIEL F. EGBERS, General Counsel

APPROVED BY AGENCY: May 21, 1999

FILED WITH LRC: June 10, 1999 at 4 p.m.

### PERSONNEL CABINET (As Amended at ARRS, August 10, 1999)

#### 101 KAR 2:056. Registers.

RELATES TO: KRS 18A.005, 18A.110(1)(f), (7) 18A.120

STATUTORY AUTHORITY: KRS [Chapter 18A,] 18A.030(2), 18A.040, 18A.110(1)(f), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(f) and (7) requires the Secretary [Commissioner] of Personnel to promulgate [comprehensive] administrative regulations; consistent with the provisions of KRS Chapter 18A, which govern the establishment of eligible lists for appointment and for the rejection of candidates or eligibles who do not meet reasonable selection requirements of the secretary [commissioner]. This administrative regulation establishes requirements for the state registers [is necessary to comply with these statutory requirements].

Section 1. Notification of Register Vacancies. [It shall be the duty of] An [The] appointing authority [authorities] shall [to] notify the secretary, on the prescribed Request for Certification Forms P-7 and P-7(a), "Certificate of Eligibles" form [commissioner] as far in advance as possible of a vacancy [vacancies] in a full-time or part-time classified position [positions] to be filled from a register [registers] [which may occur in the agencies].

Section 2. Use of Related Registers. (1) The secretary may [commissioner shall] select a register from a job classification [registers from job classifications] for which the minimum qualifications are comparable to or higher than those required for the job classification in which a [the] vacancy exists if there is an inadequate or insufficient register available.

(2) The secretary [commissioner] may, if appropriate, rerate an applicant's training and experience on the basis of the minimum qualification required for the job classification in which the vacancy exists.

Section 3. Duration of Registers. (1) If [When] a register becomes so depleted that the preparation of usable certificates for a major portion of the current [imminent] vacancies in a particular [of the] job classification is impracticable, the register shall be considered exhausted.

(2) A [The] register which has become exhausted shall expire [be considered expired] upon the administration of a superseding examination and the establishment of a register on the basis of that examination.

(3) If [When] a new examination is established for a class, [a register becomes exhausted,] the secretary [commissioner] shall send to each eligible remaining on the current [such] register a notification prior to the administration of a superseding examination.

Section 4. Replenishment of Registers. If the secretary [commissioner] determines that a register, although not exhausted, is inadequate



quate for the filling of an anticipated vacancy [vacancies], the secretary [he] may announce an open competitive examination for the purpose of replenishing the [such] register.

Section 5. Internal Mobility Program. The [There is established an] internal mobility program shall [to] facilitate the movement of a classified employee to a position in a different class [classified employees to positions in different classes] in the state personnel system.

(1) The secretary [commissioner] shall maintain a full-time and part-time register [registers] which shall include:

(a) [~~in addition to~~] The names of eligibles for reemployment and appointment, in accordance with [~~as provided by~~] 101 KAR 2:066[~~]; and~~

(b) [~~shall consist of~~] The names of interested employees with status who:

1. Meet the minimum requirements; and

2. Seek promotion, demotion, or transfer to a position of a different class [~~and who meet the minimum requirements and pass the appropriate selection method~~].

(2) An employee with status interested in internal mobility shall:

(a) Submit a completed Application for Employment or Application Update, whichever is appropriate, to the Personnel Cabinet; [~~Department of Personnel~~] and

(b) Request placement on the register. [~~Such employee shall also be required to pass the appropriate examination or selection method before being placed on the register for any job classification outside of their present classification series;~~]

Section 6. Reemployment Registers. The secretary [commissioner] shall prepare a reemployment register, which: [registers: Reemployment registers shall contain:]

(1) Shall contain the names of former employees, in rank order of seniority, who are exercising their reemployment rights; and

(2) May be combined with the list [lists] of current employees in the Internal Mobility Program for the classification.

Section 7. Full-time or Part-time Registers. (1) The secretary [commissioner] shall maintain a separate register [registers] for full-time and part-time positions.

(2) An eligible shall notify the cabinet [department] if he wants to be on the register for full time, part time or both.

Section 8. Maximum Number of Classifications. Except for an individual [those individuals] exercising reemployment rights, a [no] person shall not be eligible to have his name placed on the register for more than fifteen (15) individual job classifications at the same [any specific] time.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Request for Certification Forms P-7 and P-7(a), September 1999;

(b) "Application for Employment", Form P-2, September 1999; and

(c) "Application Update", September 1999.

(2) This material may be inspected, copied, or obtained at the Personnel Cabinet, 200 Fair Oaks Lane, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

PAUL E. PATTON, Governor  
CAROL M. PALMORE, Secretary  
DANIEL F. EGBERS, General Counsel  
APPROVED BY AGENCY: May 21, 1999  
FILED WITH LRC: June 10, 1999 at 4 p.m.

PERSONNEL CABINET  
(As Amended at ARRS, August 10, 1999)

101 KAR 2:066. Certification and selection of eligibles for appointment.

RELATES TO: KRS 18A.030(2), 18A.110(1)(b), (7), 18A.165

STATUTORY AUTHORITY: KRS [~~Chapter 18A;~~] 18A.030(2), 18A.110(1)(b), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(b) and (7) requires the Secretary [Commissioner] of Personnel to promulgate [comprehensive] administrative regulations; consistent with KRS Chapter 18A; which govern the establishment of eligibility [eligible] lists for appointment, and for consideration for appointment of persons whose scores are included in the five (5) highest scores on the examination [exam]. This administrative regulation establishes the requirements for certification and selection of eligibles for appointment [~~is necessary to comply with these statutory requirements~~].

Section 1. Request for Certification of Eligibles. To fill a vacant position in the classified service that is [~~is~~] not [~~otherwise~~] filled by lateral transfer, reinstatement, reversion or demotion, the appointing authority shall submit a request for a register [certification] to the secretary [commissioner] upon a completed Request for Certification Forms P-7 and P-7(a). The request shall:

(1) [~~prescribed form. This requisition may~~] Be for one (1) or more positions in the same:

(a) Class; or

(b) [~~in the same~~] County;

(2) [~~and shall~~] Indicate:

(a) The number and identity of the positions to be filled;

(b) [~~and~~] The title of the job classification for each position; [~~in which they have been allocated~~] and

(c) [~~specify all~~] Other pertinent information which the appointing authority and the secretary [commissioner] deem necessary; and

(3) Be made by [~~is~~] the appointing authority [~~shall make such request~~] as far in advance as possible of the date the position is to be filled [~~employee is to begin work~~].

Section 2. Certification of Eligibles. (1) Upon receipt of a requisition, the secretary [commissioner] shall certify and submit in writing to the appointing authority the names of available persons eligible for the position.

(a) If one (1) position is involved, the secretary [he] shall certify and submit from the register for that job classification the names of:

1. The applicants whose scores are included in the highest five (5) scores earned through the selection method [~~on the examination~~];

2. [~~and the names of~~] All internal mobility candidates for that classification.

(b) If more than one (1) vacancy is involved, the secretary [commissioner] may certify sufficient additional names [scores] for the agency's [agencies'] consideration in filling the total number of vacancies [~~by procedures to retain orderly consideration of eligibles~~].

(2) [~~however,~~] Each appointment shall [must] be made from the internal mobility candidate listing or the eligibles with the five (5) highest scores. Scores shall be considered in whole numbers.

(3) The life of a certificate during which action may be taken shall be sixty (60) [~~forty-five (45)~~] days from the date of issue unless otherwise specified on the certificate. An [~~certification. Any~~] appointment made from the [such] certificate during that time shall not be subject to a [any] change in the condition of the register taking place during that period.

Section 3. Availability. An eligible may, [~~at any time~~] during the life of a register, have himself listed as available or not available for appointment to a position of that job classification in a [any] county or counties in the state by filing notice to that [such] effect with the secretary [commissioner].

Section 4. Selective Certification. (1)(a) The appointing authority shall [may] [shall] specify, in writing, requirements of particular experience, education, or skill if [~~when he deems~~] those [such] require-

ments are necessary for a position.

(b) If, after investigation of the duties and responsibilities of the position, if the secretary [commissioner] finds that the particular experience, education, or skill is essential for successful performance, the secretary [he] shall [may] certify, in order of rank on the register, the names of those persons with the five (5) highest scores who possess those qualifications [specified].

(c) If, in certifying the names of the [such] eligibles, the secretary [commissioner] finds there are fewer than five (5) [such] eligibles, the secretary [he] shall complete the certificate by adding, after the names of the [such] eligibles, the names of other eligibles available for the appointment in the order of their respective rank on the register.

(2) The appointing authority shall specify in writing exceptional requirements of particular characteristics when he deems such requirements necessary for a position. If, after investigation of the duties and responsibilities of the position, the commissioner finds the exceptional requirement of the characteristic essential for successful performance, he may certify in order of rank on the register the names of those persons who possess the qualifications specified. If, in certifying the names of such eligibles, the commissioner finds there are fewer than five (5) such eligibles, he shall complete the certificate by adding, after the names of such eligibles, the names of other eligibles available for the appointment in the order of their respective rank on the register.

(3) The secretary [commissioner] shall transmit a copy of all requests for selective certification to the Personnel Board upon approval of the request.

Section 5. Selection. The final selection by the appointing authority shall be reported in writing to the secretary [commissioner]. At the same time, the appointing authority shall indicate the disposition of the other names listed on the certificate and shall certify to the secretary [commissioner] the nonavailability of an eligible [any eligibles] passed over for that reason.

[Section 6. Certification of Names from the Reemployment Register. Whenever a vacancy is to be filled from a reemployment register, the commissioner shall certify the names of eligibles.]

**Section 6. Incorporation by Reference. (1) Request for Certification Forms P-7 and P-7(a), September 1999, is incorporated by reference.**

**(2) This material may be inspected, copied, or obtained at the Personnel Cabinet, 200 Fair Oaks Lane, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.**

PAUL E. PATTON, Governor  
CAROL M. PALMORE, Secretary  
DANIEL F. EGBERS, General Counsel  
APPROVED BY AGENCY: May 21, 1999  
FILED WITH LRC: June 10, 1999 at 4 p.m.

**PERSONNEL CABINET  
(As Amended at ARRS, August 10, 1999)**

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

RELATES TO: KRS 18A.005, 18A.110(1)(g), (7), 18A.115, 18A.120

STATUTORY AUTHORITY: KRS [Chapter 18A,] 18A.030(2), 18A.110(1)(g), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(g) and (7) requires the Secretary of Personnel to promulgate administrative regulations which govern the types of appointments and are necessary to implement KRS Chapter 18A. This administrative regulation establishes the requirements for filling a vacancy, for detail to special duty, and for temporary overlap. [requires the Secretary [Commissioner] of Personnel to promulgate comprehensive administrative regulations, consistent with KRS Chapter 18A, which govern the various types of ap-

pointments, [such as probationary, emergency, provisional, reinstatement,] and for such other administrative regulations, not inconsistent with KRS Chapter 18A, as may be proper and necessary. This administrative regulation is necessary to comply with these statutory requirements] [and replaces 101 KAR 2:070].

Section 1. Filling of Vacancies. A vacancy [All vacancies] in the classified service, which is [are] not filled by promotion, transfer, or demotion, shall be filled by probationary appointment, reemployment of a career or laid-off employee [employees or of laid-off employees], reversion, or reinstatement [emergency appointment or provisional appointment].

Section 2. Detail to Special Duty. (1) If [When] the services of an [a permanent] employee with status are needed in a position within an agency other than the position to which the employee is regularly assigned, the employee may be detailed to that position for a period not to exceed one (1) year with prior approval of the secretary [commissioner].

(2) For detail to special duty, the secretary [commissioner] may waive the minimum requirements if [when] requested and justified by the appointing authority in writing.

(3) Upon approval by the secretary, the appointing authority shall notify the employee, in writing, of:

(a) The detail to special duty;

(b) The reasons for the action; and

(c) The employee's retention of status in the position from which he was detailed to special duty.

Section 3. Temporary Overlap. With the [prior] approval of the secretary [commissioner], an agency may place an employee [for training purposes or in the best interest of the state service,] in a position currently occupied by another employee for a period not to exceed sixty (60) calendar days, for training purposes or if [when] it is in the best interests of the service.

PAUL E. PATTON, Governor  
CAROL M. PALMORE, Secretary  
DANIEL F. EGBERS, General Counsel  
APPROVED BY AGENCY: May 21, 1999  
FILED WITH LRC: June 10, 1999 at 4 p.m.

**PERSONNEL CABINET  
(As Amended at ARRS, August 10, 1999)**

**101 KAR 2:095. Classified service administrative regulations.**

RELATES TO: KRS 18A.030(2), 18A.110

STATUTORY AUTHORITY: KRS [Chapter 18A,] 18A.030, 18A.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 requires the Secretary [Commissioner] of Personnel to promulgate [comprehensive] administrative regulations [consistent with KRS Chapter 18A,] which govern [for] the maintenance of employee records, the maintenance of other records and reports in the cabinet [department], and for other conditions of employment. This administrative regulation establishes those [is necessary to comply with these statutory] requirements [and replaces 101 KAR 2:090].

Section 1. Definitions. (1) "Approved charitable federation" means a charitable organization which:

(a) Qualifies as a charitable federation with a substantial Kentucky presence; and

(b) Has been approved by the Secretary of Personnel for participation in the campaign pursuant to Section 8(3) of this administrative regulation.

(2) "Charitable federation" means a legally constituted grouping, made up of or supporting at least ten (10) health and human welfare organizations, all of which:

(a) Qualify as exempt voluntary charitable organizations under 26 USC 501(c)(3); and

(b) Have a substantial Kentucky presence.

(3) "Designated nonprofit agency" means an organization with proof of tax-exempt status under 26 USC 501(c)(3) which is written in on a pledge card by a state employee as a choice to receive contributions.

(4) "State employee" means, for purposes of Section 8 of this administrative regulation, a person, including an elected public official, who is employed by a department, board, agency or branch of state government, except one (1) relating to a state college or university.

(5) "Substantial Kentucky presence" means a facility, staffed by professionals or volunteers, available to provide its services and open at least fifteen (15) hours a week and with a regional or statewide presence that meets the requirements of Section 8(2) of this administrative regulation.

**Section 2. Attendance; Hours of Work.** (1) The number of hours a full-time employee shall be [employees [in state offices in Frankfort] are] required to work shall be thirty-seven and one-half (37 1/2) hours per week [uniform for all positions] unless specified otherwise by the appointing authority or the statutes.

(2) The normal work day shall be from 8 a.m. to 4:30 p.m., local time, Monday through Friday.

(3) An appointing authority may require an employee [employees] to work hours and [work] days other than regular days and hours, [normal] including an overtime or [and] inclement weather schedule [schedules] if it is in the best interest of the agency.

(4) An employee who works for an agency which requires [Employees who work for agencies which require] more than one (1) shift or seven (7) days a week operation may be reassigned from one shift to another or [and] from one post to another or alternate days off by the agency to meet staffing requirements or to maintain security or provide essential services of the agency.

(5) An [The] employee shall [is required to] give reasonable notice in advance of absence from a work station.

**Section 3. [2.] Work Station and Temporary Assignment.** (1) Each employee shall be assigned a work station by the appointing authority.

(2) A work station may be changed to better meet the needs of the agency.

(3) An employee may be temporarily assigned to a different work station in a different county for a period of up to sixty (60) calendar days. Temporary assignment may be renewed with the approval of the Secretary of Personnel. A temporarily reassigned [provided that such] employee shall be [is] reimbursed for [his] travel expenses in accordance with regulatory provisions and the appointing authority shall notify [notifies] the employee in writing prior to the effective date of the action.

(4) [Nothing within this administrative regulation shall be construed as prohibiting] An appointing authority may assign [from assigning] an employee to work in a different site within the county of employment.

**Section 4. [3.] Dual Employment.** (1) An [No] employee holding a full-time position with the Commonwealth shall not [may] hold another state position except upon recommendation of the appointing authority and the written approval of the secretary [commissioner].

(2) [A copy of such written approval and a statement of the reasons therefor shall be transmitted to the Governor and the Director of the Legislative Research Commission:] A complete list of all employees holding more than one (1) state position shall be furnished to the Legislative Research Commission quarterly by the secretary [commissioner].

**Section 5. [4.] Notice of Resignation and Retirement.** (1) [Resignations:] An employee who desires to terminate his service with the state shall submit a written resignation or notice of retirement to the appointing authority.

(2) A resignation or notice [Resignations and notices] of retirement shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation shall be attached to the personnel action [advice] effecting the separation and be filed in the employee's service record in the agency and the Personnel Cabinet [department].

(3) Failure of an employee to give fourteen (14) calendar days notice with his resignation or notice of retirement may result in forfeiture of accrued annual leave.

(4) The effective date of a separation shall be the last work day unless the employee has been approved for the use of annual or [and] compensatory leave prior to termination.

**Section 6. [5.] Records and Reports.** (1) An appointing authority shall use the Request for Personnel-Position Action Form P-1 to report a personnel action or status change. [The secretary [commissioner] shall prescribe personnel action forms which appointing authorities shall use to report such personnel actions and status changes [as he may require].] The secretary [commissioner] shall inform an appointing authority [the appointing authorities] which personnel actions or [and] status changes shall [must] be reported [to him]. The appointing authority shall provide a copy of a personnel action form to the employee affected by the [such] action.

(2) The secretary [commissioner] shall maintain a leave record showing for each employee:

(a) Annual leave earned, used and unused;

(b) Sick leave earned, used and unused;

(c) Compensatory leave earned, used and unused; and

(d) Special leave or [any] other leave with or without pay. [Such record shall be documentary evidence to support and justify authorized leave of absence with pay.]

**Section 7. [6.] Telecommuting.** (1) Telecommuting shall be [is] a work arrangement where a selected state employee is [employees are] allowed to perform the normal duties and responsibilities of his position [their positions] through the use of computer or telecommunications at home or another place apart from the employee's usual work station.

(2) An appointing authority may establish a telecommuting program for all or any part of the agency.

(3) Eligibility and selection for participation in [such] a telecommuting program shall be [is solely] the decision of the agency, with no implied or specific right to participation being granted to an [any] employee.

(4) The telecommuter's conditions of employment shall remain the same as for a nontelecommuting employee [employees].

(a) Employee salary, benefits and employer-sponsored insurance coverage shall not change as a result of telecommuting.

(b) The telecommuter shall be responsible for the security and confidentiality of data, as well as the protection of state-provided equipment, used and accessed during telecommuting.

(c) The telecommuter shall [must] agree to maintain a clean, safe workplace.

(d) An on-site visit [On-site visits] by the employer for monitoring of safety issues shall be arranged in advance.

**Section 8. Requirements [7. Guidelines] for the Kentucky Employees Charitable Campaign.** (1) General Purpose. The purpose of the Kentucky Employees Charitable Campaign shall be [was established] to:

(a) Provide an opportunity for employees to contribute to eligible Kentucky organizations through the state's payroll deduction process;

(b) Ensure accountability for participants in regard to the funds raised;

(c) Encourage the involvement of state employees as responsible citizens;

(d) Give recognition to state employee volunteers; and

(e) [to] Minimize workplace disruption and administrative costs to Kentucky taxpayers by allowing only one (1) statewide payroll deduction charitable solicitation per year.

(2) An organization shall be considered to have a substantial Kentucky presence if the requirements established in this subsection are met. [Definitions: For the purpose of the Kentucky Employees Charitable Campaign:

(a) A "charitable federation" is a legally constituted grouping, made up of or supporting at least ten (10) health and human welfare organizations, all of which qualify as exempt voluntary charitable organizations under the IRS Code Section 501(c)(3), and which

have a substantial Kentucky presence:

(b) "Substantial Kentucky presence" means a facility, staffed by professionals or volunteers, available to provide its services and open at least fifteen (15) hours a week and with a regional or statewide presence;

(a) [1:] Services shall be available to state employees in the local community.

(b) [2:] Services shall directly benefit human beings whether children, youth, adults, the aged, the ill and infirm, or the mentally or physically disabled.

(c) [3:] Services shall [must] consist of:

1. Care, research, education or prevention in the fields of human health or social adjustment and rehabilitation;

2. Relief for victims of natural disasters and other emergencies; or

3. Assistance to those who are impoverished and in need of food, shelter, clothing and basic human welfare services.

[(c) "Approved charitable federation" means any charitable organization which:

1. Qualifies as a charitable federation with a substantial Kentucky presence; and

2. Has been approved by the Secretary of Personnel for participation in the campaign and demonstrates:]

(3) The secretary shall approve a charitable organization for participation in the campaign if the charitable organization demonstrates:

(a) [a:] Proof of tax exempt status under 26 USC [Internal Revenue Code] 501(c)(3);

(b) [b:] Proof of current registration and compliance with the reporting requirements of the Secretary of State and the Office of the Attorney General;

(c) [c:] Proof of financial responsibility, including [but not limited to]:

1. [(i)] Adoption of a detailed annual budget;

2. [(ii)] Use of generally accepted accounting principles and procedures;

3. [(iii)] The board of directors' approval for deviations from the approved budget; and

4. [(iv)] An annual financial audit;

(d) [d:] Proof of direction by an active volunteer board of directors which meets regularly and whose members serve without compensation;

(e) [e:] A written nondiscrimination policy;

(f) [f:] Public disclosure of fund raising administrative costs with a statement demonstrating that, if fund and administrative expenses are in excess of twenty-five (25) percent of total support and revenue, actual expense for those purposes are reasonable under all the circumstances in its case; and

(g) [g:] Publication of an annual report available to the general public, which includes a full description of the organization's Kentucky activities including fundraising activities.

(4) A federation [h: Federations] may apply on behalf of all their member organizations if both the federation [:- Both federations] and all federation members [shall] meet the [these] criteria established in subsection (3) of this section.

[(d) "Designated nonprofit agency" means any organization with proof of tax-exempt status under Internal Revenue Code 501(c)(3) which is written in on a pledge card by a state employee as a choice to receive contributions:

(e) "State employee" means a person, including an elected public official, who is employed by any department, board, agency or branch of state government, except one (1) relating to any of the state colleges or universities:]

(5) [(3)] Authority of the Secretary of Personnel.

(a) The Secretary of Personnel shall have the full authority over the procedures and policies relating to the operation of the Kentucky Employees Charitable Campaign.

(b) The secretary shall designate a group of state employees to compose the Kentucky Employees Charitable Campaign Committee to make recommendations on related [such] matters.

(c) The committee shall [will] be composed of a cross-section of state employees, involving the large cabinets and small agencies.

(d) The chair of the committee shall be appointed by the secretary.

tary.

(6) [(4)] Functions of the committee. The committee shall [may] make recommendations on the following:

(a) Designation of a campaign administrator.

1. The campaign administrator shall serve for a minimum period of two (2) years.

2. The campaign administrator shall [will] be charged to manage and administer the charitable fund campaign for the Commonwealth, subject to the direction and control of the Secretary of Personnel. The campaign administrator shall have statewide workplace campaign experience and have the necessary staff and volunteer support to administer the Kentucky Employee Charitable Campaign;

(b) Establishment of minimum amount, based on cost effectiveness, that an employee may authorize to be deducted for each approved federation;

(c) The format of the brochure, pledge card and other promotional materials for the annual campaign;

(d) The dates and duration of the campaign;

(e) The annual campaign budget submitted by the campaign administrator; and

(f) The costs of the campaign, which shall [will] be detailed in the budget, shall be borne by each recipient organization proportionally.

(7) [(5)] Charitable federations to apply for statewide campaign.

(a) A federation [Federations] desiring inclusion shall make application by February 15 of each year.

(b) A federation that has [Federations that have] previously participated in the campaign shall update its [may update their] application with a letter and a copy of the most recent year's audit.

(c) A [Any] charitable organization that has previously participated in the campaign shall be [is] eligible if [as long as] it fulfills all conditions of eligibility.

(8) [(6)] The campaign administrator. The campaign administrator shall [responsibilities include]:

(a) Provide staffing to manage and administer the annual campaign. This shall include [includes] preparing drafts of campaign materials for consideration by the Secretary of Personnel;

(b) Serve [Serves] as the central accounting point for both campaign cash and for payroll deductions received from the Personnel Cabinet including:

1. The preparation and submission of an annual campaign budget. Costs of the campaign shall [will] be divided among recipient organizations; and

2. A separate account maintained for managing the income and expenses of the campaign;

(c) Distribute campaign funds received from the Personnel Cabinet to participating organizations in accordance with agreed upon time periods. This shall include [includes] distribution of funds to designated nonprofit agencies;

(d) Provide an end-of-campaign report to the Secretary of Personnel and to participating organizations; and

(e) Annually furnish a financial statement prepared by a certified public accountant.

Section 9. [8:] Workplace Violence Policy. (1) Workplace violence shall be prohibited and include [is]:

(a) The attempted, threatened, or actual conduct of a person who endangers or is likely to endanger the health and safety of state employees or the general public; or

(b) A [Any] threatening statement, harassment or behavior that gives a state employee or member of the general public reasonable cause to believe that his health or safety is at risk.

(2) Examples of prohibited workplace violence shall include[; but are not limited to]:

(a) Threats of harm;

(b) Brandishing or displaying a weapon or an object that looks like a weapon in a manner which would present a safety risk to a state employee [employees] or a member of the general public or threatens or intimidates them;

(c) Intimidating, threatening, or directing abusive language toward another person, either verbally, in writing or by gesture;

(d) Stalking;

(e) Striking, slapping or otherwise physically attacking another

person; and

(f) Disobeying or failing to follow the reasonable directive of a supervisor to take action or cease actions which create a risk to the health or safety of a state employee [state employees] or the public or threatens or intimidates them.

(3) Violation of this section shall constitute grounds for disciplinary action and referral for criminal prosecution.

**Section 10. [9.] Issuance of Paychecks to State Employees. (1) A paycheck [Paychecks] shall be issued to a state employee [state employees] on the 15th and 30th day of each month.**

(2) If the regularly scheduled pay date falls on a weekend, a paycheck [paychecks] shall be issued on the preceding Friday.

(3) If the regularly scheduled pay date falls on a state holiday as defined in KRS 18A.190, a paycheck [paychecks] shall be issued on the workday preceding the holiday.

**Section 11. Incorporation by Reference. (1) Request for Personnel-Position Action Form P-1, July 1998, is incorporated by reference.**

(2) This material may be inspected, copied, or obtained at the Personnel Cabinet, 200 Fair Oaks Lane, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

PAUL E. PATTON, Governor

CAROL M. PALMORE, Secretary

DANIEL F. EGBERS, General Counsel

APPROVED BY AGENCY: May 21, 1999

FILED WITH LRC: June 10, 1999 at 4 p.m.

**PERSONNEL CABINET  
(As Amended at ARRS, August 10, 1999)**

**101 KAR 2:102. Classified leave administrative regulations.**

RELATES TO: KRS 18A.030, 18A.110, 18A.195, 61.394, 344.030, 29 USC 201, et seq., 2601, et seq.

STATUTORY AUTHORITY: KRS 18A.030, 18A.110, 18A.155, 344.030, 29 USC 201, et seq., 2601, et seq.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(7)(g) requires the Secretary of Personnel, with the approval of the Governor, to promulgate [comprehensive] administrative regulations[consistent with KRS Chapter 18A;] which govern annual leave, sick leave, special leaves of absence, and for other conditions of leave. This administrative regulation establishes the leave requirements for classified employees. [policies governing these subject matters.]

**Section 1. Annual Leave. (1) Accrual of annual leave.**

(a) Each full-time employee shall accumulate annual leave at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180-239 months	1 3/4 days per month; 21 per year
240 months & over	2 leave days per month; 24 per year

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 or more per month to accrue annual leave.

(c) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(d) In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

(e) A former employee who has [Former employees who have] been rehired, except as provided in paragraph (f) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(f) An employee, who has retired from a position covered by a

state retirement system, is receiving retirement benefits and returns to state service, shall not receive credit for months of service prior to retirement.

(g) A part-time employee shall not be entitled to annual leave.

(2) Use and retention of annual leave.

(a) Annual leave shall be used in increments of hours or of one-quarter (1/4) hours.

(b) Except as provided in paragraph (c) of this subsection, an employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time earned that year, if the operating requirements of the agency permit. [~~however;~~]

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward under this administrative regulation.

(d) Absence due to sickness, injury, or disability in excess of the amount available for those purposes shall [such purposes may], at the request of the employee, be charged against annual leave.

(e) An employee shall use annual leave for an absence on a [absences only on] regularly scheduled workday [workdays].

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated annual leave in the receiving agency.

(g) An employee who is eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than educational leave, during any part of the previous month.

(h) Annual leave may be carried from one (1) calendar year to the next as provided in this paragraph:

Months of Service	Maximum Amount
0-59 months	Thirty (30) workdays
60-119 months	Thirty-seven (37) workdays
120-179 months	Forty-five (45) workdays
180-239 months	Fifty-two (52) workdays
240 months and over	Sixty (60) workdays

(i) Leave in excess of the maximum amounts specified in [the preceding] paragraph (h) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement.

(j) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(d) of this section.

(3) Annual leave on separation.

(a) If an employee is separated by proper resignation or retirement, he shall be paid in a lump sum for accumulated annual leave. The accumulated annual leave for which he is paid shall not exceed the amounts established by subsection (2)(h) of this section. Following payment of annual leave at resignation, leave remaining after the payment of the maximum provided shall be removed from the balance.

(b) If an employee is laid off, he shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who reverts to the classified service, or resigns one (1) day and is employed the next workday, shall retain his accumulated leave in the receiving agency.

(d) An employee who has been dismissed for cause related to misconduct or who has failed, without proper excuse, to give proper notice of resignation or retirement shall not be paid for accumulated annual leave.

(e) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(f) An employee may request in writing that his accumulated annual leave not be paid upon resignation, and that all or part of the amount of his accumulated annual leave that does not exceed the amount established by this section be waived, if:

1. He resigns, or is laid off from his position, because of an approved plan of privatization of the services he performed; and

2. The successor employer has agreed to credit him with an equal amount of annual leave.

Section 2. Sick Leave. (1) Accrual of sick leave.

(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee shall have worked or been on paid leave, other than educational leave, for 100 or more hours in a month to accrue sick leave.

(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(e) A full-time employee who completes 240 months of total service with the state shall be credited with another ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service. An employee with 240 or more months of service at the time of implementation of this section shall have the additional ten (10) days credited to the sick leave balance.

(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

(g) The total service shall be verified before the leave is credited to the employee's record.

(h) **A former employee who has** [~~Former employees who have~~] been rehired, except as provided in paragraph (i) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(i) A former employee who is appointed, reinstated or reemployed, other than a former employee receiving benefits under a state retirement system, shall be credited with the unused sick leave balance credited to him upon separation.

(j) Sick leave may be accumulated with no maximum.

(2) Use and retention of sick leave with pay.

(a) An appointing authority shall grant or may require the use of accrued sick leave with pay if an employee:

1. Is unable to work due to medical, dental or optical examination or treatment;

2. Is disabled by illness or injury. The appointing authority may require the employee to provide a doctor's statement certifying the employee's inability to perform his duties for the days or hours sick leave is requested;

3. Is required to care for or transport a member of his immediate family in need of medical attention for a reasonable period of time. The appointing authority may require the employee to provide a doctor's statement certifying the employee's need to care for a family member;

4. Would jeopardize the health of himself or others at his work station because of a contagious disease or demonstration of behavior that might endanger himself or others;

5. Has lost by death a spouse, parent, grandparent, child, brother or sister, or the spouse of any of them and may be granted to include other relatives of close association. Leave under this **subparagraph** [paragraph] shall be limited to three (3) days; **or** [-]

6. Requires leave for the birth, placement or adoption of a child.

(b) At the termination of sick leave with pay, the appointing authority shall return the employee to his former position.

(c) An employee eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than education leave, during any part of the previous month.

(d) Sick leave shall be used in increments of hours or increments of one-quarter (1/4) hours.

(e) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated sick leave in the receiving agency.

(f) An employee shall be credited for accumulated sick leave if he is separated by proper resignation, layoff or retirement.

(3) Sick leave without pay.

(a) An appointing authority shall grant sick leave without pay for the duration of an employee's impairment by injury or illness, if:

1. The total continuous leave does not exceed one (1) year; and

2. The employee has used or been paid for **all** [any] accumulated annual, sick and compensatory leave unless he has requested to retain up to ten (10) days of accumulated sick leave.

(b) For continuous leave without pay in excess of thirty (30) working days, excluding holidays, the appointing authority shall notify the employee in writing of the leave without pay status.

(c) The appointing authority may require periodic doctor's statements during the year attesting to the employee's continued inability to perform the essential functions of his duties with or without reasonable accommodation.

(d) An appointing authority may grant sick leave without pay to an employee who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave **if** [when] the employee is required to care for a member of the immediate family for a period not to exceed thirty (30) working days.

(e) If an employee has given notice of his ability to resume his duties following sick leave without pay, the appointing authority shall return the employee to the original position or to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(f) If reasonable accommodation is requested, the employee shall:

1. Inform the employer; and

2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be considered to have resigned if he:

1. Has been on one (1) year continuous sick leave without pay; **[and]**

2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of sick leave; **[and]**

3. Is unable to return to his former position; **[and]**

4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which he qualified and is capable of performing its essential functions with or without reasonable accommodation; **and** [but]

5. **Has not been placed by the appointing authority in a vacant position.** [~~has been unable to place him in such a vacant position.~~]

(h) Sick leave granted under this **subsection shall not be** [paragraph is not] renewable after the employee has been medically certified as able to return to work.

(i) An employee who has been resigned under **paragraph (g) of** this subsection shall retain reinstatement privileges that were accrued during service in the classified service.

(4) Workers' compensation.

(a) If an absence is due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used to maintain regular full salary.

(b) If paid sick leave is used to maintain regular full salary, workers' compensation pay benefits shall be assigned to the state for the period of time the employee received paid sick leave.

(c) The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits are assigned.

(5) Application for sick leave and supporting documentation.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examinations, and for sick leave without pay.

(c) If the employee is too ill to work, an employee shall notify the immediate supervisor or other designated person. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination or treatment.

(f) An appointing authority shall grant sick leave **if** [when] the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.



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Section 3. Family and Medical Leave. (1) An appointing authority ~~[Appointing authorities]~~ shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 20 USC 2601, et seq., and the federal regulations implementing the Act, 29 CFR Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family leave if the employee has:

(a) Completed twelve (12) months of service; and

(b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar year basis.

(4) If both parents are employed by the state, each parent shall be entitled to twelve (12) weeks of unpaid family and medical leave for the birth, placement, or adoption of a child.

(5) While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.

(6) If the employee would qualify for family and medical leave, but has an annual, compensatory or sick leave balance, the agency shall not designate the leave as FMLA leave until:

(a) The employee's leave balance has been exhausted; or

(b) The employee requests to reserve ten (10) days of accumulated sick leave and be placed on unpaid FMLA leave.

Section 4. Court Leave. (1) An employee shall be entitled to court leave during his scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with a subpoena ~~[subpoenas]~~ by a court, or administrative agency or body of the federal or state government or any political subdivision thereof; or

(b) Serve as a juror or a witness, unless the employee or a member of his family is a party to the proceeding.

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of his assigned duties.

Section 5. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.

(a) An appointing authority ~~[Appointing authorities]~~ shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 USC Chapter 8.

(b) An employee who is directed to, or who requests and is authorized to, work in excess of the prescribed hours of duty shall be granted compensatory leave and paid overtime subject to the provisions of the Fair Labor Standards Act, the Kentucky Revised Statutes and this administrative regulation.

(c) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be compensated for hours worked in excess of forty (40) per week as provided by subparagraphs 1 to 3 of this paragraph ~~[paragraphs (1) to (3) of this subsection]~~.

1. An employee who has not accumulated the maximum amount of compensatory leave shall have the option to accumulate compensatory leave at the rate of an hour and one-half (1 1/2) for each hour worked in excess of forty (40) per week in lieu of paid overtime.

2. The election to receive compensatory leave in lieu of paid overtime shall be in writing on the Overtime Compensation Form and shall remain in force for a minimum of six (6) months. The election shall be changed by the submission of a new form. The effective date of a change shall be the first day of the next work week following receipt of the election.

3. An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times the regular hourly rate of pay for all hours worked in excess of forty (40) hours per week.

(d) An employee deemed to be "exempt" under the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours worked in excess of the regular work schedule.

(e) Compensatory leave shall ~~[may]~~ be accumulated or taken

off in one-quarter (1/4) hour increments.

(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be 240 hours.

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain the compensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.

(a) An appointing authority may require an employee who has accrued at least 100 hours compensatory leave to use compensatory leave before annual leave and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.

(b) An employee who is not in a policy-making position may, after accumulating 151 hours of compensatory leave, request payment for fifty (50) hours at the regular rate of pay. If the appointing authority or the designee approves the payment, an employee's leave balance shall be reduced accordingly.

(c) An employee who is not in a policy-making position shall be paid for fifty (50) hours at the regular hourly rate of pay, upon accumulating at the end of the pay period, 240 hours of compensatory leave. The employee's leave balance shall be reduced accordingly.

(d) If an employee's prescribed hours of duty are normally less than forty (40) hours per week, the employee shall receive compensatory leave for the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; and

2. Do not exceed the maximum amount of compensatory time that is permitted.

(e) Only hours actually worked shall be used for computing paid overtime or time and one-half (1 1/2) compensatory time.

(f) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of his:

1. Regular hourly rate of pay; or

2. Average regular rate of pay for the final three (3) years of employment.

Section 6. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United State Public Health Service Reserve, or the Kentucky National Guard shall be relieved from the civil duties, to serve under order on training duty without loss of the regular compensation for a period not to exceed the number of [ten-(10)] working days specified in KRS 61.394 for [in] a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds the number of [ten-(10)] working days specified in KRS 61.394 for [in] a federal fiscal year shall be charged to annual leave, compensatory leave or leave without pay.

(4) The appointing authority may require a copy of the orders requiring the attendance of the employee before granting military leave.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of the ~~[such]~~ duty not to exceed six (6) years. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 7. Voting and Election Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request, four (4) hours, for the purpose of voting.

(2) An election officer shall ~~[Election officers may]~~ receive additional leave if the total leave for election day does not exceed a regular workday.

(3) The absence shall not be charged against leave.

(4) An employee who is not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. An employee who is ~~[Employees who are]~~ permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis for the hours worked on election day.

Section 8. Special Leave of Absence. (1) If approved by the



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secretary, an appointing authority may grant a leave of absence for continuing education or training.

(a) ~~[(2)]~~ Leave may be granted for a period not to exceed twenty-four (24) months.

(b) ~~If granted, leave shall be granted either~~ ~~[(3) Leave may be granted]~~ with pay ~~(If [provided that] the employee contractually agrees to a service commitment) or without pay.~~

(c) ~~[(4)]~~ Leave shall be restricted to attendance at a college, university, vocational or business school for training in subjects that relates to the employee's work and will benefit the state.

(2) ~~[(5)]~~ An appointing authority, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(3) ~~[(6)]~~ If approved by the secretary, an appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of an allegation ~~[allegations]~~ of employee misconduct.

(a) Leave shall not exceed sixty (60) working days.

(b) The employee shall be notified in writing by the appointing authority that he is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(c) If the investigation reveals no misconduct by the employee, records relating to the investigation shall be purged from agency and Personnel Cabinet files.

(d) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. This notification shall be made to the employee, whether the employee has remained in state service, or has voluntarily resigned after being placed on special leave for investigative purposes.

Section 9. Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for the absence to the supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence[~~]~~:

~~[(a)]~~ without leave; ~~[and]~~

(b) ~~Be~~ treated as leave without pay for an employee ~~[employees]~~ covered by the provision of the Fair Labor Standards Act; and

(c) ~~[Shall]~~ constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be considered to have resigned the employment.

Section 10. Absences Due to Adverse Weather. (1) ~~If~~ [When] operations are suspended or temporarily closed due to localized adverse weather, an employee, who is not designated for mandatory operations and chooses not to report to work or to leave early in the event of adverse weather conditions, shall have the time of the absence reported as:

(a) Charged to annual or compensatory leave; ~~[or]~~

(b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or

(c) Deferred in accordance with subsections ~~[paragraphs]~~ (3) and (4) of this section.

(2) An employee who is ~~[Employees who are]~~ on prearranged annual, compensatory or sick leave shall charge leave as originally requested.

(3) Where operational needs allow, except for an employee ~~[employees]~~ in mandatory operations, management shall make every reasonable effort to arrange schedules whereby an employee ~~[employees]~~ will be given an opportunity to make up time not worked rather than charging it to leave.

(4) An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.

(a) Makeup work shall occur in the workweek in which the time is lost or in a week when the employee has not worked a full work schedule due to ~~[such absences as]~~ holiday, annual leave or sick leave.

(b) Time lost shall be made up within four (4) months of the occurrence of the absence. If it is not made up within four (4) months, annual leave shall ~~[will]~~ be deducted to cover the absence, or leave without pay shall ~~[will]~~ be charged if no annual leave is

available.

(c) If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual leave or deducted from the final paycheck.

(5) ~~If~~ [When] catastrophic, life-threatening weather conditions occur, as created by a hurricane, tornado, flood or blizzard ~~[hurricanes, tornadoes, floods or blizzards]~~, and it becomes necessary for authorities to order evacuation or shutdown of the place of employment, the following provisions shall apply:

(a) An employee who is ~~[Employees who are]~~ required to evacuate or who would report to a location that has been shutdown shall ~~[will]~~ not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety.

(b) An employee who is ~~[Employees who are]~~ required to work in an emergency situation ~~[such emergency situations]~~ shall be compensated pursuant to the provisions of Section 5 of this administrative regulation and the Fair Labor Standards Act as amended.

Section 11. Blood Donation Leave. (1) An employee who, during regular working hours, donates blood at a ~~[any]~~ licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted under this section shall be used at the time of the donation unless circumstances as specified by the supervisor required the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave.

(4) An employee who is deferred from donating blood shall not:

~~(a)~~ Be charged leave time for the time spent in the attempted donation; and

~~(b) [; but shall not]~~ Qualify for the remainder of the blood donation leave.

**Section 12. Incorporation by Reference. (1) Overtime Compensation Form, September 1999, is incorporated by reference.**

**(2) This material may be inspected, copied, or obtained at the Personnel Cabinet, 200 Fair Oaks Lane, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.**

PAUL E. PATTON, Governor

CAROL M. PALMORE, Secretary

DANIEL F. EGBERS, General Counsel

APPROVED BY AGENCY: May 21, 1999

FILED WITH LRC: June 10, 1999 at 4 p.m.

### PERSONNEL CABINET (As Amended at ARRS, August 10, 1999)

#### 101 KAR 2:105. Sick leave sharing procedures.

RELATES TO: KRS ~~[48A.030]~~ 18A.110(1)(h), (7)(g), 18A.196, 18A.197

STATUTORY AUTHORITY: KRS 18A.030(2), 18A.110(1)(h), (7)(g), 18A.197(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.197(9) ~~[(g)]~~ requires the Secretary ~~[Department]~~ of Personnel to promulgate ~~[procedural]~~ administrative regulations to implement the sick leave sharing program. This administrative regulation establishes the sick leave sharing procedures.

Section 1. ~~[Sick Leave Sharing Procedures. (1)]~~ Definitions. (1) ~~[(a)]~~ "Employee" is defined by KRS 18A.196(1) ~~[means any [an] employee in active payroll status. An employee who has resigned or retired or who has been placed in unpaid leave status by a personnel action shall not qualify to donate or receive sick leave under the Sick leave sharing program].~~

(2) ~~[(b)]~~ "Immediate family" means:

(a) The employee's spouse, mother, father, grandparent, son or daughter; or

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- (b) A person of similarly close [blood or legal] relationship:  
1. Who has resided with the employee for at least [not less than] thirty (30) days prior to application; or  
2. For whom the employee is legally responsible.  
(3) [(e)] "Medically certified illness, injury, impairment or physical or mental condition" means a disabling medical condition which has rendered or will render [renders] the employee completely incapable of performing the essential duties of his job due to:  
(a) The employee's personal illness; or  
(b) The medically certified necessity that the employee care for an eligible family member.

**Section 2. Eligibility to Donate or Receive Sick Leave. (1) An employee shall not qualify to donate or receive sick leave under the sick leave sharing program if the employee:**

- (a) Is not in active payroll status; or  
(b) Has:  
1. Resigned;  
2. Retired; or  
3. Been placed in unpaid leave status by a personnel action.  
(2) To request donated sick leave, an employee shall complete an Application for Sick Leave Sharing.  
(3) To donate sick leave, an employee shall complete a Sick Leave Donation Form.

**Section 3. Procedures and Restrictions. (1)** The ten (10) consecutive days of leave required for eligibility shall [may] be leave with or without pay.

(2) Sick leave sharing shall not be authorized for mere convenience or employee preference.

(3) [(2)] Sick leave shall not be donated in an amount less than seven and one-half (7.5) hours.

(4) [(3)] If [Where] multiple donors donate sick leave to an eligible recipient, agencies shall transfer leave in chronological order of receipt of the donation forms, up to the maximum amount that has been certified to be needed by the recipient.

(5) [(4)] The applicant for sick leave sharing shall be responsible for filing:

(a) The appropriate medical certificates certifying the medical necessity; and

(b) The Application for Sick Leave Sharing [applications].

(6) Donated sick leave shall not be utilized retroactively except to cover the period between the date the request was submitted to the employee's supervisor or agency representative and the date of approval by the appointing authority.

(7) [(5)] The sick leave sharing recipient shall be responsible for monitoring the amount of sick leave donated and used.

(8) [(6)] Except as provided by subsection (9) of this section, donated sick leave shall be used:

(a) In the order in which it is donated; and

(b) [shall be used] On consecutive days [except as provided by subsection (9) [(7)] of this section].

(9) [(Any)] Leave that an employee accrues while receiving donated sick leave shall be used before donated sick leave.

(10) [(7)] When the recipient of donated leave returns to work, unused donated leave shall be restored to the donors in reverse order of donation, unless the recipient provides medical evidence that [he will require] continued, periodic medical treatment relating to the original condition for which leave was donated is required.

(11) [(8)] If a sick leave donor resigns, retires or is otherwise terminated from state employment before the process of transferring leave to the recipient has begun, the [such] leave shall not be available for use by the recipient.

(12) [(9)] An appointing authority may require a sick leave recipient to provide an updated medical certificate attesting to the continued need for leave after thirty (30) working days of sick leave.

(13) [(10)] An employee receiving workers' compensation benefits shall be [is] eligible to receive shared sick leave to maintain a regular level of pay.

**Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:**

- (a) Application for Sick Leave Sharing, September 1999;

and

(b) Sick Leave Donation, September 1999.

(2) This material may be inspected, copied, or obtained at the Personnel Cabinet, 200 Fair Oaks Lane, 5<sup>th</sup> Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

PAUL E. PATTON, Governor

CAROL M. PALMORE, Secretary

DANIEL F. EGBERS, General Counsel

APPROVED BY AGENCY: May 21, 1999

FILED WITH LRC: June 10, 1999 at 4 p.m.

PERSONNEL CABINET

(As Amended at ARRS, August 10, 1999)

101 KAR 2:120. Incentive programs.

RELATES TO: KRS 18A.110(1)(d), 18A.202, EO 98-1443

STATUTORY AUTHORITY: KRS 18A.030(2), 18A.110(1)(d), [Chapter 18A;] 18A.202, EO 98-1443

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(d) requires the Secretary [Commissioner] of Personnel to promulgate [comprehensive] administrative regulations [consistent with KRS Chapter 18A;] to implement work related incentive programs for state employees. KRS 18A.202 authorizes the secretary to establish work-related incentive programs for state employees. EO 98-1443 requires the secretary to establish a state employee adoption benefit program. This administrative regulation establishes the requirements for an employee suggestion system incentive program and a state employee adoption benefit program. [is necessary to comply with these statutory provisions.]

Section 1. [Definitions. (1) Suggestion system coordinator means a designee of the appointing authority who reviews and processes evaluations from the cabinet or agency and brings suggestions approved by the agency to the attention of the suggestion council.

(2) Employee suggestion council means a group comprised of cabinet or agency suggestion system coordinators.

(3) Chairman of the employee suggestion council means a designee of the Commissioner of Personnel who shall provide administrative support to the council.

Section 2. Employee Suggestion System. (1) Administration. An employee [Employees] with status in the classified service may be recognized and rewarded for submitting a suggestion that results [suggestions that result] in the improvement of state service or in the realization of financial savings by the state.

(a) 1. The employee suggestion system [(2) An employee suggestion system] council, headed by the chairperson designated by the Secretary of Personnel, shall develop procedures to ensure proper evaluation of each suggestion, review and act upon, by approval or denial [rejection], a [any] suggestion presented to the council by a cabinet or agency, and review denials as set forth in subsection (4) of this section [5 of this administrative regulation].

2. A designated coordinator [Only designated coordinators] shall have the right to present recommended suggestions to the council and to vote on them.

3. The [employee suggestion system] council may defer action for [on a suggestion in order to obtain additional information or may defer action] up to one (1) year and one (1) month pending documentation of cash savings.

4. The council shall receive administrative support from the Personnel Cabinet.

5. The [employee suggestion system] council shall prepare an annual report to be submitted to the Secretary of Personnel [commissioner] that shall include the number of suggestions received and the status of each suggestion.

6. The council shall meet at a minimum on a quarterly basis or upon the request of the council chairperson or a majority of the coordinators [chairman].

(b) [(3)] Each cabinet secretary or agency head shall designate, in writing, the appointment of a [an employee suggestion system] coordi-

nator who shall also serve on the ~~[employee suggestion system]~~ council. The coordinator shall receive suggestions and establish and maintain internal procedures to ensure appropriate evaluation of suggestions. **A suggestion shall:**

1. ~~[Suggestions may]~~ Be made by an employee to the employee's [employees to their] ~~[of his]~~ cabinet or agency; or [and such suggestions that]

2. ~~[may]~~ Be forwarded from other ~~[cabinet]~~ coordinators if the suggestion affects [they that affect] the coordinator's [his] agency.

(c) The coordinator shall present suggestions recommended for approval by his cabinet or agency to the council for consideration.

(2) [Section 3:] Eligibility.

(a) [(1)] A suggestion shall be [is] a positive idea which:

1. Explains how to improve methods, equipment or procedures;

2. Reduces time ~~[and/or]~~ cost of a work operation;

3. Creates a safer work environment;

4. Increases revenue; or

5. Improves relationships with or services for [to] the public.

(b) [(2)] The suggestion shall:

1. ~~[must]~~ Present an improvement in state service or function; ~~[and must]~~

2. Explain how the change would be accomplished;

3. ~~[and]~~ Define what benefits would be realized by [result to] the state, particularly in terms of efficiency, effectiveness, safety, economy, conservation of energy resources, or public relations; and

4. ~~[-The suggestion shall]~~ Be submitted on the Employee Suggestion Form P-35 [form designated by the council] and be accompanied by exhibits or illustrations as needed.

a. ~~[-]~~ [(a)] Suggestions shall [must] be practicable, useful, and constructive.

b. ~~[-]~~ [(b)] A suggestion that requires legislative or regulatory changes for implementation may be submitted. It shall be [However, it is] the responsibility of the agency that desires to implement the suggestion to request the necessary legislative or regulatory changes. Upon appropriate legislative action or administrative regulation changes, the suggestion shall [may] be considered for an award.

c. ~~[-]~~ [(3)] A suggestion which has been implemented and which will result in cost savings or improvement in government operations shall be eligible for an award if it is submitted on a Employee Suggestion Form P-35 [form designated by the council] within thirty (30) working days of implementation of the suggestion by an agency.

(c) [(3)] The following suggestions shall not be [are not] eligible for a cash award:

1. [(a)] A suggestion that falls within the scope of the duties of the suggester and which the suggester has the authority to initiate or implement without other administrative approval. "Scope of duties" shall include [be defined as] a specific set of tasks as set forth in the position description of the suggester at the time the suggestion is submitted; ~~[Authority is defined as the power to implement the suggestion.]~~

2. [(b)] A suggestion [Suggestions] related to a particular problem given to an employee to solve within the scope of his duties and responsibilities;

3. [(c)] A suggestion made by a member of the council, a cabinet, or agency suggestion review committee; ~~[Suggestions made by members of the council or a cabinet/agency suggestion review committee.]~~

4. [(d)] A suggestion [Suggestions] which include a proposal [proposals] to perform routine maintenance operations or follow manufacturer's recommendations;

5. [(e)] A suggestion [Suggestions] to make a change which has been documented in writing as already under consideration by those administratively responsible; or

6. [(f)] A suggestion which corrects [Suggestions which correct] an error or [a] condition that exists ~~[only]~~ because established procedures were [are] not followed.

(d) [(4)] If more than one (1) suggester makes significant contributions to the idea, the suggestion may be submitted jointly, with an [any] award being divided equally between or among the suggesters.

(e) [(5)] The first suggestion received shall take [takes] precedence over all future suggestions having the same purpose. If two (2) or more suggestions deemed similar are received on the same day, an [any] award granted shall [will] be divided equally between or among the suggesters.

(f) [(6)] A suggestion [Suggestions] shall be considered confidential communications among the suggesters and the employees [employee] and officers whose responsibility it is to process, investigate, review, or evaluate suggestions.

(3) [Section 4:] General provisions.

(a) [(1)] The cabinet or agency head shall establish an internal system for receipt, evaluation, and reconsideration of employee suggestions. This system shall, at a minimum, include the following:

1. [(a)] A method to notify the suggester, in writing, that the suggestion has been received, and to ~~[periodically]~~ notify the suggester, in writing, of a [any] change in the status of the suggestion;

2. [(b)] A method to document the original suggestion, evaluation, and action taken; and

3. [(c)] A method to prepare and present documentation of a suggestion [suggestions] for recommendation to the ~~[employee suggestion system]~~ council.

(b) [(2)] Eligibility of a suggestion shall be evaluated according to the circumstances existing at the time the suggestion was made. An evaluation shall be completed by a person with expertise in the area under consideration. The results of the evaluation shall be recorded on the Evaluation of Employee Suggestion Form P-36 [form designated by the council], and the form shall be dated and signed by the individual making the evaluation.

(c) The suggester ~~[(3)]~~ Suggesters shall be notified in writing of the disposition of ~~the [their]~~ suggestion within ninety-five (95) calendar days of receipt by the coordinator. If all parties involved agree, an extension of time shall [may] be granted if [when] extenuating circumstances exist.

1. [(a)] A suggestion shall be considered to be active and eligible for an award until the suggester is notified, in writing, that the suggestion has been approved or denied.

2. [(b)] If [When] it is determined that a suggestion will not be implemented, the coordinator shall notify the suggester, in writing, stating the reason it was not implemented.

3. [(c)] If [When] an eligible suggestion is not adopted and conditions under which it was originally considered have changed, the suggester may request reevaluation by the cabinet or agency. The [Such] request shall:

a. Be in writing;

b. [Shall] Be evaluated by the next level of supervision;

c. ~~[-and shall]~~ Be received by the agency within one (1) year from the date of rejection; and

d. ~~[-The request shall]~~ Include [be accompanied by] information regarding ~~[of]~~ the change in conditions ~~[of circumstances].~~

(d) [(4)] If [When] a suggestion is approved and implemented by a cabinet or agency [cabinet(s) or agency(ies)], the suggester's [determined to be of benefit as set forth in Section 2(1) of this administrative regulation, the cabinet] coordinator shall recommend approval of the suggestion to the council.

1. [(a)] The recommendation shall contain:

a. ~~[-]~~ [(1)] The suggestion as completed by the suggester on the Employee Suggestion Form P-35 [form designated by the council];

b. ~~[-]~~ [(2)] The evaluation forms completed according to the criteria ~~[as]~~ set forth in this administrative regulation; and

c. ~~[-]~~ [(3)] A statement of actual or projected cost savings using generally accepted accounting principles.

2. Upon receipt of the council's decision, the chairperson ~~[(b) The chairman]~~ of the council shall send written notification of the council's action to the suggester's ~~[cabinet]~~ coordinator and the coordinator shall then provide written notification to the suggester regarding the decision ~~[of the council's action].~~

(c) Upon receipt of the council's decision, the coordinator shall notify the employee, in writing, of the decision.

3. [(d)] If [When] an eligible suggestion is denied by the council, the suggestion shall remain on active file with the council for a period of one (1) year from the date of denial.

(e) [(5)] Award of cash payment shall be in accordance with KRS 18A.202.

1. [(a)] The ~~[calculation of]~~ cash payment shall be calculated based upon [represents] the amount saved over the period of one (1) year minus [less] implementation costs and shall ~~[-to]~~ be determined according to generally accepted accounting principles.

2. [(b)] The award check shall be issued by the agency where the

suggester is employed. Funds for payment shall come from the agency or agencies implementing the suggestion. The agency issuing the check may interaccount other agencies implementing the suggestion for a proportionate share of the total ~~[amount of the]~~ award amount.

3. ~~[(c)]~~ If ~~[When]~~ a suggestion ~~[which]~~ may result in ~~[is made promoting]~~ financial savings to the state and ~~[for which]~~ proper documentation of cost savings has not yet been obtained, the council **shall** ~~[may]~~ request that each agency implementing the suggestion maintain records ~~which document~~ ~~[documenting]~~ the cost savings for a period not to exceed one (1) year from the date of implementation. Documentation shall be carried out according to generally accepted accounting principles. ~~This cost savings analysis~~ ~~[and]~~ shall be forwarded by the coordinator to the council chairperson within thirty (30) work days of ~~its~~ completion ~~[by the coordinator to the chairman of the council]~~.

~~(f) [(6)]~~ If ~~[When]~~ a ~~[an employee]~~ suggestion has been approved by the council and has resulted in a financial savings to the state, the ~~suggester~~ ~~[employee who submitted the suggestion]~~ shall be compensated in an amount of ten (10) percent of the amount saved over one (1) calendar year, with a minimum of \$100~~;~~ and ~~[with]~~ a maximum of \$2,500. If ~~[When]~~ a ~~[an employee]~~ suggestion ~~[has been]~~ approved by the council ~~results~~ ~~[and has resulted]~~ in an intangible improvement in state service, the ~~suggester~~ ~~[employee]~~ shall be compensated in the amount of \$100. Upon the suggester's ~~[employee's]~~ receipt of compensation, the suggestion **shall become** ~~[becomes]~~ the property of the state.

**(4) [Section-5:] Reconsideration.**

~~(a) [(1)]~~ A suggester may request reconsideration of a suggestion that has not received approval from the cabinet or agency within ten (10) work days of the date that written notice of ~~denial~~ ~~[disapproval]~~ is received by the suggester ~~[employee]~~.

~~(b) [(2)]~~ The suggester shall request reconsideration, in writing, and shall set forth the basis for the request. The request shall be filed with the coordinator within ~~[the aforementioned]~~ ten (10) ~~days of the date of the denial~~ ~~[day period]~~. If ~~[When]~~ the tenth day falls on a day that the cabinet or agency office is closed during ~~regular~~ ~~[normal]~~ work hours, the request may be filed on the next work day.

~~(c) Within thirty (30) work days [(3)]~~ the cabinet or agency shall act on the request for reconsideration ~~[within thirty (30) work days]~~ and notify the suggester ~~[respond to the employee]~~, in writing, of ~~[setting forth]~~ the reason for the decision.

**(5) [Section-6:] Council review.**

~~(a) [(1)]~~ A suggestion may be reviewed by the council on its own motion, or upon request of the suggester. If ~~[When]~~ a suggestion has been reconsidered and denied by the cabinet or agency, the suggester may request a review by the council. The suggester **shall** ~~[may]~~ request review within thirty (30) days of receipt of the written notification of the outcome of the reconsideration and shall set forth, in writing, the basis for his request. The request shall be filed in the office of the employee suggestion system ~~chairperson~~ ~~[chairman]~~ within the ~~[aforementioned]~~ thirty (30) day period. If ~~[When]~~ the 30th day falls on a day that the ~~chairperson's~~ ~~[chairman's]~~ office is closed during ~~regular~~ ~~[normal]~~ work hours, the request may be filed on the next work day.

~~(b) [(2)]~~ The council shall complete the review within ninety (90) calendar days of the date that ~~the chairperson receives~~ the request for review ~~[is received by the chairman]~~.

~~(c) [(3)]~~ The ~~council chairperson~~ ~~[chairman of the council]~~ shall notify the agency head of the council's findings ~~[of the council's review]~~ and its recommendation concerning the ~~suggestion's~~ ~~[implementation or denial]~~ ~~[suggestion to be implemented or denied]~~.

**Section 2. Adoption Benefit Program.** (1) The Personnel Cabinet shall administer a program to provide financial assistance as an incentive to a **state employee** ~~[state employees]~~ in the executive branch who **adopts** ~~[adopts]~~ a child on or after November 1, 1998.

(2) A state employee who finalizes a legal adoption procedure for the adoption of a child, other than the child of a spouse, on or after November 1, 1998, shall be eligible to receive reimbursement for actual costs associated with the adoption of a special needs child as defined by KRS 199.555(1), or other child. Funding for this program **shall be** ~~[is]~~ limited to \$150,000 in a ~~[any]~~ fiscal year.

(3) The employee **shall** ~~[may]~~ receive:

(a) Up to \$5,000 in unreimbursed direct costs related to the adoption of a special needs child; or

(b) Up to \$3,000 in unreimbursed direct costs related to the adoption of any other child.

(4) Unreimbursed direct costs related to the adoption of a special needs child or other child **shall** ~~[may]~~ include:

(a) Licensed adoption agency fees;

(b) Legal fees;

(c) Medical costs;

(d) Court costs; and

(e) Other reasonable fees or costs associated with child adoption as allowed by state and federal law and reviewed and approved by the court at the time of finalization of the adoption.

(5) Application for financial assistance shall be made by **submitting a completed State Employee Adoption Assistance Application** to the Secretary of Personnel and supported by documentary evidence of:

(a) Finalization of the adoption;

(b) Certification by the Secretary of the Cabinet for Families and Children that the adopted child is a special needs child, if reimbursement for special needs adoption is sought; and

(c) A copy of an affidavit of expenses related to the adoption filed with and approved by the court at the time of finalization of the adoption.

(6) If both adoptive parents are executive branch state employees, the application for financial assistance shall be made jointly and the amount of reimbursement shall be limited to that specified in subsection (3) of this section.

(7) Upon approval of the application for financial assistance, the employee's agency shall disburse funds in the amount authorized by the Secretary of Personnel, if ~~[provided that]~~ the amount available for the program has not been exhausted.

**Section 3. Incorporation by Reference.** (1) The following material is incorporated by reference:

(a) Employee Suggestion Form P-35, October 1997;

(b) Evaluation of Employee Suggestion Form, P-36, February 1993; and

(c) State Employee Adoption Assistance Application, July 1999.

(2) This material may be inspected, copied, or obtained at the Personnel Cabinet, 200 Fair Oaks Lane, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

PAUL E. PATTON, Governor  
CAROL M. PALMORE, Secretary  
DANIEL F. EGBERS, General Counsel  
APPROVED BY AGENCY: May 21, 1999  
FILED WITH LRC: June 10, 1999 at 4 p.m.

**PERSONNEL CABINET**  
(As Amended at ARRS, August 10, 1999)

**101 KAR 2:140. Workers' Compensation Fund and Program.**

RELATES TO: KRS 18A.110(7)(i), 18A.370, 18A.375, 18A.380, 342.640

STATUTORY AUTHORITY: KRS [Chapter 18A;] 18A.030(2)(i), 18A.110(7)(i), 18A.380

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(7)(i) requires the Secretary [Commissioner] of Personnel to promulgate [comprehensive] administrative regulations [consistent with KRS Chapter 18A;] to implement programs to provide for the safety, health and welfare of state employees. **KRS 18A.380 requires the cabinet to promulgate administrative regulations for the administration of the state employee workers' compensation fund established by KRS 18A.375.** This administrative regulation **establishes requirements for the workers' compensation fund and program for state employees** [is necessary to comply with these statutory provisions].

Section 1. Workers Compensation Fund. **The** ~~[A]~~ self-insured

workers compensation fund and program [shall be] established by KRS 18A.375(1) shall [and administered by the Personnel Cabinet, Division of Employee Benefits, [Department of Personnel,] to] cover all eligible employees.

Section 2. Eligibles. (1) A state employee, as defined by KRS 18A.370, shall be eligible to participate in the program. [The following state agencies and their employees are eligible to participate: all agencies within the judicial, legislative and executive branches of state government except for the Transportation Cabinet, which is self-insured with its own fund and administers its own program; volunteer fireman, volunteer ambulance, Daviess County Court Clerk, Daviess County Sheriff, Campbell County Court Clerk, Campbell County Sheriff, Fayette County Court Clerk, Fayette County Sheriff, Jefferson County Court Clerk, Jefferson County Sheriff, Kenton County Court Clerk, Kenton County Sheriff, Pike County Court Clerk, Pike County Sheriff, Hardin County Sheriff, Hardin County Clerk, Warren County Sheriff, Warren County Clerk, Kentucky Community and Technical College System, Kentucky Lottery Corporation, Kentucky Employer Mutual Insurance, Lexington Fayette County Health Department, Eastern Kentucky University, Kentucky State University, Morehead State University, Murray State University, Northern Kentucky University, University of Louisville, and Western Kentucky University.]

(2) Other state related groups shall [may also] be included upon written agreement with the Personnel Cabinet [Department of Personnel].

Section 3. Assessments. The assessment [Assessments] for an individual agency [agencies] shall be based on the claims history for the past three (3) years and on the number of employees in the agency. Premiums shall be assessed at the beginning of each fiscal year.

(1) A biennial actuarial study [studies] shall be carried out to insure the fund's fiscal soundness.

(2) A fund deficit shall [Fund deficits will] be recouped through an interim billing [billings] or additional assessment [assessments] if deemed necessary by an actuarial study [studies].

Section 4. Benefits. (1)(a) The required medical expense [expenses] for a service [services] rendered by a hospital or doctor, or [hospitals, doctors, and] for a prescribed medication shall be [medications are] paid subject to approval of the claim.

(b) A percentage of the employee's average weekly wage shall be paid if [when] he is unable to work for an extended period due to a job-related injury or illness.

(c)1. Except as provided in this subparagraph, compensation shall not [No compensation shall] be payable for the first seven (7) days of disability.

2. If the [unless] disability continues over two (2) weeks, [in which case] compensation shall be allowed from the first day of disability.

(2) For an absence [In cases of absences] due to illness or injury for which workers compensation benefits are received, if the employee elects to accept the workers' compensation benefits, accumulated sick leave may be used in order to maintain regular full salary. If paid sick leave is used, workers compensation pay benefits shall be assigned back to the state for whatever period of time an employee received paid sick leave. An employee shall not receive paid sick leave and workers compensation pay for the same period of time.

Section 5. Notification Procedures. (1) Employee requirements. An employee shall inform the [his] supervisor of an [any] injury as soon as physically able to do so.

(2) Supervisor requirements.

(a) The supervisor shall:

1. Complete the employer's first report of injury, IA-1 [SF-1], giving specific information about the injury; and

2. [shall] Submit the form to the designated office in the [his] agency within [This shall occur as soon as possible, but no later than] three (3) working days after the supervisor is notified of an injury to the insure timely payments to injured employee [employees. IA-1 [SF-1] forms shall be completed, giving specific information about the injury]; and shall be submitted in triplicate].

(b) [(a)] A Lost Time and Return to Work [lost-time/return-to-work] Form, WCF-1, shall be submitted by the employee or the employee's representative to the supervisor if [when] an employee is losing time from [has returned to] work due to a work-related injury. The supervisor shall notify his personnel unit when an employee returns so that a WCF-1 form shall [may] be submitted to the Personnel Cabinet [Department of Personnel].

(c) Each [(b) Any] medical bill [bills], or medical information regarding treatment of a job-related injury [injuries] or illness of the employee, shall be submitted in the same manner as an injury report [reports]. An injury report [injury reports] [shall not be held, until medical bills are received, but] shall be forwarded as soon as possible.

(d) A safety representative [(c) Safety representatives] in each agency shall be notified of each accident so that the representative [all accidents so that they] may review accident causes and provide safety training. A supervisor [supervisors] shall promote safety with employees.

Section 6. Recordkeeping. All records maintained by the Personnel Cabinet and by an agency [agencies] with respect to an employee claim [claims] under this administrative regulation shall be confidentially maintained.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) First Report of Injury Form IA-1, February 1995; and

(b) Lost Time and Return to Work Form WCF-1, 1995.

(2) This material may be inspected, copied, or obtained at the Personnel Cabinet, 200 Fair Oaks Lane, 5<sup>th</sup> Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

PAUL E. PATTON, Governor

CAROL M. PALMORE, Secretary

DANIEL F. EGBERS, General Counsel

APPROVED BY AGENCY: May 21, 1999

FILED WITH LRC: June 10, 1999 at 4 p.m.

## PERSONNEL CABINET (As Amended at ARRS, August 10, 1999)

### 101 KAR 2:150. State Safety Program.

RELATES TO: KRS 18A.030(2)(i), 18A.110(7)(i), 18A.155

STATUTORY AUTHORITY: KRS [Chapter 18A,] 18A.030(2)(i), 18A.110(7)(i), 18A.155

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(7)(i) [(k) and (h)] requires the Secretary [Commissioner] of Personnel to promulgate [comprehensive] administrative regulations, [consistent with KRS Chapters 18A and 18A [and proper] and necessary] for the development, [and] operation and enforcement of programs to improve work safety [effectiveness of employees in the state service in the area of safety]. This administrative regulation establishes the state safety program [is necessary to comply with these statutory requirements].

Section 1. [Definitions. (1) State safety program means a program established and administered through the Division of Employee Benefits, Department of Personnel, for the purpose of enhancing and monitoring work conditions for state employees in the executive department who are covered by the state self-insured workers compensation plan.

(2) State safety director means the administrator of the state safety program, designated by the Commissioner of Personnel.

(3) Agency safety representative means the coordinator designated by an appointing authority for each site location to work with the Department of Personnel in implementing the state safety program.

Section 2. Establishment of State Safety Program. (1) A state safety program shall be established and administered through the Personnel Cabinet [Division of Employee Benefits, Department of Personnel], and headed by a state safety coordinator [director].

(2) An appointing authority [Appointing authorities] shall design-

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nate an agency safety representative for each site location.

(3) The state safety program shall comply with the occupational health and safety requirements established in KRS Chapter 338 and the administrative regulations promulgated [Act of 1970 as administered] by the Kentucky Occupational Safety and Health Program in 803 KAR Chapter 2.

Section 2. [3:] Duties of Agency Safety Representative [Responsibilities]. (1) Each agency safety representative shall:

(a) Implement and supervise a safety program;  
(b) [-shall] Attend safety meetings sponsored by the Personnel Cabinet;

(c) [Department of Personnel, shall] Conduct safety meetings and training sessions for agency employees;

(d) [-shall] Document preventive safety measures; and  
(e) [shall otherwise] Promote safety of employees.

(2) The agency safety representative may establish an agency safety committee [committees], to meet on a regular basis for:

(a) Review of causes of accidents;  
(b) [-for] Inspection of facilities;  
(c) [-for] Development of hazard abatement methods; and  
(d) Assessment of [to assess] safety training needs.

Section 3. [4:] Duties of Supervisors. (1) A supervisor [Supervisors] shall:

(a) Review the safety program with new employees;  
(b) Enforce [-shall adhere to] general safety regulations and procedures;

(c) [-shall] Maintain safe working conditions; [-] and  
(d) [shall] Require employees to follow safety regulations and procedures.

(2) A supervisor or designee [Supervisors or designees] shall investigate each accident [all accidents] and shall forward a report on the findings to the state safety coordinator [director] in the Personnel Cabinet [Department of Personnel].

(3) A supervisor [Supervisors] shall require an employee [employees] to attend a regular safety meeting [meetings] and training session at a time [sessions at times] to be determined in coordination with the agency safety representative.

PAUL E. PATTON, Governor

CAROL M. PALMORE, Secretary

DANIEL F. EGBERS, General Counsel

APPROVED BY AGENCY: June 9, 1999

FILED WITH LRC: June 10, 1999 at 4 p.m.

## PERSONNEL CABINET (As Amended at ARRS, August 10, 1999)

### 101 KAR 3:011. Repeal of 101 KAR 3:010.

RELATES TO: KRS 18A.030, 18A.115, 18A.155, 61.394, 344.030, 29 CFR 778, et seq., 29 USC 201, et seq.

STATUTORY AUTHORITY: KRS 18A.030, 18A.155, 18A.195, 344.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.155 authorizes the Secretary of Personnel, to submit to the Governor and to secure his approval for administrative regulations for the unclassified service enumerated in KRS 18A.115 governing annual, sick and special leaves of absence. 101 KAR 3:010 which governs leave for employees in the unclassified service is being repealed because of substantial revisions that are being simultaneously promulgated with this administrative regulation. 101 KAR 3:010 shall be replaced by 101 KAR 3:015.

Section 1. 101 KAR 3:010, Leave administrative regulations for unclassified service, is hereby repealed. [Repealer Administrative Regulation for 101 KAR 3:010. The administrative regulations governing leave for the unclassified service is hereby repealed.]

PAUL E. PATTON, Governor

CAROL M. PALMORE, Secretary

DANIEL F. EGBERS, General Counsel

APPROVED BY AGENCY: May 21, 1999

FILED WITH LRC: June 10, 1999 at 4 p.m.

## PERSONNEL CABINET (As Amended at ARRS, August 10, 1999)

### 101 KAR 3:015. Leave administrative regulations for the unclassified service.

RELATES TO: KRS 18A.030, 18A.110, 18A.195, 61.394, 344.030, 29 USC 201 et seq., 2601 et seq.

STATUTORY AUTHORITY: KRS 18A.030, 18A.110, 18A.155, 344.030, 29 USC 201 et seq., 2601 et seq.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(7)(g) requires the Secretary of Personnel, with the approval of the Governor, to promulgate [comprehensive] administrative regulations[- consistent with KRS Chapter 18A,] which govern annual leave, sick leave, special leaves of absence, and for other conditions of leave. This administrative regulation establishes the leave requirements for unclassified employees [policies governing these subject matters].

Section 1. Annual Leave. (1) Accrual of annual leave.

(a) Each full-time employee shall accumulate annual leave at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180-239 months	1 3/4 days per month; 21 per year
240 months & over	2 leave days per month; 24 per year

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 hours or more per month to accrue annual leave.

(c) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(d) In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

(e) A former employee [employees] who has [have] been rehired, except as provided in paragraph (f) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(f) An employee, who has retired from a position covered by a state retirement system, is receiving retirement benefits and returns to state service, shall not receive credit for months of service prior to retirement.

(g) A part-time or interim employee shall not be entitled to annual leave.

(2) Use and retention of annual leave.

(a) Annual leave shall be used in increments of hours or of one-quarter (1/4) hours.

(b) Except as provided in paragraph (c) of this subsection, an employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time earned that year, if the operating requirements of the agency permit. [-however;]

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward under this administrative regulation.

(d) Absence due to sickness, injury, or disability in excess of the amount available for those [such] purposes shall [may], at the request of the employee, be charged against annual leave.

(e) An employee shall use annual leave for an absence [absences only] on a regularly scheduled workday [workdays].

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain accumulated



annual leave in the receiving agency.

(g) An employee who is eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than educational leave, during any part of the previous month.

(h) Annual leave may be carried from one (1) calendar year to the next as provided in this paragraph:

Months of Service	Maximum Amount
0-59 months	Thirty (30) workdays
60-119 months	Thirty-seven (37) workdays
120-179 months	Forty-five (45) workdays
180-239 months	Fifty-two (52) workdays
240 months and over	Sixty (60) workdays

(i) Leave in excess of the maximum amounts specified in paragraph (h) of this subsection ~~[the preceding paragraph]~~ shall be converted to sick leave at the end of the calendar year or upon retirement.

(j) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(d) of this section.

(3) Annual leave on separation.

(a) If an employee is separated by proper resignation or retirement, he shall be paid in a lump sum for accumulated annual leave. The accumulated annual leave for which he is paid shall not exceed the amounts established by subsection (2)(h) of this section. Following payment of annual leave at resignation, leave remaining after the payment of the maximum provided shall be removed from the balance.

(b) If an employee is laid off, he shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who reverts to the classified service, or resigns or is terminated one (1) day and is employed the next workday, shall retain his accumulated leave in the receiving agency.

(d) An employee who has been dismissed for cause related to misconduct or who has failed, without proper excuse, to give proper notice of resignation or retirement shall not be paid for accumulated annual leave.

(e) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(f) An employee may request in writing that his accumulated annual leave not be paid upon resignation, and that all or part of the amount of his accumulated annual leave that does not exceed the amount established by this section be waived, if:

1. He resigns, or is laid off from his position, because of an approved plan of privatization of the services he performed; and
2. The successor employer has agreed to credit him with an equal amount of annual leave.

#### Section 2. Sick Leave. (1) Accrual of sick leave.

(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee shall have worked or been on paid leave, other than educational leave, for 100 or more hours in a month to accrue sick leave.

(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(e) A full-time employee who completes 240 months of total service with the state shall be credited with another ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service. An employee with 240 or more months of service at the time of implementation of this section shall have the additional ten (10) days credited to the sick leave balance.

(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

(g) The total service shall be verified before the leave is credited to the employee's record.

(h) ~~A former employee~~ **[Former employees]** who **has** ~~have~~ been rehired, except as provided in paragraph (i) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(i) A former employee, other than a former employee receiving benefits under a state retirement system, who is appointed to an unclassified position, shall be credited with the unused sick leave balance upon separation.

(j) Sick leave may be accumulated with no maximum.

(2) Use and retention of sick leave with pay.

(a) An appointing authority shall grant or may require the use of accrued sick leave with pay if an employee:

1. Is unable to work due to medical, dental or optical examination or treatment;
2. Is disabled by illness or injury. The appointing authority may require the employee to provide a doctor's statement certifying the employee's inability to perform his duties for the days or hours sick leave is requested;
3. Is required to care for or transport a member of his immediate family in need of medical attention for a reasonable period of time. The appointing authority may require the employee to provide a doctor's statement certifying the employee's need to care for a family member;
4. Would jeopardize the health of himself or others at his work station because of a contagious disease or demonstration of behavior that might endanger himself or others;
5. Has lost by death a spouse, parent, grandparent, child, brother or sister, or the spouse of any of them and may be granted to include other relatives of close association. Leave under this subparagraph ~~[paragraph]~~ shall be limited to three (3) days; or ~~or~~ [-]
6. Requires leave for the birth, placement or adoption of a child.

(b) At the termination of sick leave with pay, the appointing authority shall return the employee to his former position.

(c) An employee eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than education leave, during any part of the previous month.

(d) Sick leave shall be used in increments of hours or increments of one-quarter (1/4) hours.

(e) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated sick leave in the receiving agency.

(f) An employee shall be credited for accumulated sick leave if he is separated by proper resignation, layoff or retirement.

(g) The duration of an interim employee's appointment shall not be extended by the use or approval for sick leave with or without pay.

(3) Sick leave without pay.

(a) An appointing authority shall grant sick leave without pay to an employee for the duration of an employee's impairment by injury or illness, if:

1. The total continuous leave does not exceed one (1) year; and
2. The employee has used or been paid for all ~~any~~ accumulated annual, sick and compensatory leave unless he has requested to retain up to ten (10) days of accumulated sick leave.

(b) For continuous leave without pay in excess of thirty (30) working days, excluding holidays, the appointing authority shall notify the employee in writing of the leave without pay status.

(c) The appointing authority may require periodic doctor's statements during the year attesting to the employee's continued inability to perform the essential functions of his duties with or without reasonable accommodation.

(d) An appointing authority may grant sick leave without pay to an employee, other than an interim employee, who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if ~~when~~ the employee is required to care for a member of the immediate family for a period not to exceed thirty (30) working days.

(e) If an employee has given notice of his ability to resume his duties following sick leave without pay, the appointing authority shall



return the employee to the original position or to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(f) If reasonable accommodation is requested, the employee shall:

1. Inform the employer; and
2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be considered to have resigned if he:

1. Has been on one (1) year continuous sick leave without pay;

[and]

2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of sick leave; [and]

3. Is unable to return to his former position; [and]

4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which he is qualified and is capable of performing its essential functions with or without reasonable accommodation; and [but]

5. Has not been placed by the appointing authority in a vacant position. ~~[The appointing authority has been unable to place him in such a vacant position.]~~

(h) Sick leave granted under this subsection shall not be ~~[paragraph is not]~~ renewable after the employee has been medically certified as able to return to work.

(i) An employee who has been resigned under paragraph (g) of this subsection shall retain reinstatement privileges that were accrued during his service in the classified service.

(4) Workers' compensation.

(a) If an absence is due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used to maintain regular full salary.

(b) If paid sick leave is used to maintain regular full salary, workers' compensation pay benefits shall be assigned to the state for the period of time the employee received paid sick leave.

(c) The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits are assigned.

(5) Application for sick leave and supporting documentation.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examinations, and for sick leave without pay.

(c) If he is too ill to work, an employee shall notify his immediate supervisor or other designated person. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination or treatment.

(f) An appointing authority shall grant sick leave if [when] the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.

Section 3. Family and Medical Leave. (1) An appointing authority [Appointing authorities] shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 20 USC 2601, et seq., and the federal regulations implementing the Act, 29 CFR Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family leave if the employee:

- (a) Completed twelve (12) months of service; and

(b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar year basis.

(4) If both parents are employed by the state, each parent shall be entitled to twelve (12) weeks of unpaid family and medical leave

for the birth, placement, or adoption of a child.

(5) While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.

(6) If the employee would qualify for family and medical leave, but has an annual, compensatory or sick leave balance, the agency shall not designate the leave as FMLA leave until:

(a) The employee's leave balance has been exhausted; or

(b) The employee requests to reserve ten (10) days of accumulated sick leave and be placed on unpaid FMLA leave.

Section 4. Court Leave. (1) An employee shall be entitled to court leave during his scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with a subpoena [subpoenas] by a court, or administrative agency or body of the federal or state government or any political subdivision thereof; or

(b) Serve as a juror or a witness, unless the employee or a member of his family is a party to the proceeding.

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of his assigned duties.

Section 5. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.

(a) An appointing authority [Appointing authorities] shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 USC Chapter 8.

(b) An employee who is directed to work, or who requests and is authorized to work, in excess of the prescribed hours of duty shall be granted compensatory leave and paid overtime subject to the provisions of the Fair Labor Standards Act, the Kentucky Revised Statutes and this administrative regulation.

(c) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be compensated for hours worked in excess of forty (40) per week as provided by subparagraphs 1 to 3 of this paragraph.

1. An employee who has not accumulated the maximum amount of compensatory leave shall have the option to accumulate compensatory leave at the rate of an hour and one-half (1 1/2) for each hour worked in excess of forty (40) per week in lieu of paid overtime.

2. The election to receive compensatory leave in lieu of paid overtime shall be in writing on the Overtime Compensation Form and shall remain in force for a minimum of six (6) months. The election shall be changed by the submission of a new form. The effective date of a change shall be the first day of the next workweek following receipt of the election.

3. An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times his regular hourly rate of pay for all hours worked in excess of forty (40) hours per week.

(d) An employee deemed to be "exempt" under the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours worked in excess of his regular work schedule.

(e) Compensatory leave shall [may] be accumulated or taken off in one-quarter (1/4) hour increments.

(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be 240 hours.

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his compensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.

(a) An appointing authority may require an employee who has accrued at least 100 hours compensatory leave to use compensatory leave before annual leave and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.

(b) An employee who is not in a policy-making position may, after accumulating 151 hours of compensatory leave, request that

he be paid for fifty (50) hours at his regular rate of pay. If the appointing authority or his designee approves the payment, an employee's leave balance shall be reduced accordingly.

(c) An employee who is not in a policy-making position shall be paid for fifty (50) hours at his regular hourly rate of pay, upon accumulating at the end of the pay period, 240 hours of compensatory leave. The employee's leave balance shall be reduced accordingly.

(d) If an employee's prescribed hours of duty are normally less than forty (40) hours per week, he shall receive compensatory leave for the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; and
2. Do not exceed the maximum amount of compensatory time that is permitted.

(e) Only hours actually worked shall be used for computing paid overtime or time and one-half (1 1/2) compensatory time.

(f) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of his:

1. Regular hourly rate of pay; or
2. Average regular rate of pay for the final three (3) years of employment.

**Section 6. Military Leave.** (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties, to serve under order on training duty without loss of his regular compensation for a period not to exceed the number of [ten-(10)] working days specified in KRS 61.394 for a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds the number of [ten-(10)] working days specified in KRS 61.394 for a federal fiscal year shall be charged to annual leave, compensatory leave or leave without pay.

(4) The appointing authority may require a copy of the orders requiring the attendance of the employee before granting military leave.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of the [such] duty not to exceed six (6) years. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

**Section 7. Voting and Election Leave.** (1) An employee who is eligible and registered to vote shall be allowed, upon prior request, four (4) hours, for the purpose of voting.

(2) An election officer shall [Election-officers may] receive additional leave if the total leave for election day does not exceed a regular workday.

(3) The absence shall not be charged against leave.

(4) An employee who is not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. An employee who is [Employees who are] permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis for the hours worked on election day.

**Section 8. Special Leave of Absence.** (1) If approved by the secretary, an appointing authority may grant a leave of absence for continuing education or training.

(a) Leave may be granted for a period not to exceed twenty-four (24) months or the conclusion of the administration in which the employee is serving, whichever comes first.

(b) If granted, leave shall be granted either [Leave may be granted] with pay [if [provided that]] the employee contractually agrees to a service commitment) or without pay.

(c) Leave shall be restricted to attendance at a college, university, vocational or business school for training in subjects that relates to the employee's work and will benefit the state.

(2) An appointing authority, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(3)(a) If approved by the secretary, an appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of an allegation [allegations] of employee misconduct.

(b) Leave shall not exceed sixty (60) working days.

(c) The employee shall be notified in writing by the appointing authority that he is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(d) If the investigation reveals no misconduct by the employee, records relating to the investigation shall be purged from agency and Personnel Cabinet files.

(e) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. This notification shall be made to the employee, whether he has remained in state service, or has voluntarily resigned after being placed on special leave for investigative purposes.

**Section 9. Absence Without Leave.** (1) An employee who is absent from duty without prior approval shall report the reason for his absence to his supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence[]:

(a) without leave; [and]

(b) Be treated as leave without pay for an employee [employ-ees] covered by the provision of the Fair Labor Standards Act; and

(c) [Shall] constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be considered to have resigned his employment.

**Section 10. Absences Due to Adverse Weather.** (1) If [When] operations are suspended or temporarily closed due to localized adverse weather, an employee, who is designated for mandatory operations and chooses not to report to work or to leave early in the event of adverse weather conditions, shall have the time of his absence reported as:

(a) Charged to annual or compensatory leave; [or]

(b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or

(c) Deferred in accordance with subsections (3) and (4) of this section.

(2) An employee who is [Employees] who are on prearranged annual, compensatory or sick leave shall charge leave as originally requested.

(3) Where operational needs allow, except for an employee [employees] in mandatory operations, management shall make every reasonable effort to arrange schedules whereby an employee will be given an opportunity to make up time not worked rather than charging it to leave.

(4) An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.

(a) Makeup work shall occur in the workweek in which the time is lost or in a week when the employee has not worked a full work schedule due to [such-absences-as] holiday, annual leave or sick leave.

(b) Time lost shall be made up within four (4) months of the occurrence of the absence. If it is not made up within four (4) months, annual leave shall [will] be deducted to cover the absence, or leave without pay shall [will] be charged if no annual leave is available.

(c) If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual leave or deducted from the final paycheck.

(5) If [When] catastrophic, life-threatening weather conditions occur, as created by a hurricane, tornado, flood or blizzard [hurricanes, tornadoes, floods or blizzards], and it becomes necessary for authorities to order evacuation or shutdown of the place of employment, the following provisions shall apply:

(a) An employee who is [Employees who are] required to evacuate or who would report to a location that has been shut down shall [will] not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety.

(b) An employee who is [Employees who are] required to work

in an emergency situation [~~such emergency situations~~] shall be compensated pursuant to the provisions of Section 5 of this administrative regulation and the Fair Labor Standards Act as amended.

Section 11. Blood Donation Leave. (1) An employee who, during regular working hours, donates blood at a [any] licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted under this section shall be used at the time of the donation unless circumstances as specified by the supervisor required the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave. An employee who is deferred from donating blood shall not:

(a) Be charged leave time for the time spent in the attempted donation; and

(b) [~~but shall not~~] Qualify for the remainder of the blood donation leave.

**Section 12. Incorporation by Reference. (1) Overtime Compensation Form, September 1999, is incorporated by reference.**

**(2) This material may be inspected, copied, or obtained at the Personnel Cabinet, 200 Fair Oaks Lane, 5th Floor, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.**

PAUL E. PATTON, Governor

CAROL M. PALMORE, Secretary

DANIEL F. EGBERS, General Counsel

APPROVED BY AGENCY: May 21, 1999

FILED WITH LRC: June 10, 1999 at 4 p.m.

#### PERSONNEL CABINET

(As Amended at ARRS, August 10, 1999)

#### 101 KAR 3:045. Compensation plan and pay incentives [compensation incentive systems].

RELATES TO: KRS 18A.155, **EO 98-1443**

STATUTORY AUTHORITY: KRS 18A.155(1)(b), **EO 98-1443**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.155 requires the Secretary [Commissioner] of Personnel to [submit to the Governor-proposed] administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (t) and (u). **EO 98-1443 requires the secretary to establish a state employee adoption benefit program. This administrative regulation establishes the compensation plan and pay incentives for employees in unclassified service. [and (v)].**

Section 1. New Appointments. An appointing authority shall [may] appoint an applicant at a salary not to exceed the midpoint of the pay grade.

Section 2. Reentrance to State Service. (1) Returning retirees. An employee who was formerly employed under KRS Chapter 18A and who is appointed to a position covered by the provisions of KRS Chapter 18A, while receiving retirement payments through the Kentucky Retirement Systems or Kentucky Teachers Retirement System, shall be appointed in accordance with the provisions for new appointments.

(2) Other reentering employees: An appointing authority shall [may] set the salary of a former classified or unclassified employee, other than a returning retiree:

(a) In accordance with the standards used for making new appointments; or

(b) Up to a salary formerly paid in the classified or unclassified service, if that salary is within the current pay grade.

Section 3. Salary Adjustments. (1) Promotion. An employee who is promoted shall receive a five (5) percent increase or an increase

to the minimum of the new grade, whichever is greater. An appointing authority may grant a salary increase of five (5) percent per grade upon promotion.

(2) Demotion. If [~~When~~] an employee [~~who~~] is demoted the appointing authority shall [may] determine the salary in one (1) of the following ways:

(a) The employee's salary shall [may] be reduced to a rate that is not below the minimum for the class to which the demotion is made; or

(b) The employee shall [may] be allowed to retain the salary received prior to the demotion. If the employee's salary is not reduced upon demotion, the appointing authority shall explain the reason in writing and place the explanation in the employee's personnel files.

(3) Reclassification.

(a) An employee who is advanced to a higher pay grade through reclassification shall receive a five (5) percent increase or an increase to the minimum of the new grade, whichever is greater. An appointing authority may grant a salary increase of five (5) percent per grade upon reclassification to a higher grade.

(b) An employee who is placed in a lower pay grade through reclassification shall receive the same salary received prior to reclassification.

(4) Reallocation.

(a) An employee who is advanced to a higher pay grade through reallocation shall receive a five (5) percent increase or an increase to the new grade minimum, whichever is greater. An appointing authority may grant a five (5) percent increase per grade upon reallocation to a higher grade.

(b) An employee who is placed in a lower pay grade through reallocation shall receive the same salary received prior to reallocation.

(5) Detail to special duty.

(a) An employee who is detailed to special duty in a higher grade shall receive a five (5) percent increase or an increase to the minimum of the grade, whichever is greater, for the duration of the period of the detail. An appointing authority may grant a salary increase of five (5) percent per grade for the duration of the detail.

(b) An employee who is detailed to special duty to the same or lower grade shall continue to receive the same salary.

(6) Reversion.

(a) The salary of an employee who is reverted following detail to special duty in a higher class shall be adjusted to:

1. The salary received prior to the detail; and

2. All salary advancements and adjustments which would have been awarded if the detail had not occurred.

(b) The salary of an employee who is reverted from a position in the unclassified service to a position in the classified service shall be adjusted to:

1. The salary received prior to leaving the classified service; and

2. All salary advancements and adjustments which would have been awarded if the individual had remained in the classified service.

(7) Pay grade changes. If [~~When~~] a job classification is assigned to a higher pay grade through a pay grade change, the salary of all employees below the new minimum shall be raised to the new minimum.

(a) If sufficient funds are available, an appointing authority may provide an increase to an employee whose salary is at or above the new minimum of the job classification in one (1) of the following amounts:

1. Five (5) percent;

2. Ten (10) percent; or

3. A dollar amount approved by the Secretary of Personnel.

(b) **An employee [Employees]** in a class assigned to a lower pay grade through a grade change shall retain his [their] current salary.

(8) Special entrance rates. If [~~When~~] a special entrance rate is established for a job classification, an appointing authority shall adjust the salary of an [any] employee in that classification, who is below the special entrance rate, to the new rate. **If sufficient funds are available**, an appointing authority may also grant a salary adjustment equal to the difference between the former entrance rate

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and the new special entrance rate to other employees in that classification.

### (9) Other salary adjustments.

(a) On the 16th of a [any] month, an appointing authority may grant a five (5) percent salary adjustment to an employee who was eligible for, but did not receive an increase upon the completion of six (6) months service following promotion.

(b) On the 16th of a [any] month, an appointing authority may grant a salary adjustment to an employee within an agency who was eligible for, but did not receive at least a five (5) percent advancement as a result of a grade change on or after January 1, 1999. The total adjustment under this provision when combined with an [any] increase at the time of the grade change shall equal five (5) percent of the employee's salary immediately prior to the grade change.

(c) An appointing authority may grant an employee who was eligible for, but did not receive an adjustment beyond the new minimum at the time the special entrance rate was established an increase equal to the difference between the old entrance rate and the new entrance rate.

### Section 4. Salary Advancements. (1) Initial appointment increase.

[(a)] An appointing authority shall [may] grant a five (5) percent increase to an employee, except an interim employee;

(a) On the first day of the month following completion of six (6) months of service; or

(b) No later than the first day following twelve (12) months of service.

(c) [(b)] If the appointing authority elects not to grant the initial appointment increase upon completion of six (6) months service, the increase may be granted on the first day of any month following the date the employee was eligible, but shall be granted no later than the first day following twelve (12) months of service.

(2) Six (6) month promotional increase. An employee may receive a five (5) percent increase following the completion of six (6) months service after promotion.

(3) Annual increment dates shall be established as follows:

(a) On the date of receiving an initial appointment increase;

(b) On the first of the month following completion of twelve (12) months service by a former employee who is appointed or reappointed, except in the case of an interim employee; or

(c) On the first day of the month following completion of twelve (12) months service by an employee, other than an interim employee, who returns from leave without pay.

(4) Annual increment dates shall not change when an employee:

(a) Is in a position which is assigned a new or different pay grade;

(b) Receives a salary adjustment as a result of his position being reallocated;

(c) Is promoted;

(d) Is transferred;

(e) Is demoted;

(f) Is detailed to special duty;

(g) Receives an educational achievement award;

(h) Returns from military leave;

(i) Is reclassified; or

(j) Receives an increase six (6) months following promotion.

(5) Service computation. Full-time and part-time service shall be counted when computing service for purposes of determining increment eligibility. Service as an interim employee, or in the former seasonal, temporary, emergency, provisional or federally funded, time-limited categories shall not be considered.

(6) Return from leave without pay. An employee returning to duty from leave without pay shall receive an annual increment on the first of the month after completing twelve (12) months of service since the last increment was received.

Section 5. Educational Achievement Award. (1) On the 16th of a [any] month, an appointing authority may grant a five (5) percent increase to an employee's base salary based on educational achievement as specified in this section.

(2) An agency may elect not to participate in the educational achievement program if sufficient funds are not available.

(3) An employee shall [may] not receive more than one (1) educational achievement award in a [any] fiscal year.

(4) An employee shall not receive an educational achievement award and an adjustment for continuing excellence (ACE) based on the same training.

(5) By submitting a personnel action to grant an educational achievement award, the appointing authority shall certify [certifies] that all of the qualifying conditions established by this section for the appropriate type of educational achievement award have been met:

(a) High school diploma, high school equivalency certificate, or a passing score on the GED test;

1. The employee has obtained the high school diploma, equivalency certificate, or passing score on the GED test;

a. Outside of work hours;

b. While in state service;

c. After establishing an increment date; and

d. On or after January 1, 1984.

2. The employee has not previously attained a high school diploma, equivalency certificate, or passing score on the GED test; and

3. The employee has not completed college coursework on the undergraduate or graduate level prior to obtaining the high school diploma, equivalency certificate or a passing score on the GED test.

(b) Postsecondary education or training.

1. The employee has completed 260 hours of job related instruction (or the equivalent as determined by the Secretary of Personnel);

2. The employee began the course work after becoming a state employee and completed the course work after establishing an increment date;

3. The employee has completed the course work within five (5) years of the date on which it was begun;

4. The course work has not previously been applied toward an educational achievement award;

5. The agency has not paid for the course work or costs associated with it, in whole or in part; and

6. The employee was not on educational or extended sick leave when the courses were taken.

(c) Kentucky Certified Public Manager Program.

1. The employee has successfully completed the Kentucky Certified Public Manager Program offered by the Governmental Services Center at Kentucky State University; and

2. The employee has not previously received an educational achievement award for completing the Kentucky Certified Manager [Managers] Program.

Section 6. Employee Recognition Award. (1) On the 16th day of a [any] month, an appointing authority may grant an employee an employee recognition award (ERA) in the form of a lump sum payment of up to five (5) percent of midpoint under the following conditions:

(a) The employee has established an annual increment date and has worked at least twenty-four (24) months in state service, twelve (12) consecutive months of which is in the department granting the award; [and]

(b) The employee has not received an ERA in the preceding twelve (12) months or an ACE or a distinguished service award in the preceding twenty-four (24) months; and

(c) 1. The appointing authority determines that the employee's acts or ideas have resulted in significant financial savings or improvements in services to the Commonwealth and its citizens; or [An employee is not eligible for an ERA under this provision for an act or idea that has been approved or submitted for consideration as an employee suggestion system award. An employee who has received an ERA shall not be eligible to be considered for an employee suggestion system award for those acts or ideas upon which the ERA is based.]

2. [(d)] The employee has exhibited distinguished performance during participation in special projects that have had a significant beneficial impact on the department or governmental operations.

(2) an employee shall not be eligible for an ERA under this section for an act or idea that has been approved or submitted for consideration as an Employee Suggestion System Award.

An employee who has received an ERA shall not be eligible to be considered for an Employee Suggestion System Award for those acts or ideas upon which the ERA is based.

(3) The granting of an ERA shall be within the sole discretion of the appointing authority.

(4) [(3)] An appointing authority shall not [may] grant an ERA to [no] more than twenty-five (25) percent of the total number of full-time employees in the department in a [any] calendar year.

(5) If [(4)-When] an appointing authority grants an ERA, the justification [reason(s)] for the award shall be stated in writing, and placed in the employee's personnel files.

(6) An appointing authority shall submit a letter or memorandum to the cabinet to award an ERA. The letter or memorandum shall:

(a) Explain the reason or reasons for the granting of the award; and

(b) Include a certification by the appointing authority that:

1. Sufficient funds are available within the department; and

2. The criteria and limitations established in this section have been met.

[(5) By submitting the appropriate personnel documents to award an ERA, the appointing authority certifies that sufficient funds are available within the department, and that the criteria in this section have been met.]

#### Section 7. Adjustment for Continuing Excellence (ACE) Award.

(1) On the 16th day of a [any] month, an appointing authority may grant a salary adjustment of up to ten (10) percent of the grade midpoint to a full-time employee's base pay as an adjustment for continuing excellence award (ACE) under the following conditions:

(a) The employee has an established annual increment date.

(b) The employee has worked at least twenty-four (24) consecutive months, twelve (12) consecutive months of which shall have been served in the department granting the award.

(c) The employee has not received an ACE award or a distinguished service award in the preceding twenty-four (24) months or an employee recognition award (ERA) in the preceding twelve (12) months; and

(d)1. The employee has demonstrated a sustained level of exceptional job performance; or

2. [(e)] The employee has assumed a significant level of additional job responsibilities or duties consistent with the assigned classification, and has performed them in an exceptional manner; or

3. [(f)] The employee has acquired professional or technical skills or knowledge through agency directed or authorized attainment of a job related licensure, certification, or formal training that will substantially improve job performance.

(2) [(g)] An employee shall not be [is-not] eligible for an ACE award under this section [provision] if an educational achievement award has been granted for the same training.

(3) [(2)] The granting of an ACE award shall be within the sole discretion of the appointing authority.

(4) [(3)] An appointing authority shall not [may] grant an ACE to [no] more than twenty-five (25) percent of the total number of full-time employees in the department in a [any] calendar year.

(5) An appointing authority shall submit a letter or memorandum to the cabinet to grant an ACE award. The letter or memorandum shall:

(a) Explain the reason or reasons for the granting of the award; and

(b) Include a certification by the appointing authority that:

1. The criteria and limitations established in this section have been met; and

2. Funds are available within the department's current recurring base budget to support the award.

[(4) When an appointing authority grants an ACE award, the appointing authority shall submit the appropriate personnel action supported by a memorandum of justification certifying:

(a) The reason or reasons for the granting of the award; and

(b) That all criteria and limitations provided in this section for the award have been met; and

(c) That funds are available within the department's current recurring base budget to support the award.]

Section 8. Adoption Benefit Program. (1) The Personnel Cabinet shall administer a program to provide financial assistance as an incentive to a state employee [state-employees] in the executive branch who adopts [adopt] a child on or after November 1, 1998.

(2) A state employee who finalizes a legal adoption procedure for the adoption of a child, other than the child of a spouse, on or after November 1, 1998, shall be eligible to receive reimbursement for actual costs associated with the adoption of a special needs child as defined by KRS 199.555(1), or other child. Available funds for this program shall not exceed \$150,000 in a [any] fiscal year.

(3) The employee shall [may] receive:

(a) Up to \$5,000 in unreimbursed direct costs related to the adoption of a special needs child; or

(b) Up to \$3,000 in unreimbursed direct costs related to the adoption of any other child.

(4) Unreimbursed direct costs related to the adoption of a special needs child or other child shall [may] include:

(a) Licensed adoption agency fees;

(b) Legal fees;

(c) Medical costs;

(d) Court costs; and

(e) Other reasonable fees or costs associated with child adoption as allowed by state and federal law and reviewed and approved by the court at the time of finalization of the adoption.

(5) Application for financial assistance shall be made by submitting a completed State Employee Adoption Assistance Application to the Secretary of Personnel and supported by documentary evidence of:

(a) Finalization of the adoption;

(b) Certification by the Secretary of the Cabinet for Families and Children that the adopted child is a special needs child, if reimbursement for special needs adoption is sought; and

(c) A copy of an affidavit of expenses related to the adoption filed with and approved by the court at the time of finalization of the adoption.

(6) If both adoptive parents are executive branch state employees, the application for financial assistance shall be made jointly and the amount of reimbursement shall be limited to that specified in subsection (3) of this section.

(7) Upon approval of the application for financial assistance, the employee's agency shall disburse funds in the amount authorized by the Secretary of Personnel, if [provided that] the funds authorized for the program have [has] not been exhausted.

#### Section 9. Incorporation by Reference. (1) State Employee Adoption Assistance Application, July 1999, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Personnel Cabinet, 200 Fair Oaks Lane, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Classification Plan: The principles and provisions of 101 KAR 2:020 shall apply to positions in the unclassified service.]

Section 2. Compensation Plan. (1) With the exception of the provisions of Section 3 of this administrative regulation relating to probationary increments, the principles and provisions of 101 KAR 2:036 shall apply to employees and positions in the unclassified service. An employee in the unclassified service who completes the initial six (6) month period following appointment with satisfactory performance may be granted a statutory increment at the beginning of the month following completion of such period:

(a) An employee who was eligible for but did not receive a five (5) percent salary advancement as the result of any of the following actions: promotional increase, reallocation, or class grade changes, on or after January 3, 1986, may have his salary adjusted upon request by the appointing authority and approval by the commissioner. In no case may the salary adjustment be made retroactive to the original effective date but shall be granted on the first of the month following approval of the increase.

(b) Inasmuch as the appointing authority has the option of not providing salary increases under this section, an eligible employee whose salary is not adjusted is not considered to have been penalized and therefore shall have no basis for appeal.



(c) An appointing authority, with the approval of the commissioner, may grant a salary adjustment, equivalent to the budgeted annual increment for classified employees, to seasonal, temporary, FTE and other unclassified employees who have completed twelve (12) months total full-time employment in the classified or unclassified service without a salary increase. The salary adjustment, if granted, shall be effective on the first day of the month following approval of the increase.

(2) Physicians, employed as such and pursuant to KRS 64.655, shall be exempt from the provisions of 101 KAR 2:036, Section 1, and may be appointed to any rate within the pay range when justified in writing by the appointing authority and approved by the commissioner.

Section 3. Educational Achievement Award. Upon request of the appointing authority and subject to the approval of the commissioner:

(1) An employee may receive one (1) lump sum educational achievement award per fiscal year for satisfactorily completing outside of work hours, 260 classroom hours (or the equivalent as determined by the commissioner) of job related instruction in approved courses. Approved courses must have been completed after an employee initially served six (6) months in state government. Employees shall not receive credit for hours taken while on educational leave, for hours paid for by the agency through tuition assistance, or for hours which previously counted toward an educational achievement award. The lump sum educational achievement award shall be ten (10) percent of the employee's annual base salary but not more than \$2,500. The lump sum payment shall be granted only if the 260 classroom hours (or equivalent) have been completed within the past five (5) years prior to the effective date of the increase; or

(2) An employee may receive one (1) lump sum educational achievement award for earning an approved diploma, high school equivalency certificate, or a passing score on the GED test. The approved high school diploma, certificate, or passing score shall have been obtained by the state employee on or after January 1, 1984 while in state service. Employees receiving an approved high school diploma, high school equivalency certificate, or a passing score on the GED test shall receive a lump sum educational achievement award of ten (10) percent of their annual base salary but not more than \$2,500. A high school level educational achievement award shall not be granted to employees who present new credentials but have previously:

(a) Received a high school diploma, high school equivalency certificate, or a passing score on the GED test; or

(b) Completed college course work on the undergraduate or graduate level.

(3) An employee who has successfully completed the Kentucky Certified Public Manager Program offered by Governmental Services Center at Kentucky State University shall receive one (1) lump sum educational achievement award. The lump sum educational achievement award shall be ten (10) percent of the employee's annual base salary but not more than \$2,500.

(4) To apply for an educational achievement award an employee shall submit supporting documentation to the appointing authority or his designee on a DPT Form 10 or its equivalent, demonstrating completion of 260 classroom hours (or the equivalent) together with official transcripts or grade reports for the courses completed. As provided by this section, the appointing authority may recommend the application for approval and may forward the documentation to the Commissioner of the Department of Personnel for final approval.]

PAUL E. PATTON, Governor  
CAROL M. PALMORE, Secretary  
DANIEL F. EGBERS, General Counsel  
APPROVED BY AGENCY: May 21, 1999  
FILED WITH LRC: June 10, 1999 at 4 p.m.

**FINANCE AND ADMINISTRATION CABINET**  
**Division of Occupations and Professions**  
**[Directory of Registered Athlete Agents]**  
**(As Amended at ARRS, August 10, 1999)**

**200 KAR 30:010. Definitions for 200 KAR Chapter 30.**

RELATES TO: KRS 164.680 to 164.689

STATUTORY AUTHORITY: KRS 164.681(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.681(4) authorizes the division to promulgate administrative regulations necessary to carry out the provisions of KRS 164.680 to 164.689. This administrative regulation establishes the definitions for 200 KAR Chapter 30 [provides definitions for terms used in those administrative regulations].

Section 1. Definitions. (1) "Agent contract" is defined by KRS 164.680(1).

(2) "Appropriate college, university, [secondary school] or athletic regulatory body" means the college, university, [secondary school] or athletic regulatory body which provides or regulates an athletic program in which a student athlete participates or did participate, at the time the misconduct set forth in a complaint occurred.

(3) "Athlete agent" is defined by KRS 164.680(3).

(4) "Charge" means an allegation issued by the college, university, [secondary school] or athletic regulatory body stating a violation of a specified provision of KRS 164.681 to 164.689, or 200 KAR Chapter 30 [the administrative regulations promulgated thereunder], has occurred.

(5) "Complaint" means a [any] written allegation of misconduct by a registered athlete agent or student athlete which may constitute a violation of KRS 164.680 to 164.689 or 200 KAR Chapter 30 [the administrative regulations promulgated thereunder].

(6) "Disciplinary action" means:

(a) A suspension or revocation of an athlete agent's registration;

(b) [;] The imposition of community service upon a student athlete; or

(c) A combination of the actions authorized in paragraphs (a) and (b) of this subsection [any combination of the above].

(7) "Director" means the director of the Division of Occupations and Professions.

(8) "Division" is defined by KRS 164.680(4).

(9) [(8)] "Director" means the director of the Division of Occupations and Professions.

(9) "Informal proceedings" means proceedings instituted by the appropriate college, university, secondary school or athletic regulatory body during the investigative process to allow those affected to comment on the complaint prior to reaching a factually supported decision whether or not the college, university, secondary school or athletic regulatory body will recommend to the division disciplinary action.

(10) "Investigative assistant" means an individual assigned [designated] by the division to assist [the college, university, secondary school, athletic regulatory body or division] in the investigation of a complaint.

(10) [(11)] "Student athlete" is defined by KRS 164.680(7).

NANCY L. BLACK, Director  
ROBERT S. JONES, Assistant Attorney General  
APPROVED BY AGENCY: June 11, 1999  
FILED WITH LRC: June 11, 1999 at 2 p.m.

**FINANCE AND ADMINISTRATION CABINET**  
**Division of Occupations and Professions**  
**[Directory of Registered Athlete Agents]**  
**(As Amended at ARRS, August 10, 1999)**

**200 KAR 30:020. Complaint review.**

RELATES TO: KRS 164.680 to 164.689

STATUTORY AUTHORITY: KRS 164.681(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

**164.681(4) authorizes the division to promulgate administrative regulations necessary to implement KRS 164.680 to 164.689. This administrative regulation establishes the procedure for review of a complaint against an athlete agent or student athlete.** KRS 164.681(4) authorizes the division to promulgate administrative regulations establishing a procedure to review complaints against athlete agents and student athletes for violation of KRS 164.680 to 164.689, and the administrative regulations promulgated thereunder. This administrative regulation sets forth procedures for review of complaints.

Section 1. Form of Complaint: Response. (1) A complaint shall be:

- (a) Submitted to the division;
- (b) ~~[(2) A complaint shall be]~~ In writing; and
- (c) ~~[shall be]~~ Signed by the person offering the complaint.
- (2) ~~[(3)]~~ A complaint may be filed by a [any] person or institution, including the division or appropriate college, university, [secondary school] or athletic regulatory body, based upon information in its possession.
- (3) ~~[(4)]~~ Upon receipt of a complaint, the division shall:
  - (a) Send a copy to the appropriate college, university, ~~[secondary school]~~ or athletic regulatory body; and
  - (b) Send to the athlete agent or student athlete named in the complaint:
    - 1. A copy of the complaint; and
    - 2. ~~[(5) A copy of the complaint shall be sent by the division to the athlete agent, student athlete, or both, named in the complaint, and shall include with]~~ A request for a response to the complaint.
- (4) The response shall be:
  - (a) Filed with the division within twenty (20) days from the date of service of the complaint; and
  - (b) ~~[shall be]~~ Served upon the appropriate college, university, ~~[secondary school]~~ or athletic regulatory body.

Section 2. Review by Appropriate College, University, ~~[Secondary School]~~ or Athletic Regulatory Body. (1) After the receipt of a complaint, and a response, or after the period of time for a response to be filed has expired, the appropriate college, university, ~~[secondary school]~~ or athletic regulatory body shall enter an initial determination within thirty (30) days stating in writing whether a formal investigation of the complaint is necessary. An extension of time shall [may] be granted by the division for good cause, upon request by the institution.

(2)(a) A college, university, or athletic regulatory body shall determine that a complaint does not warrant a formal investigation if:

1. The complaint does not allege a violation of KRS 164.680 to 164.689 or 200 KAR Chapter 30; or

2. The allegations in the complaint, if true, would not constitute a violation of KRS 164.680 to 164.689 or 200 KAR Chapter 30.

(b) If the college, university, or athletic regulatory body determines that a complaint does not warrant a formal investigation pursuant to paragraph (a) of this subsection, the college, university, or [When in the opinion of the college, university, secondary school or athletic regulatory body a complaint does not warrant a formal investigation, because a violation of KRS 164.680 to 164.689, or the administrative regulations promulgated thereunder is not alleged, nor could a violation be inferred from allegations in the complaint, the college, university, secondary school or] athletic regulatory body shall notify the complaining party, the person against whom the complaint was made, and the division of its recommendation not to proceed. The division shall:

- 1. [may either] Accept the recommendation not to proceed; or
- 2. Order a formal investigation under subsection (3) of this section.

(3) If [When in the opinion of] the division, [or] the appropriate college, university, [secondary school] or athletic regulatory body determines that a complaint warrants a formal investigation [for conduct in violation of KRS 164.680 to 164.689, or the administrative regulations promulgated thereunder], the college, university, [secondary school] or athletic regulatory body shall:

(a) Issue a written statement notifying the division, person against whom the complaint was made, and person or institution making the complaint, of the decision to investigate the complaint; and

(b) Authorize its president, ~~[or]~~ athletic director, or designated representative, and an [a-designated] investigative assistant [assigned by the division], to investigate the complaint and report their findings and recommendations to the division within ninety (90) days of the date of the notification of the decision to investigate. An extension of time shall [may] be granted by the division for good cause shown.

Section 3. Issuance of Recommendations: Review by the Division. (1) Upon completion of the formal investigation, the college, university, ~~[secondary school]~~ or athletic regulatory body shall issue a written report to the division stating its factual findings and recommendations as to the proper disposition of the complaint. The recommendations shall be served upon the person [those] against whom the complaint was made. If disciplinary action is recommended, the report [the recommendations are for the division to take disciplinary action, they] shall state the charges upon which the recommendations are based.

(2) Within fifteen (15) days of receipt of the recommendation [recommendations], the division shall take action as required by KRS 164.687(1) [in a manner commensurate with the nature and severity of the violation identified by the charges].

(3) If [When in the opinion of] the division determines that the charges do not warrant disciplinary action, the complaint shall be dismissed. The division shall notify the complaining party, the individual being investigated, and the appropriate college, university, [secondary school] or athletic regulatory body, of the outcome of the complaint.

(4) If [When in the opinion of] the division determines that the charges warrant disciplinary action, the division shall issue an order stating the charges, and the disciplinary action imposed. The order shall be signed by the director and served upon the person disciplined.

(5) An order by the division may be appealed as authorized by KRS 164.687(2).

Section 4. Notice and Service of Process. (1) Unless waived by the recipient, service of notice and other process shall be made by hand-delivery or delivery by certified mail, return receipt requested, to the individual's last known address ~~[which the division has of record]~~ or, if known, by regular mail on the named individual's attorney.

(2) Refusal of service if by certified mail, or avoidance of service if hand-delivered, shall not prevent the division from proceeding, as may be appropriate.

NANCY L. BLACK, Director  
ROBERT S. JONES, Assistant Attorney General  
APPROVED BY AGENCY: June 11, 1999  
FILED WITH LRC: June 11, 1999 at 2 p.m.

FINANCE AND ADMINISTRATION CABINET  
Division of Occupations and Professions  
~~[Directory of Registered Athlete Agents]~~  
(As Amended at ARRS, August 10, 1999)

200 KAR 30:030. Procedure for registration.

RELATES TO: KRS 164.682  
STATUTORY AUTHORITY: KRS 164.681(4), 164.682(2)(a)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.681(4) authorizes the division to promulgate ~~[such]~~ administrative regulations necessary [as are needed] to implement the provisions of KRS 164.680 to 164.689. KRS 164.682(2)(a) requires a person to register as an athlete agent by completing and submitting to the division the required application. This administrative regulation establishes [sets forth] the procedures for application and registration of an athlete agent [agents].



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Section 1. Application Procedures. (1) An applicant for registration shall submit to the division:

(a) A completed Application for Athlete Agent Registration;  
(b) The fee required by KRS 164.682(2)(b) and 200 KAR 30:040;

(c) A copy of the information required by KRS 164.682(2)(c);  
and

(d) A copy of the agent contract with the student athlete.  
[Application for registration shall be made to the division using the application which is attached and incorporated by reference.]

(2) An application [Applications] shall be complete and signed by the applicant.

(3) The division may request clarification and verification of the information provided in the application.

(4) To file a surety bond with the division pursuant to KRS 164.682(2)(c)1, an agent shall submit to the division a completed Bond for Athlete Agents.

Section 2. Incorporation by Reference. (1) The following material is [forms are] incorporated by reference:

(a) "Application for Athlete Agent Registration (2/99)"; and

(b) "Bond for Athlete Agents (2/99)".

(2) This material [These forms] may be inspected, copied, or obtained [~~between 8 a.m. and 4:30 p.m.~~] at the Division of Occupations and Professions, Berry Hill Mansion, 700 Louisville Road, Frankfort, Kentucky ~~40601~~, Monday through Friday, 8 a.m. to 4:30 p.m.

NANCY L. BLACK, Director

ROBERT S. JONES, Assistant Attorney General

APPROVED BY AGENCY: June 11, 1999

FILED WITH LRC: June 11, 1999 at 2 p.m.

FINANCE AND ADMINISTRATION CABINET  
Division of Occupations and Professions  
[~~Directory of Registered Athlete Agents~~]  
(As Amended at ARRS, August 10, 1999)

200 KAR 30:040. Fees.

RELATES TO: KRS 164.682(2)(b)

STATUTORY AUTHORITY: KRS 164.681, 164.682(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.682(2)(b) requires a person registering as an athlete agent to pay a registration fee and renewal fee as established by the division. This administrative regulation establishes the fees charged [provides the maximum fees which may be charged by the division. This administrative regulation provides the exact fees to be charged] by the division.

Section 1. Application and Renewal Fees. (1) The fee for initial registration with the Kentucky Division of Occupations and Professions as an athlete agent shall be \$300.

(2) The registration renewal fee [fees] shall be paid as of March 31 of each year.

(a) The renewal fee for registration as an athlete agent shall be \$100 if paid by March 31.

(b) The late renewal fee during a sixty (60) day grace period after March 31 shall be \$150.

(c) The late renewal fee after the sixty (60) day grace period, but during a one (1) year period after March 31, shall be \$200. [~~and~~]

(d) The division shall:

1. Revoke a [any] registration not renewed within one (1) year of March 31; and

2. [~~and may~~] Reinstate the registration upon:

a. [~~canceled under this provision, only upon~~] Satisfaction of all requirements necessary for an initial applicant; and

b. [~~plus~~] Payment of a reinstatement fee of \$300.

Section 2. Verification of Registration Fee. The fee for a verification of a registration shall be fifteen (15) dollars.

NANCY L. BLACK, Director

ROBERT S. JONES, Assistant Attorney General

APPROVED BY AGENCY: June 11, 1999

FILED WITH LRC: June 11, 1999 at 2 p.m.

FINANCE AND ADMINISTRATION CABINET  
Division of Occupations and Professions  
[~~Directory of Registered Athlete Agents~~]  
(As Amended at ARRS, August 10, 1999)

200 KAR 30:050. Reinstatement.

RELATES TO: KRS 164.687(3)

STATUTORY AUTHORITY: KRS 164.681(4), 164.687(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.687(3) authorizes [provides for] the reinstatement of a registered athlete agent [agents] by the division. This administrative regulation establishes the [these] reinstatement procedures.

Section 1. Reinstatement Procedures. (1) A person whose registration has been revoked due to disciplinary action taken by the division for a minimum of three (3) years may petition the division for reinstatement.

(2) A copy of the petition shall be sent to the division and the appropriate college, university, [~~secondary school~~] or athletic regulatory body.

(3) The appropriate college, university, [~~secondary school~~] or athletic regulatory body shall respond to a petition for reinstatement within thirty (30) days from the date of receipt.

(4) The division shall consider the petition and response, and may investigate the petition on its own, or in response to an objection [objections], if raised.

(5) The division shall [may] reinstate the registration upon a factual finding that the athlete agent;

(a) Has complied with the terms prescribed in the order of revocation; and

(b) Displays knowledge and ethical character which [~~in the opinion of the division~~] displays an ability to competently act as an athlete agent in conformity with [~~the~~] KRS 164.680 to 164.689 and 200 KAR Chapter 30 [~~the administrative regulations promulgated thereunder~~].

(6) The athlete agent seeking reinstatement may request a hearing with the division within thirty (30) days after an adverse decision on the petition.

NANCY L. BLACK, Director

ROBERT S. JONES, Assistant Attorney General

APPROVED BY AGENCY: June 11, 1999

FILED WITH LRC: June 11, 1999 at 2 p.m.

FINANCE AND ADMINISTRATION CABINET  
Division of Occupations and Professions  
[~~Directory of Registered Athlete Agents~~]  
(As Amended at ARRS, August 10, 1999)

200 KAR 30:060. Annual contact report.

RELATES TO: KRS 164.682(5)

STATUTORY AUTHORITY: KRS 164.681, 164.682(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.682(5) requires an athlete agent to file an annual contact report on activities within Kentucky. This administrative regulation establishes the minimum requirements for the annual contact report. [provides for athlete agents to maintain financial records, and file annual contact reports on activities within the Commonwealth. This administrative regulation sets forth the minimum requirements for those reports.]

Section 1. Annual Contact Report. An annual contact report shall be filed by March 31 of each year, and shall include:

(1) A list of each student athlete contacted, either directly or otherwise, during the preceding twelve (12) months;

- (2) The date of initial contact with each student athlete;
- (3) A list of student athletes with whom the athlete agent enters into an oral or written contract or provides in-kind benefits, with an attached copy of the contract, if written;
- (4) The date and time the athlete agent entered into each contract or in-kind transaction;
- (5) The date and time written notification was provided to the athletic director or president of the college or university in which the student athlete was enrolled when the athlete agent entered into each contract or provided monetary or in-kind benefits to a student athlete, with an attached copy of the written notification; **and**
- (6) A complete financial statement for the preceding year through December 31.

NANCY L. BLACK, Director  
 ROBERT S. JONES, Assistant Attorney General  
 APPROVED BY AGENCY: June 11, 1999  
 FILED WITH LRC: June 11, 1999 at 2 p.m.

**FINANCE AND ADMINISTRATION CABINET**  
**Division of Occupations and Professions**  
**[Directory of Registered Athlete Agents]**  
**(As Amended at ARRS, August 10, 1999)**

**200 KAR 30:070. Records retention.**

RELATES TO: KRS 164.684(2), **164.685**  
 STATUTORY AUTHORITY: KRS 164.681(4)  
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.684(2) **and 164.685 require an athlete agent and student athlete** [provides for athlete agents and student athletes] to provide to the college or university in which a student athlete is enrolled written notification of an agent contract or the acceptance of in-kind benefits. This administrative regulation **establishes** [sets forth] the records retention requirements for **a college or university** [colleges and universities] receiving this written notification.

Section 1. **(1) A college or university which receives** [Colleges and universities which receive] written notification **that** a student athlete has entered an agent contract or accepted in-kind benefits from an athlete agent shall:

- (a) Record the time and date of receipt of the notification; **and**
  - (b) [Section 2. Colleges and universities which receive written notification a student athlete has entered an agent contract or accepted in-kind benefits from an athlete agent shall] Maintain the written notification, and the record of time and date of receipt, for a period of five (5) years.
- (2) The [ , and those ]** records shall be subject to inspection by an authorized agent of the division.

NANCY L. BLACK, Director  
 ROBERT S. JONES, Assistant Attorney General  
 APPROVED BY AGENCY: June 11, 1999  
 FILED WITH LRC: June 11, 1999 at 2 p.m.

**GENERAL GOVERNMENT CABINET**  
**Board of Certification of Fee-Based Pastoral Counselors**  
**(As Amended at ARRS, August 10, 1999)**

**201 KAR 38:010. Definitions for 201 KAR Chapter 38.**

RELATES TO: KRS 335.620  
 STATUTORY AUTHORITY: KRS 335.615(1)-(4), (6); KRS 335.620  
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.620 **establishes** [sets forth] the requirements for certification as a fee-based pastoral counselor. The board is required to review the applications of applicants for certification. **This administrative regulation establishes the definitions used in 201 KAR Chapter 38.** [In addition to other requirements, KRS 335.620(5)(b) requires applicants to have experience under supervision. This administrative

regulation establishes definitions necessary for the evaluation of experience under supervision.]

Section 1. Definitions. **(1)** [The following terms relate to the evaluation of applications for certification:

- (1) "Approved supervisor" means an individual who:
  - (a) Holds a diplomate level of certification from the American Association of Pastoral Counselors;
  - (b) Holds a fellow level of certification from the American Association of Pastoral Counselors and is also under supervision by a diplomate;
  - (c) Is certified as a fee-based pastoral counselor in the Commonwealth of Kentucky with a minimum of four (4) years of experience in the practice of pastoral counseling; or
  - (d) Holds licensure or certification in any of the mental health professions of psychiatry, psychology, social work, or family therapy with at least five (5) years of clinical experience and two (2) years of supervisory experience.

**(2)** "Clinical supervision" means the process of utilizing a partnership aimed at enhancing the professional development of supervisees in providing pastoral counseling services. [Clinical supervision shall be equally distributed throughout the qualifying period.]

**(2) [(3)]** "Equivalent course of study" means a master's, doctoral degree, or accredited training program in pastoral counseling from a regionally accredited institution in a mental health field closely related to pastoral counseling which either contains, or has been supplemented by, the coursework in each of the basic core areas listed in 201 KAR 38:030, Section 2 [1].

**[(4)]** "The practice of fee-based pastoral counseling" means the practice of fee-based pastoral counseling as defined by KRS 335.605(3).]

NANCY L. BLACK, Director  
 MARK BRENGELMAN, Assistant Attorney General  
 APPROVED BY AGENCY: June 14, 1999  
 FILED WITH LRC: June 14, 1999 at 4 p.m.

**GENERAL GOVERNMENT CABINET**  
**Board of Certification of Fee-Based Pastoral Counselors**  
**(As Amended at ARRS, August 10, 1999)**

**201 KAR 38:020. Application.**

RELATES TO: KRS **335.620**, [335.600]  
 STATUTORY AUTHORITY: KRS 335.615(1)-(4), (6), 335.620  
 NECESSITY, FUNCTION, AND CONFORMITY: **KRS 335.615(1) requires the board to approve or deny applications for certification of a fee-based pastoral counselor. KRS 335.620 establishes application requirements for a fee-based pastoral counselor. This administrative regulation establishes the application process for certification.** [This administrative regulation establishes the application process for certification under KRS 335.615(1)-(4) as a fee-based pastoral counselor.]

Section 1. An applicant for certification shall:

- (1) Meet the requirements of KRS 335.620;
- (2) Pay by check or money order an initial certification fee as established by 201 KAR 38:040, Fees, made payable to the Kentucky State Treasurer;
- (3) **Pass the written examination titled "Pastoral Counselors Examination" administered and verified by the Pastoral Counselors Examination Board and submit documentation of a passing score to the Board of Certification of Fee-Based Pastoral Counselors.**
- (4) [Pay by check or money order a written examination fee as established by 201 KAR 38:040, Fees, made payable to the Pastoral Counselor Examination Board at the time of taking the pastoral counselor examination;
- (4) Pass the written examination of the Pastoral Counselor Examination Board, the pastoral counselor examination;
- (5) File a completed, signed, and dated Application **for Certification as a Fee-Based Pastoral Counselor** [form] with the board

containing;

- (a) Name;
- (b) Address;
- (c) Home phone;
- (d) Work address;
- (e) Work phone;
- (f) Date of birth;
- (g) Criminal convictions;
- (h) Misconduct in other positions;
- (i) Credentials by other states;
- (j) Membership in professional organizations;
- (k) Education;
- (l) Experience;
- (m) Clinical supervision that shall be equally distributed throughout the qualifying period and verification that meets the following requirements:

1. At least 120 hours shall be individual supervision by an approved supervisor; and

2. An approved supervisor shall be an individual who:

a. Holds a diplomate level of certification from the American Association of Pastoral Counselors;

b. Holds a fellow level of certification from the American Association of Pastoral Counselors and is also under supervision by a diplomate;

c. Is certified as a fee-based pastoral counselor in Kentucky with a minimum of four (4) years of experience in the practice of pastoral counseling; or

d. Holds licensure or certification in one (1) of the mental health professions of psychiatry, psychology, social work, or family therapy with at least five (5) years of clinical experience and two (2) years of supervisory experience; [Clinical supervision and verification;]

(n) Endorsement by a denomination or faith group [Religious endorsing body endorsement for ministry]; and

(o) Affidavit.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form "Application-1" for fellows and diplomates of the American Association of Pastoral Counselors (June, 1999 edition) Board of Certification of Fee-Based Pastoral Counselors[~~is incorporated by reference~~]; and

(b) Form "Application-2" for nonfellows and nondiplomates of the American Association of Pastoral Counselors (June, 1999 edition) Board of Certification of Fee-Based Pastoral Counselors[~~is incorporated by reference~~].

(2) This material [They] may be inspected, copied, or obtained at the Board of Certification of Fee-Based Pastoral Counselors, 700 Louisville Road, Berry Hill Annex, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

NANCY L. BLACK, Director

MARK BRENGELMAN, Assistant Attorney General

APPROVED BY AGENCY: June 14, 1999

FILED WITH LRC: June 14, 1999 at 4 p.m.

**GENERAL GOVERNMENT CABINET**  
**Board of Certification of Fee-Based Pastoral Counselors**  
**(As Amended at ARRS, August 10, 1999)**

**201 KAR 38:030. Equivalent course of study.**

RELATES TO: KRS 335.620[(4)-(7)]

STATUTORY AUTHORITY: KRS 335.615[(1)-(4)], (6); 335.620(4)-(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.620(4) and (7) provides that the board shall establish [approve] a course of study equivalent to a master of divinity degree plus an additional minimum of one (1) year of academic training relative to pastoral counseling [and promulgate the equivalency standard by administrative regulations]. This administrative regulation establishes [defines] the criteria for the equivalent course of

study.

Section 1. Clinical membership at the fellow level in the American Association for Pastoral Counselors shall indicate [be deemed] that the applicant has met both the educational and experiential requirements for certification as set forth in KRS 335.620(4) and [-] (7).

Section 2. To qualify as an equivalent course of study, the basic core areas of study shall include the completion of a minimum of fifty-eight (58) semester hours of work that meets the requirements of Section 3 of this administrative regulation. The course work may:

(1) Include or extend beyond the one (1) professional degree in a theological or spiritual discipline or a mental health discipline; and

(2) Include unlimited hours earned in:

(a) An American Association of Pastoral Counselors approved Training Program in pastoral counseling with fifteen (15) contact hours equaling one (1) semester hour; or

(b) Another educational institutional program which meets the requirements stipulated by the American Association of Pastoral Counselors' Certification Committee, or the Institutional Accreditation Committee.

Section 3. The hours shall be distributed as follows: [The basic core areas which are necessary in order to qualify as an equivalent course of study, shall include the completion of a minimum of fifty-eight (58) semester hours of work which may include or extend beyond the one (1) professional degree in theological/spiritual discipline or mental health discipline. This work may include unlimited hours from American Association of Pastoral Counselors approved training programs in pastoral counseling (with fifteen (15) contact hours equaling one (1) semester hour) or other educational institutional programs which meet requirements stipulated by the American Association of Pastoral Counselors, Certification Committee, or the Institutional Accreditation Committee. These hours shall be distributed as follows:]

(1) Religious foundations. This area shall include up to twenty-seven (27) semester hours, including the following areas:

- (a) Scripture;
- (b) Theology;
- (c) Religious history;
- (d) Theological and social ethics;
- (e) Spirituality; and
- (f) World religions.

(2) Core clinical theory.

[~~(a)~~] This area shall include up to twenty-four (24) semester hours:

(a) With [-including] at least three (3) semester hours in each of the following:

- 1. Counseling and psychotherapy techniques;
- 2. Group dynamics and techniques; and
- 3. Marriage and family systems theories and techniques; and

(b) Up to fifteen (15) semester hours [~~must be~~] taken from the following areas:

- 1. Professional identity function and ethics;
- 2. Theories of counseling and psychotherapy;
- 3. Theories of human behavior, learning, personality development;
- 4. Career development;
- 5. Appraisal, evaluation, and diagnostic procedures [{}to make a current diagnosis{}]; and
- 6. Abnormal behavior.

(3) Pastoral counseling theory. This area shall include up to twelve (12) semester hours distributed among the following:

- (a) Basic pastoral care which shall include [{}crisis intervention, grief counseling, and hospital ministry{}];
- (b) History of pastoral care and counseling;
- (c) Psychology of religion;
- (d) Faith development;
- (e) Pastoral theology;
- (f) Theology of psychotherapy;

- (g) Spiritual formation; and
- (h) Clinical pastoral education.
- (4) Specialized technical studies. This area shall include up to fifteen (15) semester hours including at least two (2), but not more than three (3), of the following areas:
  - (a) Psychodynamic psychotherapies;
  - (b) Marriage and family therapy;
  - (c) Humanistic psychotherapy;
  - (d) Jungian analytic psychotherapy;
  - (e) Cognitive therapy;
  - (f) Behavior therapy;
  - (g) Brief therapy; or
  - (h) Group therapy.
- (5) A practicum, internship, or residency may be included in addition to academic courses not to exceed more than ten (10) hours.

NANCY L. BLACK, Director  
 MARK BRENGELMAN, Assistant Attorney General  
 APPROVED BY AGENCY: June 14, 1999  
 FILED WITH LRC: June 14, 1999 at 4 p.m.

**GENERAL GOVERNMENT CABINET  
 Board of Certification of Fee-Based Pastoral Counselors  
 (As Amended at ARRS, August 10, 1999)**

**201 KAR 38:040. Fees.**

RELATES TO: KRS 335.620(1)  
 STATUTORY AUTHORITY: KRS 335.615(6); 335.620(1), (8)  
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.615(6) and 335.620(1) require the board to establish an initial fee for certification. KRS 335.620(8) requires an applicant who has not received certification before July 1, 1999, to pass a written examination approved by the board. This administrative regulation establishes the initial fee for certification[;] and the fee for taking the written examination[;—that KRS 335.620(1) and (8) authorizes the board to establish and approve by administrative regulation:]

Section 1. Initial Certification Fee. (1) The initial fee for certification as a fee-based pastoral counselor shall be \$400.

(2) If an application for certification is denied, the board shall refund \$250 of the initial certification fee.

Section 2. Written Examination Fee. The fee for taking the written examination of the Pastoral Counselor Examination Board, the pastoral counselor examination, shall be \$200.

NANCY L. BLACK, Director  
 MARK BRENGELMAN, Assistant Attorney General  
 APPROVED BY AGENCY: June 14, 1999  
 FILED WITH LRC: June 14, 1999 at 4 p.m.

**GENERAL GOVERNMENT CABINET  
 Board of Certification of Fee-Based Pastoral Counselors  
 (As Amended at ARRS, August 10, 1999)**

**201 KAR 38:060. Code of ethics.**

RELATES TO: KRS 335.615(5)  
 STATUTORY AUTHORITY: KRS 335.615(5), (6)  
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.615(5) requires the board to promulgate a code of ethics for certified fee-based pastoral counselors. This administrative regulation establishes the required code of ethics.

Section 1. Identification of a Client. (1) A client shall be a person who receives a counseling, psychotherapeutic, or other professional service from a fee-based pastoral counselor.

(2) A person identified as a client pursuant to subsection (1)

of this section shall be deemed to continue to be a client for a period of two (2) years following the last date of service rendered to that client. [Definition: "Client" shall be a person who receives a counseling, psychotherapeutic, or other professional service from a fee-based pastoral counselor. A client shall be deemed to continue to be a client for a period of two (2) years following the last date of service rendered to that client.]

Section 2. Responsibility to Clients. (1) A fee-based pastoral counselor shall:

- (a) Advance and protect the welfare of his client;
- (b) Respect the rights of persons seeking his assistance; and
- (c) Make reasonable efforts to ensure that his services are used appropriately.

(2) A fee-based pastoral counselor shall not:

(a) ~~[Discriminate against or refuse professional service to any one on the basis of race, gender, religion, national origin, or sexual orientations;~~

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

(b)1. Except as provided by subparagraph 2 of this paragraph, [(e)] engage in a dual relationship with a client, including a social, business, or personal relationship, that may:

a. [1:] Impair professional judgment;

b. [2:] Incur a risk of exploitation of the client; or

c. [3:] Otherwise violate a provision of this administrative regulation.

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

(c) [(d)] Engage in a sexual relationship with a current client or with a former client for two (2) years following the termination of pastoral counseling;

(d) [(e)] Use his professional relationship with a client to further his own interests;

(e) [(f)] Continue a pastoral counseling relationship [relationships] unless it is reasonably clear that the client is benefiting from the relationship;

(f) [(g)] Fail to assist a person in obtaining other pastoral counseling services if the pastoral counselor is unable or unwilling, for appropriate reasons, to provide professional help;

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

(h) [(i)] Videotape, record, or permit third-party observation of a pastoral counseling session [sessions] without having first obtained written informed consent from the client;

(i) [(j)] Engage in sexual or other harassment or exploitation of a client, student, trainee, supervisee, employee, colleague, research subject, or actual or potential witness or complainant in an investigation or a disciplinary investigation or proceeding [investigations and disciplinary investigations or proceedings] by the board; or

(j) [(k)] Diagnose, treat, or advise on problem [problems] outside the recognized boundaries of his competence.

Section 3. Confidentiality. (1) A fee-based pastoral counselor shall respect and guard the confidences of each individual client.

(2) A fee-based pastoral counselor [counselors] shall not disclose a client confidence except:

(a) As mandated, or permitted by law;

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

(c) If the pastoral counselor is a defendant in a civil, criminal, or disciplinary action arising from the pastoral counseling, confidences may be disclosed only in the course of that action; or

(d) If a waiver has been obtained in writing, confidential information shall be revealed only in accordance with the terms of the waiver. If more than one (1) person in a family receives pastoral counseling, unless a waiver is executed by each family member receiving pastoral counseling, who is legally competent to execute a waiver, a pastoral counselor shall not disclose information received from any family member.

(3) A pastoral counselor may use client or clinical materials in

teaching, writing, and public presentations if:

- (a) A written waiver has been obtained in accordance with subsection (2)(d) of this section; or
- (b) Appropriate steps have been taken to protect client identity and confidentiality.
- (4) A pastoral counselor shall store or dispose of client records so as to maintain confidentiality.

Section 4. Responsibility to a Student or Supervisee. (1) A fee-based pastoral counselor shall not exploit the trust and dependency of a student or supervisee.

- (2) A fee-based pastoral counselor shall:
  - (a) Be aware of his influential position with respect to a student or supervisee; and
  - (b) Avoid exploiting the trust and dependency of these persons.
- 1. A pastoral counselor shall make every effort to avoid a dual relationship, including a social, business, or personal relationship, with a student or supervisee that may impair professional judgment or increase the risk of exploitation.
- 2. If a dual relationship cannot be avoided, a pastoral counselor shall take appropriate professional precautions to ensure judgment is not impaired and no exploitation occurs.
- 3. A pastoral counselor shall not provide pastoral counseling to a student, employee or supervisee.
- 4. A pastoral counselor shall not engage in sexual intimacy or contact with a student or supervisee.
- (3) A pastoral counselor shall not permit a student or supervisee to perform or to hold himself out as competent to perform professional services beyond his level of training, experience, and competence.
- (4) A pastoral counselor shall not disclose a student's or supervisee's confidence except:
  - (a) As mandated, or permitted by law;
  - (b) To prevent a clear and immediate danger to a person or persons;
  - (c) If the pastoral counselor is a defendant in a civil, criminal, or disciplinary action arising from the supervision, the student's or supervisee's confidence may be disclosed only in the course of that action;
  - (d) In an educational or training setting [settings] if there are multiple supervisors, to other professional colleagues who share responsibility for the training of the supervisee; or
  - (e) If there is a waiver previously obtained in writing, information shall be revealed only in accordance with the terms of the waiver.

Section 5. Financial Arrangements. (1) A pastoral counselor shall make financial arrangements with a client, third-party payer, or supervisee that are reasonably understandable and conform to accepted professional practices.

- (2) A pastoral counselor shall:
  - (a) Not offer or accept payment for referrals;
  - (b) Not charge excessive fees for services;
  - (c) Disclose his fees to clients and supervisees at the beginning of services; and [or]
  - (d) Represent facts truthfully to clients, third-party payers, and supervisees regarding services rendered.

Section 6. Advertising. (1) A fee-based pastoral counselor shall:

- (a) [(+)] Accurately represent his education, training, and experience relevant to his practice of pastoral counseling; and
- (b) [(2)] Not use professional identification, including a business card, office sign, letterhead, or telephone or association directory listing if it includes a statement or claim that is false, fraudulent, misleading, or deceptive pursuant to subsection (2) of this section.
- (2) [(3)] A statement shall be false, fraudulent, misleading, or deceptive if it:
  - (a) Contains a material misrepresentation of fact;
  - (b) Fails to state a [any] material fact necessary to make the statement, in light of all circumstances, not misleading; or
  - (c) Is intended to or is likely to create an unjustified expectation.

Section 7. Professional Competence and Integrity. A pastoral

counselor shall maintain standards of professional competence and integrity and shall be subject to disciplinary action as provided in KRS 335.635:

- (1) Upon [(a)] conviction of a felony, or a misdemeanor involving moral turpitude, or a misdemeanor related to his practice as a pastoral counselor.
- [(b)] Conviction shall include conviction based on:
  - (a) [(+)] A plea of no contest or an "Alford Plea"; or
  - (b) [(2)] The suspension or deferral of a sentence or conditional discharge; [-]
- (2) If his license or certificate to practice a health profession issued by another state's regulatory agency has been disciplined, or had a license or certificate to practice denied, by that state's regulatory agency;
- (3) If his license or certificate to practice a health profession issued by another Kentucky regulatory agency has been disciplined or had a license or certificate to practice denied, by that Kentucky regulatory agency;
- (4) Upon a showing of impairment due to mental or physical incapacity or the abuse of alcohol or other substances which may negatively impact the practice of pastoral counseling;
- (5) If he misrepresented or concealed a material fact in obtaining a certificate or seeking reinstatement of a certificate, or seeking renewal of a certificate;
- (6) If he has refused to comply with an order issued by the board; or
- (7) If he has failed to cooperate with the board by not:
  - (a) Furnishing in writing a complete explanation to an initiating complaint filed with the board;
  - (b) Appearing before the board or a designated representative [representatives] of the board at the time and place designated; or
  - (c) Properly responding to a subpoena [subpoenas] issued by the board, [-or]
  - (8) Violated any statutory or regulatory section of KRS Chapter 335.

NANCY L. BLACK, Director

MARK BRENGELMAN, Assistant Attorney General

APPROVED BY AGENCY: June 14, 1999

FILED WITH LRC: June 14, 1999 at 4 p.m.

#### KENTUCKY HERITAGE LAND CONSERVATION FUND BOARD (As Amended at ARRS, August 10, 1999)

##### 418 KAR 1:020. Administrative procedures of the board.

RELATES TO: KRS 61.805 through 61.850, 61.870 through 61.884, 146.550 through 146.570,

STATUTORY AUTHORITY: KRS 146.560(2), 146.565[-146.570]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2) requires the board to promulgate administrative regulations necessary for the application for funds from agencies identified in KRS 146.570, review and approval of projects and grants, and acquisition of land. This administrative regulation establishes those procedures. [directs the board to promulgate, in accordance with the provisions of KRS Chapter 13A, administrative regulations deemed necessary for the application for funds from the agencies identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. It also directs the board to promulgate administrative regulations on acquisition. KRS 146.565 requires prior board approval of acquisition of land and expenditure of funds. This administrative regulation establishes the administrative procedures the board will employ to implement these duties.]

Section 1. Meetings. (1) ~~[Meetings of the board shall be conducted in accordance with the Kentucky Open Meetings Laws, KRS 61.805 through 61.850]~~

(2) Regular meetings. The board shall meet quarterly at times and places designated by the chair. The board shall provide for a yearly schedule of regular meetings pursuant to KRS 61.820.

(2) Special meetings. If a regular meeting is [This schedule shall be made available to the public. Should any regular meeting be]

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rescheduled, the board shall provide written notice of the rescheduled meeting pursuant to KRS 61.823(3) through (4).

(3) Special meetings. The chair or a majority of the members of the board may call a special meeting. The board shall provide written notice of a special meeting pursuant to KRS 61.823(3) through (4), unless the meeting is an emergency meeting, in which case the board shall comply with the notice requirements of KRS 61.823(5).

(4) Closed sessions. Deliberations on the future acquisition of land may be closed to the public when publicity would be likely to affect the value of the land. Sessions may also be closed to the public for any other reason permitted by KRS 61.810. The board shall meet the requirements for closed sessions set forth in KRS 61.815.

Section 2. Quorum. (1) Seven (7) members of the board shall be required to constitute a quorum of which:

(a) Three (3) shall be members pursuant to KRS 146.560(1)(a) through (e); and

(b) Four (4) shall be members pursuant to KRS 146.560(1)(f) through (k).

(2) The board shall act by a majority of those present at the meeting and constituting a quorum. [Seven (7) members of the board, including at least three (3) who are members pursuant to KRS 146.560(1)(a) through (e) and four (4) who have been appointed pursuant to KRS 146.560(1)(f) through (k), shall constitute a quorum. The board shall act by a majority of those present at a meeting at which a quorum is present.]

Section 3. Meeting Participation. (1) A board member may participate in a meeting [Board members may participate in meetings] in person or by video teleconference pursuant to KRS 61.826.

(2) The designation of a board member pursuant to KRS 146.560(1)(a) through (e) shall be in writing and shall be submitted to the chair [board] prior to the first [any] meeting the designee attends [as a member]. If the requirements of this subsection are not met, the designee shall not be permitted to vote.

Section 4. Meeting Minutes, Annual Report. (1) Meeting minutes. Minutes of each meeting of the board shall be prepared and mailed to each member of the board. Except for a closed session meeting, the minutes shall be provided to an interested party upon request to the chair [; mailed to the members of the board, and made available to interested parties upon request to the chair].

(2) Annual report. An annual report of the activities of the board for the previous year shall be prepared. This report shall include a cumulative list of all approved projects and a brief status report of all areas acquired through the fund. The board shall submit the annual report to the Legislative Research Commission by October 1 of each year. Upon receipt of the annual report, the Legislative Research Commission may publish it in the Legislative Record or other appropriate publication.

Section 5. Inspection of Public Records. Public records of the board shall be made available for public inspection in accordance with the Kentucky Open Records Act, KRS 61.870 through 61.884. The title and address of the official custodian of the board's records shall be Commissioner, Department for Natural Resources, Natural Resources and Environmental Protection Cabinet, 663 Teton Trail, Frankfort, Kentucky 40601.

Section 6. Principal Office. The principal office of the board shall be located at the Office of the Commissioner, Department for Natural Resources, Natural Resources and Environmental Protection Cabinet, 663 Teton Trail, Frankfort, Kentucky 40601. Its regular office hours are 8 a.m. to 4:30 p.m., Monday through Friday, except for state holidays.

Section 7. Officers. The board shall nominate and elect a vice-chair and a treasurer. The vice-chair shall [vice-chair's duty is to] preside over meetings in the absence of the chair. The treasurer, which shall be a member appointed pursuant to KRS 146.560(1)(f) through (k), shall monitor and report disbursements and receipts.

Section 8. Committees. (1) There shall be two (2) standing committees, a projects review committee and a stewardship committee.

The chair, with board approval, may also create other committees for specific purposes and a definite term.

(2) The projects review committee:

(a) Shall:

1. Review state agency project applications submitted in accordance with 418 KAR 1:030 and competitive grant applications submitted in accordance with 418 KAR 1:040;

2. Determine the compliance of an application with the four (4) priorities for acquisition set forth in KRS 146.560(2)(a) through (d);

3. Determine completeness and accuracy of an application; and

4. Prepare and submit a report of its findings to:

a. Each individual board member at least fifteen (15) days prior to a meeting at which the application will be considered by the board; and

b. The applicant;

(b) May:

1. Assist an applicant in the preparation of an application; and

2. Contact an applicant before the due date of a report to correct a minor deficiency in the application.

(3) The stewardship committee shall:

(a) Review and make recommendations to the board regarding preliminary and final RMPs; and

(b) Ensure that the management of land purchased, in whole or in part, with fund money meets the requirements of:

1. KRS 146.550 through 146.570;

2. 418 KAR Chapter 1;

3. A memorandum of agreement between the board and a recipient of fund money;

4. A conservation easement which pertains to the project site; and

5. The latest RMP approved by the board.

(4) A committee shall consist of two (2) or more board members. The chair shall appoint members and a chair to be a committee, subject to approval of the board.

(5) [(a) The purpose of the projects review committee shall be to review state agency project applications submitted pursuant to 418 KAR 1:030 and competitive grant applications submitted pursuant to 418 KAR 1:040 and determine their compliance with the four (4) priorities for acquisition set forth in KRS Chapter 146.560(2)(a) through (d) and their completeness and accuracy. The findings as to each application shall be set forth in a report which shall be submitted to individual board members at least fifteen (15) days prior to any meeting of the board at which the application is to be considered. A copy of this report shall also be delivered to the applicant. The projects review committee may also assist applicants in the preparation of applications. The projects review committee may contact an applicant at any time before its report is due to correct minor deficiencies in an application.

(b) The purpose of the stewardship committee shall be to review, and make recommendations to the board concerning, RMPs (preliminary and final) and to ensure that the management of land purchased, in whole or in part, with fund money meets the requirements of KRS 146.550 through 146.570, this chapter, memorandums of agreement between the board and a recipient of fund money, conservation easements which pertain to the project site, and the latest RMP approved by the board.

(3) Each committee shall consist of one (1) or more [at least five (5)] board members. The member(s) [members], including a chair for each committee, shall be appointed by the chair of the board, with approval of the board.

(4) A majority of the members of a committee shall constitute a quorum. A committee shall act by a majority of those present at a meeting at which a quorum is present.

(6) A committee member:

(a) Shall serve:

1. For a term of one (1) year;

2. Until removed; or

3. Until a successor is appointed.

(b) May be appointed to a successive term.

(7) Committee membership shall be established at the last



meeting of each calendar year.

~~[(5) Committee members shall serve for a term of one (1) year, but shall remain in office until removed or a successor is appointed. Committees shall be reestablished at the last meeting of each calendar year. Committee members shall be eligible for reappointment.]~~

WILLIAM H. MARTIN, Chairman

BARBARA FOSTER, General Counsel

APPROVED BY AGENCY: May 10, 1999

FILED WITH LRC: May 12, 1999 at 10 a.m.

**KENTUCKY HERITAGE LAND CONSERVATION FUND BOARD  
(As Amended at ARRS, August 10, 1999)**

**418 KAR 1:030. State agency projects.**

RELATES TO: KRS 146.200 to 146.360, 146.550 through 146.570

STATUTORY AUTHORITY: KRS 146.560(2), 146.565[-146.570]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2)

requires the board to promulgate administrative regulations necessary for the application for funds from agencies identified in KRS 146.570, review and approval of projects and grants, and acquisition of land. This administrative regulation establishes standards for the review and approval of proposed state agency projects funded pursuant to KRS 146.570(4)(a) through (e). [KRS 146.560(2) directs the board to promulgate, in accordance with the provisions of KRS Chapter 13A, administrative regulations deemed necessary for the application for funds from the agencies identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. It also directs the board to promulgate administrative regulations on acquisition. KRS 146.565 requires prior board approval of acquisition of land and expenditure of funds. KRS 146.570(4)(a) through (e) authorizes the allocation of fund money to certain state agencies. This administrative regulation establishes standards for the review and approval of proposed state agency projects funded pursuant to KRS 146.570(4)(a) through (e).]

Section 1. Approval of Certain Expenditures. Upon written request of a state agency, the board may give advance approval to certain categories of expenditures of money received pursuant to KRS 146.570(4)(a) through (e), including appraisals, title opinions, and environmental audits.

Section 2. Application. (1) A state agency seeking approval for projects funded pursuant to KRS 146.570(4)(a) through (e) shall submit to the board a completed project application. Application shall be made on the form incorporated by reference in Section 6 of this administrative regulation. This subsection shall not apply to expenditures that have received approval pursuant to Section 1 of this administrative regulation.

(2) ~~The state agency project application shall contain at least the following:~~

~~(a) General information about the applicant, including, but not limited to, its name and address and the name, address, and phone number of its contact person;~~

~~(b) An identification of the priorities for acquisition, as set forth in KRS 146.560(2)(a) through (d), for which the site qualifies;~~

~~(c) A description of the project and project site and a delineation of project significance, including a description of how the project site qualifies for each applicable priority for acquisition;~~

~~(d) A 1:24,000 USGS topographic map with project site clearly outlined, and other maps, as appropriate;~~

~~(e) A preliminary RMP which meets the requirements of KRS 146.550 through 146.570, this chapter, and the preliminary RMP instructions incorporated by reference in 418 KAR 1:060, Section 16;~~

~~(f) An estimation of acquisition and management costs, the total amount of money requested from the fund, a specification of the forms and sources of matching funds, if any, and assurances as to the certainty of those funds; and~~

~~(g) A certification clause signed by an authorized agency official. In the case of joint applications, the certification clause shall be signed~~

~~by an authorized official from each joint applicant.~~

(3)] State agencies may submit joint project applications. The preliminary RMP for a joint project shall specify which state agency will perform each aspect of management. Each joint applicant shall remain responsible for all aspects of management.

~~[(4) Beginning January 1, 1996, an application shall be received by the board at least sixty (60) days prior to the meeting at which it is to be considered. Applications and information received after this deadline shall be considered at the next available meeting. Applications shall be promptly forwarded to members of the projects review committee for review. Individual board members shall receive the project review committee's report on an application at least fifteen (15) days prior to a meeting at which that application is to be considered. If the project review committee report lists deficiencies in the application, the state agency shall have an opportunity to correct these deficiencies. However, no additional information will be accepted after the sixty (60) day deadline, except that the projects review committee may, at its discretion, accept information to correct minor deficiencies after the sixty (60) day deadline but at least fifteen (15) days before the meeting at which the information is to be considered.]~~

Section 3. Review of Application. After reviewing the report received from the projects review committee pursuant to 418 KAR 1:020, Sections 8(2)(a), and 2(4) of this administrative regulation, the board shall review each application and evaluate it based on the following criteria:

(1) Whether the proposed project meets one (1) or more of the following priorities for acquisition:

(a) Natural areas that possess unique features such as habitat for rare and endangered species;

(b) Areas important to migratory birds;

(c) Areas that perform important natural functions that are subject to alteration or loss; and

(d) Areas to be preserved in their natural state for public use, outdoor recreation and education;

(2) Whether the proposed project site is a natural area or wetland, and whether access or buffer land is necessary;

(3) Property costs, seeking to maximize public benefit by taking advantage of priority areas below fair market value and where public or private funds are available on a matching basis;

(4) The completeness and accuracy of the application;

(5) The information in the application and its attachments;

(6) Whether the preliminary RMP furthers the purposes of KRS 146.550 through 146.570;

(7) The applicant's ability to complete the acquisition and manage the land consistent with the preliminary RMP;

(8) The significance of the natural and educational resources on the project site;

(9) The prevalence of this type of project and project site in public systems;

(10) The threat of loss or degradation of the project site if not protected;

(11) The overall cost compared to the benefit to the Commonwealth of Kentucky; and

(12) In the case of a project application submitted pursuant to KRS 146.570(4)(d), whether the proposed acquisition is within a wild river corridor established by the Kentucky Wild Rivers Act, KRS 146.200 to 146.360, and the administrative regulations promulgated pursuant thereto.

Section 4. Project Approval or Denial. (1) The board shall approve or deny a project application, with or without conditions or amendments, by the vote of a majority of those present at a meeting at which a quorum is present.

(2) The board shall mail to the applicant, within fifteen (15) days of board action, written notice of the approval or denial of a project application and, if denied, the reasons for denial.

Section 5. Agreements. Funds shall not be disbursed until the applicant enters into a written memorandum of agreement with the board which requires the applicant, at a minimum, to meet the requirements of KRS Chapter 146.550 through 146.570, this chapter, any other applicable laws of the Commonwealth of Kentucky, the



application, [any conservation easement which pertains to the project site,] and the latest RMP approved by the board.

Section 6. Incorporation by Reference. (1) "Kentucky Heritage Land Conservation Fund Board Grant Application Form, Form Number HL-1 (January 1999)" [The following document] is incorporated by reference.

(2) This material may be inspected, copied, or obtained [and is available for public inspection and copying between the hours of 8 a.m. and 4:30 p.m., Monday through Friday,] at the Office of the Commissioner, Department for Natural Resources, [Natural Resources and Environmental Protection Cabinet,] 663 Teton Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [- State Agency Project Application, Form Number HL-1, Kentucky Heritage Land Conservation Fund Board, Frankfort, Kentucky, April 1995.]

WILLIAM H. MARTIN, Chairman

BARBARA FOSTER, General Counsel

APPROVED BY AGENCY: May 10, 1999

FILED WITH LRC: May 12, 1999 at 10 a.m.

**KENTUCKY HERITAGE LAND CONSERVATION BOARD**  
(As Amended at ARRS, August 10, 1999)

**418 KAR 1:040. Competitive grants.**

RELATES TO: KRS 146.550 through 146.570, 382.800 through 382.860

STATUTORY AUTHORITY: KRS 146.560(2), 146.565[-, 146.570]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2) requires the board to promulgate administrative regulations necessary for the application for funds from agencies identified in KRS 146.570, review and approval of projects and grants, and acquisition of land. This administrative regulation establishes the procedures for review and approval of grants funded to state agencies, local governments, and state colleges and universities pursuant to KRS 146.570(4)(f). [KRS 146.560(2) directs the board to promulgate, in accordance with the provisions of KRS Chapter 13A, administrative regulations deemed necessary for the application for funds from the agencies identified in KRS 146.570; review and approval of proposed projects; and review and approval of grants. It also directs the board to promulgate administrative regulations on acquisition. KRS 146.565 requires prior board approval of acquisition of land and expenditure of funds. KRS 146.570(f) authorizes the allocation of fund money to state agencies, local governments, and state colleges and universities. This administrative regulation establishes standards for the review and approval of grants funded pursuant to KRS 146.570(4)(f).]

Section 1. Application. (1) A state agency, local government, and state college or university seeking a grant [State agencies, local governments, and state colleges and universities seeking grants] pursuant to KRS 146.570(4)(f) shall submit to the board a completed competitive grant application package. Application shall be made on the Kentucky Heritage Land Conservation Fund Board Application", Form HL-1.

(2) The application shall include:

(a) The application form;

(b) Cover letter;

(c) Site map;

(d) Site or project description;

(e) Preliminary Resource Management Plan;

(f) 1:24,000 topographical map;

(g) Project costs worksheet;

(h) Comparison of the project site to the surrounding landscape (competitive applicant only);

(i) A statement of the importance of the project to the applicant and to the Commonwealth of Kentucky (competitive applicant only);

(j) Explanation of why the project qualifies for fund money (competitive applicant only);

(k) Two (2) or more project endorsements (competitive applicant only); and

(l) Description of partnerships with other agencies.

(3) [form incorporated by reference in Section 5 of this administrative regulation:

(2)] [The competitive grant application shall contain at least the following:

(a) A cover letter which contains the original signature of the authorized official who signs the certification clause and which authorizes the contact person, if any, to represent the applicant;

(b) General information about the applicant, including, but not limited to, its name and address and the name, address, and phone number of its contact person;

(c) An identification of the priorities for acquisition, as set forth in KRS 146.560(2)(a) through (d), for which the site qualifies;

(d) The status of land acquisition;

(e) An estimation of acquisition and management costs, the amount of money requested from the fund, a specification of the forms and sources of matching funds, if any, and assurances as to the certainty of those funds;

(f) A description of the project and project site which augments the preliminary RMP and includes the following information:

1. A description of the project and the project site;

2. A comparison of the project site to the surrounding landscape;

3. The importance of the project to the applicant and the Commonwealth of Kentucky;

4. An explanation of why the project qualifies for fund money;

5. A description of partnerships with other agencies;

6. A detailed budget describing proposed fund expenditures and total project expenditures; and

7. An identification of nonfund money and its sources.

(g) A 1:24,000 topographic map with the project site clearly outlined and any nearby public lands identified;

(h) A site map of appropriate scale which clearly identifies existing and planned facilities, access points and other appropriate information;

(i) A preliminary RMP which meets the requirements of KRS 146.550 through 146.570, this chapter, and the preliminary RMP instructions incorporated by reference in 418 KAR 1:060, Section 16;

(j) Other pertinent information, including at least two (2) project endorsements; and

(k) A certification clause signed by an authorized agency official. In the case of joint applications, the certification clause shall be signed by an authorized official from each joint applicant.

(3) Money expended by an applicant in connection with a denied application for funds, a grant, or project [grants or projects] under this section shall not be reimbursed to the applicant.

(4) [(3)] [(4)] An applicant shall not supply false or misleading information to the board and shall provide to the board verification that all information in the grant application is true and accurate.

(5) [(4)] [(5)] Grant applicants may submit joint applications. The preliminary RMP for a joint application shall specify which entity will perform each aspect of management. Each joint applicant shall remain responsible for all aspects of management.

[(6) Beginning January 1, 1996, an application shall be received by the board at least sixty (60) days prior to the meeting at which it is to be considered. Applications and information received after this deadline shall be considered at the next available meeting. Applications shall be promptly forwarded to members of the Projects Review Committee for review. Individual board members shall receive the Projects Review Committee's report on an application at least fifteen (15) days prior to a meeting at which that application is to be considered. If the project review committee report lists deficiencies in the application, the applicant shall have an opportunity to correct these deficiencies. However, no additional information will be accepted after the sixty (60) day deadline, except that the Projects Review Committee may, at its discretion, accept information to correct minor deficiencies after the sixty (60) day deadline but at least fifteen (15) days before the meeting at which the information is to be considered.]

Section 2. Review of Application. (1) After reviewing the report received from the Projects Review Committee pursuant to 418 KAR 1:020, Section [Sections] 8(2)(a)[- and 1(6)] of this administrative

regulation, each board member shall review ~~the~~ [each] application package and evaluate it based on the following criteria:

(a) Whether the fund contains adequate money to fund the proposed project;

(b) Whether the proposed project meets one (1) or more of the following priorities for acquisition:

1. A natural area that meets the priorities for acquisition as set forth in KRS 146.560(2)(a) through (d); [Natural areas that possess unique features such as habitat for rare and endangered species;]

2. An area [Areas] important to migratory birds;

3. An area that performs an important natural function that is [Areas that perform important natural functions that are] subject to alteration or loss; and

4. An area to be preserved in its natural state for:

a. Public use;

b. Outdoor recreation; and

c. Education; [Areas to be preserved in their natural state for public use, outdoor recreation and education;]

(c) Whether the proposed acquisition is a natural area or wetland and whether access or buffer land is necessary;

(d) Property costs, seeking to maximize public benefit by taking advantage of;

1. A priority area below fair market value; and

2. Public or private funds available on a matching basis; [priority areas below fair market value and where public or private funds are available on a matching basis;]

(e) The completeness and accuracy of the application package;

(f) The information in the application package;

(g) Whether the preliminary RMP furthers the purposes of KRS 146.550 through 146.570;

(h) The applicant's ability to complete the acquisition and manage the land consistent with the preliminary RMP;

(i) The significance of the natural and educational resources on the project site;

(j) The prevalence of this type of project and project site in public systems;

(k) The threat of loss or degradation of the project site if not protected; and

(l) The overall cost compared to the benefit to the Commonwealth of Kentucky; [and]

[(m) Any other factors deemed relevant by the board;]

(2) The board;

(a) Shall approve or deny a competitive grant application [with or without conditions or amendments;] by the vote of a majority of those present at a meeting at which there is a quorum;

(b) [is present. The board] May:

1. Amend or attach conditions to the approval of a competitive grant application.

2. Conduct a series of votes to narrow a list of grant applications if the total cost of the applications exceeds the available funds.

(c) Shall not approve an expenditure that exceeds currently available funds. [only approve expenditures that do not exceed funds currently available, and, in the case of numerous applications, the total cost of which exceeds funds available, the board may conduct a series of votes to narrow the list of applications;]

(3) Consideration of a grant application [Funds and grant applications] may be carried over from meeting to meeting and the board may decline to approve a grant application [any or all grant applications] at a given meeting.

(4) The board may, itself or through an agent, verify the accuracy of the information in a grant application and make such further investigation of the merits of a proposed acquisition as the board deems appropriate.

(5) The board shall mail to the applicant, within fifteen (15) days of board action, written notice of the approval or denial of a grant application and, if denied, the reasons for denial.

Section 3. Agreements. Funds shall not be disbursed until the applicant has entered into a written memorandum of agreement with the board which requires the applicant to comply with:

(1) The requirements of KRS 146.550 through 146.570;

(2) 418 KAR Chapter 1;

(3) Other applicable laws of the Commonwealth of Kentucky;

(4) The application;

(5) A conservation easement which pertains to the project site; and

(6) The latest RMP approved by the board. [at a minimum, to meet the requirements of KRS Chapter 146.550 through 146.570, this chapter, any other applicable laws of the Commonwealth of Kentucky, the application, conservation easements which pertain to the project site, and the latest RMP approved by the board;]

Section 4. Conservation Easements. A local government [Local governments] shall convey to the Commonwealth of Kentucky a conservation easement in perpetuity over all land acquired, in whole or in part, with fund proceeds. This conveyance shall occur simultaneously with the conveyance of the property to the applicant [disbursement of fund money]. The conservation easement shall [at a minimum;] meet the requirements of KRS 382.800 through 382.860 and ensure that lands acquired are maintained in perpetuity for the purposes set out in KRS 146.560.

Section 5. Incorporation by Reference. (1) "Kentucky Heritage Land Conservation Fund Board Grant Application Form, Form Number HL-1 (January 1999)" [The following document] is incorporated by reference.

(2) This material may be inspected, copied or obtained [and is available for public inspection and copying between the hours of 8 a.m. and 4:30 p.m., Monday through Friday,] at the Office of the Commissioner, Department for Natural Resources, [Natural Resources and Environmental Protection Cabinet,] 663 Teton Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Competitive Grant Application, Form Number HL-2, Kentucky Heritage Land Conservation Fund Board, Frankfort, Kentucky, April 1995;]

WILLIAM H. MARTIN, Chairman

BARBARA FOSTER, General Counsel

APPROVED BY AGENCY: May 10, 1999

FILED WITH LRC: May 12, 1999 at 10 a.m.

# KENTUCKY HERITAGE LAND CONSERVATION FUND BOARD (As Amended at ARRS, August 10, 1999)

## 418 KAR 1:050. Procedures for acquisition of land.

RELATES TO: KRS 146.550 through 146.570

STATUTORY AUTHORITY: KRS 146.560(2), 146.565[146.570]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2)

directs the board to promulgate administrative regulations, in accordance with the provisions of KRS Chapter 13A, on acquisition. This administrative regulation governs the acquisition of land purchased, in whole or in part, with fund money.

Section 1. An applicant shall attempt to acquire:

(1) Land at a price below its fair market value; and

(2) Available matching funds for the purchase of land from a public or private entity. [Applicants shall attempt to acquire land below fair market value and attempt to acquire matching public or private funds;]

Section 2. Transfer of Funds. An expenditure [Expenditures] approved by the board shall be disbursed promptly by the Natural Resources and Environmental Protection Cabinet, if [provided] the recipient of fund money has entered into the written memorandum of agreement required by Section 5 of 401 KAR 1:030 or Section 3 of 401 KAR 1:040 [401 KAR 1:030, Section 5, or 418 KAR 1:040, Section 3; has complied strictly with the requirements of the application, the most recent RMP approved by the board, KRS 146.550 through 146.570, this chapter, and any other applicable laws of the Commonwealth of Kentucky][and, in the case of local governments, has conveyed to the board a conservation easement pursuant to 418 KAR 1:040, Section 4;].

Section 3. Deadline for Acquisition. The project site shall be acquired within two (2) years of board approval of the acquisition. An extension [Extensions] may be granted by the board upon receipt of a written request for extension.

Section 4. Verification. (1) Within ninety (90) days of purchase, a recipient of fund money shall provide to the board, a certified copy of the deed of conveyance for land acquired.

(2) The deed shall:

(a) Indicate that it has been filed of record in the courthouse of the county where the real estate is located; and

(b) Indicate the amount of consideration paid for the real estate, in accordance with KRS 45.450. [Recipients of fund money shall provide to the board, within ninety (90) days of land acquisition, verification of land acquisition and money expended for acquisition.]

WILLIAM H. MARTIN, Chairman

BARBARA FOSTER, General Counsel

APPROVED BY AGENCY: May 10, 1999

FILED WITH LRC: May 12, 1999 at 10 a.m.

# KENTUCKY HERITAGE LAND CONSERVATION FUND BOARD (As Amended at ARRS, August 10, 1999)

## 418 KAR 1:060. Management.

RELATES TO: KRS 146.550 through 146.570

STATUTORY AUTHORITY: KRS 146.560(2), 146.565[~~146.570~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2)

requires the board to promulgate administrative regulations necessary for the application for funds from agencies identified in KRS 146.570, review and approval of projects and grants. This administrative regulation establishes the procedures for management of land acquired with fund money. [KRS 146.560(2) directs the board to promulgate, in accordance with the provisions of KRS Chapter 13A, administrative regulations deemed necessary for the application for funds from the agencies identified in KRS 146.570; review and approval of proposed projects, and review and approval of grants. KRS 146.565 requires prior board approval of expenditure of funds. KRS 146.570(3) requires each recipient of fund money to develop and implement a resource management plan, allocate at least ten (10) percent of fund money received for management, and maintain in perpetuity, for the purposes set out in KRS 146.560, lands acquired with fund money. This administrative regulation governs the management of land acquired with fund money.]

Section 1. Purpose. Each recipient of fund money shall maintain in perpetuity for the purposes set forth in KRS 146.560 land acquired with fund money. Management practices shall also meet the requirements of KRS 146.550 through 146.570, this chapter, any other applicable laws of the Commonwealth, the application, any memorandum of agreement between the board and the recipient of fund money, any conservation easement which pertains to the project site, and the most recent RMP approved by the board.

Section 2. Preliminary RMP. (1) An applicant for fund money shall submit to the board a preliminary RMP simultaneously with an application submitted pursuant to 418 KAR 1:030 or 1:040. The applicant shall follow the preliminary RMP instructions incorporated by reference in Section 16 of this administrative regulation.

(2) The preliminary RMP shall include at least the following information:

(a) The purpose for which the project site will be acquired and managed;

(b) A description of the management activities that will occur on the project site, including those related to natural resource protection, resource restoration and enhancement, archeological and historical resource protection, security, safety, and maintenance of the project site;

(c) An explanation of how the management activities will further the purpose of the project site;

(d) A description of physical improvements, existing and proposed, at the project site, and an explanation of how these activities will be coordinated with the protection of plant and animal species and communities;

(e) A description of how public access will be provided;

(f) A description of all agreements, existing and anticipated, which affect, or may affect, the project site and its use, including, but not limited to, management agreements, leases, easements, and licenses;

(g) A description of existing and anticipated types of public use and restrictions at the project site; and

(h) The approximate costs, including staffing costs, and potential funding sources for the items listed in paragraphs (a) through (g) of this subsection.

Section 3. Final RMP. (1) A recipient of fund money shall submit to [file with] the board [county clerk in each county in which the project site is located], within two and one-half (2 1/2) years of receipt of funding [land acquisition], a final RMP which [has been approved by the board] is consistent with the preliminary RMP and application, and which meets the requirements of KRS 146.550 through 146.570, this chapter, any memorandum of agreement between the board and the recipient, and any conservation easement which pertains to the project site. The applicant shall follow the final RMP instructions incorporated by reference in Section 16 of this administrative regulation.

(2) The final RMP shall include at least the following information:

(a) A table of contents;

(b) General information including the name of the project, the location of the project site, the name, address, and phone number of the property owner and contact persons, a description of natural resources, and historical information relative to site management;

(c) The purpose and proposed future use [purpose(s) and proposed future uses] of the project site;

(d) An explanation of how commitments made in the application, preliminary RMP, memorandum of agreement and conservation easement are reflected in the management plan;

(e) Any biological or archaeological inventories that have been conducted; [A description of the management activities that will occur on the project site, including those related to natural resource protection, resource restoration and enhancement, archeological and historical resource protection, staffing, security, safety, maintenance of the project site, and coordination of management activities with adjacent landowners and other resource protection agencies;]

(f) A monitoring plan to ensure the continued viability of natural communities and endangered, threatened and special concern plant and animal species on the project site;

(g) A description of the management activities that will occur on the project site, including those related to natural resource protection, resource restoration and enhancement, archeological and historical resource protection, staffing, security, safety, maintenance of the project site, and coordination of management activities with adjacent landowners and other resource protection agencies;

(h) An explanation of how the proposed management activities will further the purpose [purpose(s)] of the project site;

(i) The identification and location of physical improvements, existing and proposed, on a master site plan;

(j) A description of how public access will be provided;

(k) A description of all agreements, existing and anticipated, which affect, or may affect, the project site and its use, including, but not limited to, management agreements, leases, easements, and licenses;

(l) A description of existing and anticipated types of public use and restrictions at the project site;

(m) An explanation of the procedures that will be utilized to assess progress in achieving the goals set forth in the final RMP;

(n) An explanation of the procedures that will be utilized to ensure that the project site is identified by one (1) or more appropriate signs and if the site will be identified on literature or advertising; and

(o) The estimated costs of the activities listed in paragraphs (e) through (n) of this subsection.

(3) An applicant may request that its preliminary RMP serve as the final RMP if the preliminary RMP meets all the requirements of subsection (2) of this section.

(4) The board shall vote to accept or reject the final RMP. If it is rejected, the board shall identify the deficiencies and notify the applicant of those deficiencies. The applicant shall correct these deficiencies within sixty (60) days of notification from the board. [An explanation of how the proposed management activities will further the purpose(s) of the project site;

(g) The identification and location of physical improvements, existing and proposed, on a master site plan;

(h) A description of how public access will be provided;

(i) A description of all agreements, existing and anticipated, which affect, or may affect, the project site and its use, including, but not limited to, management agreements, leases, easements, and licenses;

(j) A description of existing and anticipated types of public use and restrictions at the project site;

(k) A monitoring plan to ensure the continued viability of natural communities and endangered, threatened and special concern plant and animal species on the project site;

(l) An explanation of the procedures that will be utilized to assess progress in achieving the goals set forth in the final RMP;

(m) An explanation of the procedures that will be utilized to ensure that the project site is identified on all signs, literature, and advertising as being publicly owned and as having been purchased with fund money; and

(n) The estimated costs of the activities listed in paragraphs (c) through (m) of this subsection.]

Section 4. Land acquired, in whole or in part, with money from the fund shall be managed in strict accordance with the most recent RMP approved by the board.

Section 5. Amendment of RMPs. RMPs may be amended only upon prior written board approval. Until [and unless] board approval of an amendment is obtained, the recipient of fund money shall adhere strictly to the most recent RMP approved by the board.

Section 6. Management Agreements. A recipient of fund money may, with prior approval of the board, enter into agreements with third parties for management of land. Despite the terms of any management agreement, the recipient of fund money retains full responsibility for management of the land in accordance with the requirements of KRS 146.550 through 146.570, this chapter, any other applicable laws of the Commonwealth of Kentucky, any memorandum of agreement between the board and the recipient, any conservation easement which pertains to the project site, and the most recent RMP approved by the board.

Section 7. Time Limits. Money initially approved by the board for management shall be expended within two and one-half (2 1/2) years of receipt of funds from the board [land acquisition]. An extension may be granted [Extensions may be granted for cause] by the board upon receipt of a written request for extension.

Section 8. Application for Additional Management Funds. (1) The board may, at its discretion, grant requests for additional management money. [Requests for additional management money shall be in writing and shall be submitted to the board at least two and one-half (2 1/2) years after land acquisition.]

(2) [Additional management awards shall not exceed fifty (50) percent of the initial management funds allocated to the project.

(3) The board shall consider the following factors in its evaluation of requests for additional management money:

(a) The applicant's past management record;

(b) The applicant's need for additional management funds; and

(c) Funds available.

Section 9. Verification. Recipients of fund money shall provide to the board, within three (3) years of land acquisition or six (6) months of expenditure of funds, whichever comes first, verification of money expended on land management.

Section 10. Joint RMPs. Applicants may submit joint RMPs which specify which entity will perform each aspect of management. Each

applicant shall remain responsible for all aspects of management.

Section 11. Reports. (1) Recipients of fund money shall submit to the board management reports detailing:

(a) The status of the project;

(b) The applicant's compliance with the most recent RMP approved by the board; and

(c) The status of any final RMP that has yet to be submitted to, or approved by, the board.

(2) Management reports shall be submitted annually until the final RMP has received board approval. Following approval of the final RMP, additional management reports shall be submitted upon request of the board. [Thereafter, the reports shall be submitted biennially.] State agency reports are due on or before the date of the first board meeting of the year. Local government and state college and university reports are due on or before the date of the third board meeting of the year.

Section 12. [Filing. Recipients of fund money shall file, in the office of the county clerk in the county in which the land is located, approved preliminary RMPs within thirty (30) days of land acquisition. Final RMPs shall be filed within the time limits set forth in Section 3 of this administrative regulation. Approved RMP amendments shall be filed within thirty (30) days of receipt of board approval.

Section 13. [14:] Right of Entry. Recipients of fund money shall permit members or agents of the board to enter, at any reasonable time, with or without notice, property purchased, in whole or in part, with fund money to ensure that the property is being managed in accordance with KRS 146.550 through 146.570, this chapter, any other applicable laws of the Commonwealth, the application, any memorandum of agreement between the board and the recipient, any conservation easement that pertains to the project site, and the most recent RMP approved by the board.

Section 13. [14:] Transfer or Encumbrance of Land. Recipients of fund money shall not, without prior board approval, sell, give, devise, or otherwise convey or encumber land acquired, in whole or in part, with fund money.

Section 14. [15:] Identification. The project site shall be identified by one (1) or more signs, and literature or advertising, where appropriate, shall also identify the site as having been purchased with money from the fund. [on all signs, literature, and advertising as being publicly owned and as having been purchased with money from the fund.]

Section 15. [16:] Incorporation by Reference. (1) The following material is [documents are] incorporated by reference:

(a) [and are available for public inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the Office of the Commissioner, Department for Natural Resources, Natural Resources and Environmental Protection Cabinet, 663 Teton Trail, Frankfort, Kentucky 40601:

(+) "Preliminary Resource Management Plan Instructions (January 1999), Form Number HL-2", [3, Kentucky Heritage Land Conservation Fund Board, Frankfort, Kentucky, April 1995; and]

(b) [(2)] "Final Resource Management Plan Instructions (January 1999), Form Number HL-3", [4, Kentucky Heritage Land Conservation Fund Board, Frankfort, Kentucky, April 1995.]

(2) This material may be inspected, copied, or obtained at the Office of the Commissioner, Department for Natural Resources, 663 Teton Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m.

WILLIAM H. MARTIN, Chairman

BARBARA FOSTER, General Counsel

APPROVED BY AGENCY: May 10, 1999

FILED WITH LRC: May 12, 1999 at 10 a.m.

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KENTUCKY HERITAGE LAND CONSERVATION FUND BOARD  
(As Amended at ARRS, August 10, 1999)

418 KAR 1:070. Remedies.

RELATES TO: KRS 146.550 through 146.570

STATUTORY AUTHORITY: KRS 146.560(2), 146.565[-146.570]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2)

requires the board to promulgate administrative regulations necessary for the application for funds from agencies identified in KRS 146.570, review and approval of projects and grants, and acquisition of land. This administrative regulation establishes the requirements for maintaining land acquired with fund money and enables the board to ensure that fund money is used for acquisition and management, in accordance with KRS 146.560. [KRS 146.570(3) requires each recipient of money to implement a RMP for each tract acquired, allocate at least ten (10) percent of moneys received for management, and maintain in perpetuity, for the purposes set out in KRS 146.560, lands acquired with fund money. It also requires fund money to be spent exclusively on acquisition and management of lands as defined in KRS 146.560. Pursuant to KRS 146.565, board approval is a prerequisite to land acquisition and expenditure of funds. This administrative regulation ensures that land acquired with fund money is maintained in accordance with these requirements and that fund money is used for acquisition and management only, in accordance with KRS 146.560.]

Section 1. Forfeiture of Money. (1) Funds approved by the board pursuant to KRS 146.570(4)(f) for land acquisition which, within two (2) years of board approval, is not expended on acquisition of approved land shall revert to the fund. The board may grant an extension [written extensions for cause] upon receipt of a written request.

(2) Money initially approved by the board for management pursuant to KRS 146.570(4)(f) which, within two and one-half (2 1/2) years of receipt of funds from the board [land acquisition], is not expended on management of approved land shall revert to the fund. The board may grant an extension [written extensions for cause] upon receipt of a written request.

Section 2. Forfeiture of Land. (1) Land acquired with fund money shall be [is] subject to forfeiture if the following occurs: [- as determined by the board, if any of the following has occurred:] [The following occurrences may result, as determined by the board, in the forfeiture of land acquired with fund proceeds:]

(a) Failure to maintain and manage land acquired with fund proceeds for the purposes set forth in KRS 146.560;

(b) Violation of a memorandum of agreement between the board and the recipient of fund money;

(c) Violation of the terms of any conservation easement which pertains to land purchased, in whole or in part, with fund proceeds;

(d) Falsification of information or inaccurate information in the application for a competitive grant or state agency project;

(e) Failure to provide, within ninety (90) days of acquisition, verification of land acquisition and money expended for acquisition;

(f) Falsification of information or inaccurate information in the preliminary or final RMP;

(g) Failure to adhere strictly to, or implement, the most recent RMP which has received board approval;

(h) Failure to submit a final RMP to the board [file with the county clerk's office], within two and one-half (2 1/2) years, of receipt of funds from the board [of land acquisition, a final RMP which has been approved by the board];

(i) Expenditure of fund money on anything other than items which have received prior board approval;

(j) Failure to provide verification, within three (3) years of land acquisition or six (6) months of expenditure of funds, whichever comes first, of money expended on management of the land;

(k) Failure to permit entry of members or agents of the board pursuant to 418 KAR 1:060, Section 13;

(l) Failure to submit reports to the board pursuant to 418 KAR 1:060, Section 11;

(m) Any attempt to transfer land in violation of 418 KAR 1:060, Section 14; or

(n) Dissolution of the recipient entity.

(2) Any land forfeited pursuant to this administrative regulation shall be transferred to an appropriate land management entity, as designated by the board. Forfeited land shall continue to be managed in accordance with 418 KAR 1:060, Section 1.

Section 3. [Other] Remedies. The board may utilize all [other] remedies available to it by law, including an injunction and restraining order [- but not limited to, injunctions and restraining orders] to enforce the provisions of KRS 146.550 through 146.570, this chapter, and any other applicable laws of the Commonwealth of Kentucky; any application submitted to the board; any memorandum of agreement between the board and a recipient of fund money; any conservation [conversation] easement which pertains to land purchased, in whole or in part, with fund money; and any RMP approved by the board.

WILLIAM H. MARTIN, Chairman

BARBARA FOSTER, General Counsel

APPROVED BY AGENCY: May 10, 1999

FILED WITH LRC: May 12, 1999 at 10 a.m.

JUSTICE CABINET

(As Amended at ARRS, August 10, 1999)

500 KAR 13:020. Internal Investigations Unit.

RELATES TO: KRS Chapter 15A

STATUTORY AUTHORITY: KRS 15A.160, *U.S. vs Commonwealth*, Civil Action No. 3:95 CV-7575

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes the procedures for investigations by the "Internal Investigations Unit" (hereinafter "IIU") Office of the Secretary. 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) "IIU" means Internal Investigation Unit, Office of the Secretary, Justice Cabinet.

(5) "Perpetrator" means an individual employed or a volunteer at a facility against whom an allegation of a special incident has been founded by the Internal Investigations Unit.

(6) "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) Does not provide appropriate supervision, medical care, food, clothing, shelter or education;

(f) Allows or encourages a resident to:

1. Use drugs, alcohol or gamble; or

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### 2. Engage in other illegal activity;

(g) Uses humiliating, demeaning, profane or racially charged language or gestures directed at a resident;

(h) Uses verbal threats of harm directed at a resident;

(i) Exhibits a pattern of harassing conduct directed at a resident.

(j) Uses or attempts to use a resident in the pursuit of the staff's own personal gain;

(k) Accepts a bribe from a resident or indicates a bribe would be accepted.

(l) Enters any unlawful transaction with a youth as set forth in KRS 530.064, 530.065 and 530.070.

(m) Enters into a business relationship with a resident;

(n) Extends unearned special privileges to a resident in return for something done for staff. [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 and/or gestures 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.]

(7) "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 or contracted with 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 shall 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 does not indicate imminent danger, the investigation shall be initiated within twenty-four (24) hours and personal contact made with the victim within seventy-two (72) hours. Issues to be considered in determining how soon personal contact should

be made include the nature of the allegation, how recently the alleged incident occurred and the measures taken by the facility to ensure the safety of the resident. Any deviation from the time frames shall require supervisory approval and be documented in the investigative file.

(3) 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 every effort made to have personal contact with the victim within three (3) workdays. Unsuccessful efforts to make personal contact shall be documented in the investigative file.

(4) 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 and the local county attorney.

(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) Take possession of and 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 the Commissioner of the Department of Juvenile Justice.

(4) Forward all completed investigations that appear to meet the definition of an abused or neglected child in KRS 600.020 to the Cabinet for Families and Children.

(5) Forward all completed investigations that are founded to the local county attorney.

(6) Forward all completed investigations to the Juvenile Services Review Board as required by *U.S. v. Commonwealth No. 3:95-CV-7575*.

(a) The board shall make a determination of whether the facts support a finding that a special incident occurred; and

(b) The board shall recommend disciplinary action.

(c) The determination and recommendations by the board shall be forwarded to the Commissioner of the Department of Juvenile Justice.

**Section 7 . Incorporation by Reference. (1) "IIU-2, Special Incident Reporting Form", (5/99), Justice Cabinet, is incorporated by reference.**

**(2) It may be inspected, copied, or obtained at Justice Cabinet, 403 Wapping Street, 2d Floor Bush Building, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.**

ROBERT F. STEPHENS, Secretary

BARBARA W. JONES, General Counsel

APPROVED BY AGENCY: June 7, 1999

FILED WITH LRC: June 8, 1999 at 4 p.m.



JUSTICE CABINET  
Kentucky Department of Criminal Justice Training  
(As Amended at ARRS, August 10, 1999)

**503 KAR 3:020. [In-service] Law enforcement training course trainee [conduct] requirements; misconduct; penalties; discipline procedures [and penalties].**

RELATES TO: KRS 15A.070

STATUTORY AUTHORITY: KRS [Chapter 13A,] 15A.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.070 authorizes Department of Criminal Justice Training to establish, supervise and coordinate training programs and schools for law enforcement personnel. This administrative regulation prescribes conduct requirements of trainees attending in-service law enforcement training courses conducted by the Department of Criminal Justice Training, prescribes procedures for disciplinary action, and sets penalties.

Section 1. Removing a Trainee from the Course. (1) Unqualified trainee. If a trainee is not qualified to participate in training, he shall:

(a) Be removed from training by the:

1. Director;
2. Branch manager; or
3. Section supervisor;

(b) Not receive credit for completed portions of training.

(2) A trainee shall be considered unqualified if:

(a) He or his agency files an incomplete or fraudulent application to attend the training course;

(b) He is not presently employed as a law enforcement officer and has not received special permission to attend;

(c) He arrives at the beginning of training physically unable to participate because of:

1. Physical injury; or
2. Being under the influence of alcohol or drugs (prescription or illegal);

(d) He has had prior disciplinary action while at DOCJT which would prevent participation (expelled or suspended from training), or has a pending disciplinary action which was initiated during a previous DOCJT training course;

(e) He is unprepared to participate in training due to his arrival without the required equipment, license, uniform, or preparation;

(f) He failed to complete a prerequisite law enforcement training course; or

(g) He is not employed in a capacity for which the course is designed and has not received special permission to attend.

(3) If a trainee is removed from training, pursuant to subsection (1) of this section, within thirty (30) days of the removal, he may request in writing an administrative hearing, which shall comply with KRS Chapter 13B.

(4) [(3)] Agency request. The department shall remove a trainee from training upon written request of the trainee's law enforcement agency. The trainee shall not receive credit for completed portions of the course.

Section 2. Gifts. A gift from trainees to department staff shall conform with the requirements of KRS 11A.040 [Chapter 11A, the Executive Branch Code of Ethics].

Section 3. Penalties for Misconduct. (1) The following penalties shall apply to a trainee's failure to meet conduct requirements of the department. The penalties are listed in order of decreasing severity.

(a) Expulsion. The trainee is dismissed from the course and all privileges are terminated.

(b) Loss of privileges. The trainee's privileges as specified in the imposed penalty are rescinded for a stated period of time. The trainee's participation in training activities is not affected.

(c) Written reprimand. The trainee is reprimanded in writing for violating a conduct requirement.

(d) Verbal warning. The trainee is warned verbally that he has violated a conduct requirement.

(2) Second and subsequent violations.

(a) If a trainee has received a penalty for violating a conduct requirement, upon a second violation of any conduct requirement the next higher penalty shall be added to the list of penalties which may be imposed for the second violation.

(b) If a trainee has previously received two (2) penalties for violating two (2) conduct requirements, upon a third or subsequent violation of any conduct requirement the next two (2) higher penalties shall be added to the list of penalties which may be imposed for the third or subsequent violation.

(3) Giving notice of disciplinary action to trainee and trainee's agency. The department shall give written notice to a trainee of any penalty imposed upon him. The trainee's agency shall be given written notice of any penalty imposed upon the trainee except a verbal warning, and shall be given verbal notice when a trainee has been charged with a violation of a conduct requirement and has requested a hearing.

(4) Penalty records.

(a) The department shall keep a written record of any penalty imposed on a trainee.

(b) A copy of any penalty imposed on a trainee shall be placed in his training file.

(c) Only the department, the trainee, and the trainee's agency head shall have access to the penalty records in a trainee's training file unless broader access is required by law.

Section 4. Termination of Dangerous or Disruptive Situation. If the conduct or condition of a trainee constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of a department activity, a department staff member may take all reasonable steps necessary to terminate the situation.

Section 5. Conduct Requirements. (1) A trainee attending a training course shall meet the following conduct requirements:

(a) General conduct - chain of command.

(b) All communications shall follow chain of command of the department. Exceptions are the unavailability of a supervisor, or the trainee's complaint regarding a supervisor. Penalty: verbal warning or written reprimand.

(2) General conduct - insubordination. A trainee shall:

(a) Obey a lawful order from a department staff member. Penalty: verbal warning, written reprimand, loss of privileges.

(b) Refrain from vulgarity, rudeness, violent, threatening, or offensive confrontation, or other disrespectful conduct directed toward a department staff member, trainee or other department trainee or guest. Penalty: verbal warning, written reprimand.

(3) General conduct - grooming. The trainee shall maintain a professional personal appearance which reflects favorably upon the trainee, the department, and the trainee's agency. Penalty: verbal warning or written reprimand.

(4) General conduct - alcoholic beverages and other intoxicants.

(a) A trainee shall not possess, consume nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician while attending a training course. Penalty: written reprimand, loss of privileges, or expulsion.

(b) If a trainee has taken a controlled substance as prescribed by a physician or has taken any other medication, whether prescribed or not, he shall not participate in any training activity if he is under the influence thereof to the extent that the trainee may be impaired or may endanger himself or other persons or property. A trainee shall advise the section supervisor in writing of the use of controlled substance or medication whether or not it has been prescribed by a physician. Penalty: verbal warning, written reprimand.

(c) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, or branch manager observes an unlawfully-possessed intoxicating substance, he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(5) General conduct - weapons and other dangerous devices.

(a) A trainee may possess his regular service weapon or authorized off-duty weapon, including ammunition, on property used



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by the department. A trainee shall not possess any other deadly weapons (as defined in KRS 500.080), ammunition, destructive devices or booby trap devices (as defined in KRS 237.030), hazardous substances (as defined in KRS 224.01-400), fireworks, or instruments used by law enforcement for control purposes (such as batons, stun guns, Mace, and pepper spray) on property used by the department except under circumstances specifically authorized by the department. Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.

(b) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, branch manager, director or commissioner observes an unlawfully-possessed weapon or other dangerous device he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(6) General conduct - department property.

(a) A trainee shall not negligently or intentionally damage, destroy, fail to return, or be wasteful of property of the department or any other facility used by the department. Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.

(b) A trainee shall not have successfully completed training until he has returned all issued items or made satisfactory arrangements to pay for unreturned or damaged items.

(7) General conduct - conduct unbecoming a trainee. A trainee shall not:

(a) Engage in criminal activity, including acts which would constitute a felony, misdemeanor or violation, while enrolled in a training class. Depending on the nature of the conduct, the trainee shall be penalized by a verbal warning, written reprimand, loss of privileges, suspension or expulsion. **Additionally, the appropriate prosecutorial authority may be notified of the activity.**

(b) Engage in conduct which creates a danger or risk of danger to the trainee or another, possess obscene material as defined in KRS 531.010, engage in conduct which is unreasonably annoying, engage in fighting or in violent, tumultuous or threatening conduct, engage in sexual harassment or conduct which is patently offensive. Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.

(8) Training activities - absences.

(a) A trainee is absent if he is not physically present in a class or other required department activity for more than ten (10) minutes. A trainee shall give advance notice of an absence when possible. Penalty for an unexcused absence: verbal warning or written reprimand; penalty for an unexcused tardiness: verbal warning or written reprimand.

(b) All absences from training must be approved by the section supervisor or branch manager. Absences shall only be excused for legitimate reasons including sickness, court appearances, and emergencies. Written notice shall be given prior to the absence, or in the case of unexpected absences on the first day upon returning.

(c) If a trainee is absent less than ten (10) percent of a subject area, excused or unexcused, he shall make up for the absence by completing a special assignment. The assignment shall be provided by the instructor who taught the missed subject area and shall be approved by the section supervisor. Failure to complete the assignment shall be deemed a failure for that subject area.

(d) A trainee shall repeat a subject area in which he has had an absence of ten (10) percent or more, excused or unexcused.

(e) A trainee shall not be allowed to repeat a test that occurs during the trainee's unexcused absence.

(9) Training activities - breaks. Trainees shall be allowed a ten (10) minute break per hour of instruction if possible. Breaks shall be taken only in areas designated by the department. Penalty: verbal warning or written reprimand.

(10) Training activities- general conduct.

(a) A trainee shall be attentive during training activities. Penalty: verbal warning or written reprimand.

(b) A trainee shall not use tobacco products during, or bring food or drink into, any department training activity, regardless of location, unless permitted by the branch manager. Penalty: verbal warning or written reprimand.

(c) A trainee shall not negligently or intentionally engage in

conduct which creates or may create a risk of injury to others during a training session. **Penalty: verbal warning, written reprimand, loss of privileges, or expulsion. [3]**

(11) Training activities - dishonesty. A trainee shall not cheat or attempt to cheat on a test or on any other assignment or activity; or alter or attempt to alter a test grade or other evaluation result; or engage in any other conduct intended to gain an undeserved evaluation for himself or another. Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.

(12) Residence hall.

(a) Each trainee shall be responsible for cleaning his area. Each morning, prior to leaving for class training, a trainee shall ensure his room is clean and free of trash, with beds made and the room ready for inspection. Penalty: verbal warning, written reprimand, loss of privileges.

(b) Doors shall be locked whenever a room is unoccupied. Penalty: verbal warning or written reprimand.

(c) The use of cooking appliances or space heaters is prohibited. Penalty: verbal warning, written reprimand, loss of privileges.

(d) All residence hall rooms, closets, and containers therein may be inspected by department staff for purposes of safety, sanitation and rule violations.

(e) A trainee residing at the residence hall shall not:

1. Have any person of the opposite sex in his room without the permission of the department. Penalty: verbal warning, written reprimand, loss of privileges.

2. Keep pets, animals, or birds of any kind in his room. Penalty: verbal warning, written reprimand, loss of privileges.

3. Engage in dangerous, disruptive, immoral or obscene behavior. Penalty: verbal warning, written reprimand, loss of privileges.

**Section 6. Summary Discipline.** Except for summary discipline, no penalty shall be imposed upon a trainee unless charges have first been brought by the legal officer.

(1) The following department staff members have the authority to impose the specified penalties summarily without meeting the requirements of the formal disciplinary procedures provided by Sections 8 through 13 of this administrative regulation. To have the authority to impose summary discipline, the staff member shall believe by a preponderance of the evidence that the trainee has engaged in the misconduct.

(a) A department instructor may summarily impose a verbal warning.

(b) The section supervisor, branch manager, director, or commissioner may summarily impose a verbal warning or written reprimand [~~written reprimand, or loss of privileges~~].

(2) Before imposing a penalty summarily, the staff member shall give the trainee the opportunity to give an explanation.

(3) A summarily imposed penalty shall be reviewed by, and may be rescinded or modified by, the immediate supervisor of the staff member imposing the penalty. The reviewer shall provide the trainee with the opportunity to give an explanation.

**Section 7. Removal from Training Pending an Initial Appearance Before the Commissioner.** (1) When a **charge [request for charges]** is filed against a trainee, the commissioner or director may remove the trainee from some or all training until the trainee's initial appearance before the commissioner if he has reasonable grounds to believe the alleged misconduct took place and:

(a) He has reasonable suspicion to believe the trainee would be dangerous or disruptive if not removed; or

(b) The trainee **has been [may be]** charged with misconduct serious enough to authorize expulsion.

(2) A trainee who has been removed from training pending an initial appearance before the commissioner shall be provided the initial appearance within three (3) training days of the removal.

**Section 8. Complaint.** Anyone having reasonable grounds for believing that a trainee has violated any of the conduct requirements identified in this administrative regulation may file a complaint with the section supervisor. This complaint shall be in writing setting forth the facts upon which the complaint is based.

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Section 9. Investigation by Section Supervisor. (1) If the section supervisor receives a complaint of or witnesses apparent misconduct, he shall take statements and otherwise investigate the matter.

(2) After investigating the matter, the section supervisor shall:

(a) Take no action if none is justified by the evidence; or

(b) Impose appropriate summary discipline; or

(c) File, with the legal officer, a written request that charges be brought against the trainee. The request for charges shall describe the alleged misconduct and designate the specific conduct requirements violated. All pertinent evidence and documents including the complaint, and statements of the trainee and witnesses shall be forwarded to the legal officer.

Section 10. Review by Legal Officer; Placing Charges. (1) The legal officer shall review the request for charges and the supporting evidence and documents.

(2) The legal officer may make or cause further inquiry into the matter for additional information.

(3) The legal officer shall either:

(a) File such charges against the trainee as he believes are justified by the evidence; or

(b) Deny the request for charges if the evidence does not support any charges. If the legal officer declines to file charges, he shall provide the commissioner with a statement of his reasons for not filing charges.

(4) The charging document shall:

(a) Be in writing;

(b) Particularly describe the alleged misconduct so as to reasonably inform the trainee of the nature of the allegation;

(c) State the time, date and place the trainee shall make an initial appearance before the commissioner to answer the charges.

(d) Be signed by the legal officer; and

(e) Be served upon the trainee at least one (1) hour before his initial appearance before the commissioner. Have a copy served upon the trainee either in person or by mail

Section 11. Initial Appearance Before the Commissioner. (1) The initial appearance before the commissioner shall be held no more than three (3) training days after the charges have been served on the trainee. If the trainee after receiving proper notice, fails to appear, the commissioner may proceed in his absence and the trainee shall be notified in writing of any action taken.

(2) At the initial appearance before the commissioner:

(a) The legal officer shall:

1. Read the charges to the trainee;

2. Explain to the trainee:

a. The charges;

b. His right to a hearing in accordance with KRS Chapter 13B;

and

c. His right to be represented by legal counsel.

(b) The legal officer shall explain to the trainee the possible answers to the charges: admit the charges are true, deny the charges are true but waive a hearing, or deny the charges are true and ask for a hearing.

(c) The commissioner shall advise the trainee of the penalty which shall be imposed if the trainee admits the charges or waives a hearing.

(d) The trainee shall be requested to answer the charges.

(e) If the trainee chooses to waive his rights and admits the charges or denies the charges but waives a hearing:

1. He shall be permitted to make a statement of explanation;

and

2. The commissioner shall impose a penalty.

(f) If the trainee denies the charges and requests a hearing, or refuses to answer the charges, the commissioner shall set a date for the hearing. A notice of administrative hearing as required by KRS 13B.050 shall be served on the trainee within forty-eight (48) hours of the initial appearance before the commissioner.

(3) The commissioner may remove the trainee from some or all training until the hearing if:

(a) He has reasonable grounds to believe the trainee would be dangerous or disruptive if not removed; or

(b) The trainee is charged with misconduct serious enough to

authorize expulsion as a possible penalty.

Section 12. Hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

Section 13. Appeal. (1) A trainee may appeal an order entered by the commissioner which imposes a penalty adverse to the trainee by filing a written notice of appeal to the Secretary of the Justice Cabinet.

(a) The notice of appeal shall state the points on which the appeal is based and shall be on a form provided by the department. The form is made a part of 503 KAR 3:010 by reference.

(b) A copy of the order being appealed shall be attached to the notice of appeal.

(c) A copy of the notice of appeal shall be delivered to the commissioner of the department by certified mail.

(2) The appeal shall not be heard de novo but shall be determined upon the audio record and any written or physical evidence introduced at the hearing.

(3) The Secretary of the Justice Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal. (Conduct—A trainee attending a training course conducted by the Department of Criminal Justice Training shall be subject to the following rules of conduct:

(1) Absences.

(a) For the purpose of this section, absence is defined as not being physically present in a class.

(b) Any absences of less than twenty (20) percent of the subject area, excused or unexcused, shall be made up by completion of a special assignment determined by the instructor of the missed subject area and approved by the supervisor of the section conducting the course. Any absence, excused or unexcused, of twenty (20) percent or more, requires the trainee to repeat the area of instruction. Any test that occurs during an unexcused absence cannot be made up.

(c) To be excused, absences shall be for legitimate reasons such as sickness, court appearances, and emergencies. Written notice shall be given when possible before the absence or on the first day upon returning in unexpected absences.

(2) Alcoholic beverages or other intoxicating substances.

(a) A trainee shall not possess, consume nor be under the influence of alcoholic beverages or controlled substances not therapeutically prescribed by a physician while on property utilized by the Department of Criminal Justice Training.

(b) If a trainee has taken a controlled substance as prescribed by a physician or has taken any other medication whether prescribed or not he or she shall not participate in any training activity if the trainee is under the influence thereof to the extent that the trainee may be impaired or may endanger himself or other persons or property. A trainee shall advise the in-service course supervisor of the use of controlled substances or medication whether or not it has been prescribed by a physician.

(3) Appearance.

(a) Personal appearance shall be such as to project an image which will reflect favorably upon the student officer as well as the Department of Criminal Justice Training and the student officer's employing agency.

(b) Clothing, jewelry or other accessories which depict obscenities (either pictorially or written) or any symbol representing objects not considered in good taste (based on professional police standards, or which depict words considered abusive) cannot be worn while attending Department of Criminal Justice Training classes or while on Department of Criminal Justice Training or campus property.

(4) Breaks.

(a) Each class may be allowed a ten (10) minute break per hour of instruction when possible. The course instructor shall designate the specific time and/or place for breaks.

(b) Trainees, attending class in the Stratton Building, are prohibited from taking breaks except in the following designated areas:

1. Lower level of breezeway (outside, between main building and gym);

2. Stratton Cafeteria; and

3. Second floor vending area.

(5) Conduct unbecoming an officer-trainee.

(a) A trainee shall not conduct himself in a manner unbecoming

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an officer-trainee:

(b) For the purposes of this section conduct unbecoming an officer trainee shall consist of, but not be limited to:

1. Inefficient or wasteful use of materials, supplies and equipment issued by the Department of Criminal Justice Training for the use by trainees;

2. Disorderly or boisterous behavior which is or may become disruptive to a training session;

3. Careless, negligent, or inattentive conduct which creates or may create a risk of injury to others during a training session;

4. Malingering or sleeping during a training class;

5. Wearing clothing that is so dirty or tattered as to present a sloven appearance;

6. Wearing clothing in a manner that is sexually revealing or suggestive; or

7. Aiding or abetting another in any of the foregoing.

(c) Disruptive trainees may be removed from the class room at the option of the instructor.

(d) The use of tobacco, drink and food products is prohibited in all classrooms in which Department of Criminal Justice Training classes are being conducted. This policy will apply to meeting rooms in state parks, hotels and rooms of other agencies, if used in a classroom setting and for teaching a Department of Criminal Justice Training course of class, or when being used for Department of Criminal Justice Training sponsored seminar.

(e) As used in this section, classroom includes all indoor facilities and outdoor areas utilized by the Department of Criminal Justice Training for training purposes whether the facilities are regularly utilized by the department or periodically utilized such as state parks, hotels/motels, law enforcement agencies or colleges and universities.

(6) Dishonesty.

(a) A trainee shall not cheat or attempt to cheat on an examination, other evaluation or assigned project; alter or attempt to alter an examination score; deceive for profit or gain; or steal.

(b) A trainee shall not encourage, aid or abet any trainee in any of the foregoing proscribed conduct.

(7) Dormitory conduct.

(a) Backing into parking spaces is prohibited.

(b) Trainees shall observe "lights out" by 11 p.m. Sunday through Thursday except on nights prior to an academic test when the time will be extended to 12 midnight.

(c) Trainees living in the dormitory shall conduct themselves in an orderly manner. Any dangerous or disruptive behavior such as but not limited to rowdiness, loud noise, theft, immoral or obscene conduct shall not be committed.

(d) Each trainee will be responsible for cleaning his area. Each morning, prior to leaving for class, the trainee shall ensure his room is clean, free of trash, beds made and the room ready for inspection.

(e) Doors shall be locked whenever a room is unattended. While the room is unoccupied during training hours (8 a.m. — 5 p.m.), the window coverings shall be left open to their widest extension.

(f) The use of cooking appliances such as hot plates, electric skillets and ovens is prohibited.

(g) All dorm rooms and lockers are subject to inspection search for purposes of safety, sanitation and rule violations by the staff of the Department of Criminal Justice Training.

(h) The lobby of the dormitory is available to entertain visitors and guests and is not to be used as a group study area.

(i) A trainee residing at the dormitory shall:

1. Turn off all lights upon departure from the room;

2. Turn off air conditioner when leaving the room for a long period of time, including school hours and weekends while away; and

3. Turn off heating unit when leaving the room for a long period of time unless the temperature is near freezing—then leave the heater on low.

(j) A trainee shall not have any person of the opposite sex in his or her dormitory room without written permission of the class coordinator or higher staff member. No visitation shall be permitted after 10:30 p.m.

(k) Pets, animals or birds of any kind shall not be kept in rooms of the dormitory facilities.

(8) Gifts. A trainee, individually or as a participant in group action, shall not give or contribute toward the giving of a gift of value to a staff member of Department of Criminal Justice Training while participating

as a trainee in any course conducted by the Department of Criminal Justice Training.

(9) Insubordination.

(a) A trainee shall not be insubordinate.

(b) For the purpose of this section insubordination means:

1. A refusal to obey a lawful order from an instructor or other staff member of the Department of Criminal Justice Training authorized to convey the order;

2. Disrespectful conduct consisting of, but not limited to, use of vulgarity, rude remarks, obscene comments or gestures.

(10) Property loss or damage.

(a) A trainee shall not willfully or negligently damage, destroy, or fail to return property of the Department of Criminal Justice Training or university.

(b) Failure to comply with this administrative regulation shall result in a trainee having to replace or pay for the damage, destroyed or lost property upon notification.

(11) Tardiness.

(a) Class shall begin and end promptly as scheduled unless otherwise specified. All trainees are expected to be punctual for class and school functions.

(b) Those who are late during the first ten (10) minutes of a class without justification shall be considered tardy.

(c) Arrival after ten (10) minutes will be considered an absence.

(12) Weapons, explosives, etc.

(a) Weapons.

1. Deadly weapons as defined in KRS 500.080 other than an officer's regular service weapon or authorized off-duty weapon including ammunition therefore shall not be possessed on university, college or governmental property used by the Department of Criminal Justice Training except those specifically authorized by the Department of Criminal Justice Training. Weapons specifically designated by the Department of Criminal Justice Training for training purposes and which are not provided by the Department of Criminal Justice Training shall only be brought directly to the facilities of the department at specific times and removed all as may be deemed appropriate by the department. Such weapons may not be stored in trainee vehicles parked on property utilized by the Department of Criminal Justice Training.

2. Weapons specifically designated by the Department of Criminal Justice Training to be used for training purposes shall be stored in a vault to be provided by the department at all times when they are not being used directly in a training session and may be removed only for scheduled training, servicing, cleaning, or repair purposes. Servicing, cleaning, and repairs of weapons shall be effected (other than repairs which may require expertise of a qualified gunsmith) only at times, places and subject to such conditions and supervision as may be approved by the supervisor of the in-service training section. Such activity shall only be conducted in the presence of a certified firearms instructor.

(b) Devices other than firearms. Destructive devices (as defined in KRS 237.030), booby trap devices (as defined in KRS 237.030), "stun" guns, or fireworks (in all forms) shall not be possessed on university, college or governmental property used by the Department of Criminal Justice Training. Exceptions may occur for training purposes and then only as they may be provided by the department.

(c) Hazardous substances. Hazardous substances (as defined in KRS 224.877) shall not be possessed on university, college or governmental property used by the Department of Criminal Justice Training. Exceptions may occur for training purposes and then only as they may be provided by the department.

(d) Confiscation.

1. Any instructor, supervisor, assistant director or director who observes any violation of this section, shall immediately confiscate the offending item or substance.

2. These items shall then be stored in a safe and secure facility of the Department of Criminal Justice Training pending appropriate disposition.

Section 2. Summary Action. (1) Recognizing that conduct of a trainee may constitute an immediate danger or a immediate threat of danger to self or others, an instructor, section supervisor, training assistant director, director or the commissioner, having knowledge of such conduct, may summarily discipline the trainee by reprimand,

suspension from the particular training activity or by other appropriate action.

(2) Following such disciplinary action, the rules of procedure set forth in Section 4 of this administrative regulation shall be applicable.

**Section 3. Penalties.** (1) For the following violation:

(a) Alcoholic beverages or other intoxicating substances, i.e., being on property utilized by the Department of Criminal Justice Training while under the influence of alcoholic beverages or controlled substances not prescribed by a doctor, or if prescribed by a doctor participating in a training exercise while under the influence thereof to the extent that it endangers the trainee or other persons or property;

(b) Conduct unbecoming an officer trainee, i.e., willful, careless, negligent or inattentive conduct which causes injury or creates a grave risk of injury to another person or property;

(c) Dishonesty;

(d) Property loss or damage, i.e., willfully or negligently damaging, destroying or failing to return property of the Department of Criminal Justice Training or university;

(e) A second violation of the rules described in Section 1(1)(a) of this administrative regulation. The following penalty may be imposed:

1. Expulsion from training with or without prejudice. (Such expulsion shall be deemed a course failure);

2. Loss of privileges (meals, housing or both);

3. Suspension from training. (Such suspension shall be deemed a failure for that portion of training);

4. Written reprimand (with a copy filed with trainee's employing agency);

5. Probation.

(2) For the following violations:

(a) Alcoholic beverages or other intoxicating substances, i.e., the use or possession thereof not prescribed by a doctor on or about property utilized by the Department of Criminal Justice Training; possession of alcoholic beverages and/or intoxicating substances in a dormitory room shall result in loss of housing privilege;

(b) Conduct unbecoming an officer trainee except that which causes injury or damage to others or property;

(c) Insubordination;

(d) Weapons and explosives;

(e) Two (2) violations of other rules.

The following penalty may be imposed:

1. Loss of privileges (meals, housing or both);

2. Suspension from training not to exceed five (5) days (such suspension shall be deemed a failure for that portion of training);

3. Written reprimand (with a copy filed with trainee's employing agency);

4. Probation.

(3) For all other violations not specifically noted in subsections (1) and (2) of this section the following penalty may be imposed:

(a) Written reprimand;

(b) Written warning;

(c) Probation.

**Section 4. Who May Impose Penalties.** (1) Instructor. An instructor may only impose a penalty consisting of a written warning.

(2) Supervisor. A supervisor may only impose a penalty consisting of a written warning, a written reprimand or a probation.

(3) Training director. The director of the training division may only impose a penalty consisting of written warning, written reprimand, suspension from training, a loss of privileges or probation.

(4) Commissioner. The commissioner may impose a penalty consisting of any of the previously identified penalties, expulsion from training or probation.

**Section 5. Complaint Process.** (1) Complaint. Any employee of the Department of Criminal Justice Training, guest instructor, guest or any course trainee having reasonable grounds for believing that a trainee has violated any of the rules of conduct identified herein or any violation of the law may file a complaint with the supervisor who is conducting the particular course at the time or the supervisor of the training section handling that training program. This complaint should be, but is not required to be, in writing setting forth the facts upon which the complaint is based. If an instructor or the supervisor observes a violation of a rule for which only a penalty of a written warning or re-

primand is provided a complaint need not be filed.

(2) Review of complaint.

(a) Upon receiving a complaint of a violation of these rules of conduct or of a violation of law the supervisor of the training section of the particular training program shall inquire into the matter and take such statements as may be advisable.

(b) After an inquiry into and review of the complaint the supervisor may dispose of the complaint by the issuance of a written warning or reprimand or file charges.

(c) If the supervisor of the particular training program deems it advisable to file charges, the file together with the written request specifying the proscribed conduct shall be forwarded to the legal officer.

(3) Charges.

(a) Upon receipt of a request for charges, the legal officer shall review the request and the file to determine the sufficiency of the requested charge.

(b) The legal officer may make or cause further inquiry into the matter for additional information.

(c) The legal officer shall file such charges against a trainee as the legal officer believes is justified from the file and further inquiry or may deny the request for charges if the facts do not support any charges. If the legal officer declines to proceed with charges he shall notify the commissioner with a statement of reasons and the commissioner shall review the decision.

(4) Form.

(a) Charges shall be in writing.

(b) The proscribed conduct shall be particularly described so as to reasonably inform the trainee of the nature of the allegation.

(c) The charges form shall state the time, date and place the hearing on the charges shall be heard.

(d) The legal officer shall sign the charges form and have a copy served upon the trainee either in person or by mail.

**Section 6. Summary Disposition.** (1) At the appearance of the trainee the charges shall be read to the trainee and explained if need be.

(2) The trainee shall be advised of a proposed penalty to be assessed in the event the charges are admitted or in the event the trainee denies the charge but waives a hearing.

(3) The trainee shall be requested to enter a plea.

(4) If the trainee admits the charge he shall be permitted to make a statement of explanation.

(5) If the trainee admits the charge or denies the charge but waives a hearing, penalty shall be assessed and an order entered.

(6) If the trainee denies the charge and requests a hearing a date and place shall be forthwith determined and the trainee notified either in person or by mail.

**Section 7. Hearing.** (1) The hearing shall be open.

(2) A trainee charged with a violation shall have the right to be present at a hearing, to testify, to present evidence in his own behalf, present witnesses, and to question those testifying against him.

(3) Formal rules of evidence and procedures shall not be applicable.

(4) The hearing shall be recorded by audio means but need not be transcribed.

(5) Affidavits may be received provided a copy is served on the other side not less than five (5) days prior to the hearing.

(6) The legal officer shall prepare a finding of fact, conclusion of law and order at the conclusion of the hearing pursuant to direction of the staff member conducting the hearing.

**Section 8. Review.** (1) A penalty imposed by an instructor, supervisor or director shall be automatically reviewed by the next highest level in the chain of command.

(2) The review shall be made on the record only, i.e., on the audio recording of evidence, documents and statements introduced at the initial hearing.

(3) The review shall be limited to a determination of whether there are reasonable grounds for believing that the charge or charges have been sustained by the evidence and whether the penalty imposed is commensurate with the seriousness of the evidence.

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Section 9. Appeal. (1) A trainee may appeal an order entered by the commissioner which imposes a penalty adverse to the trainee by filing a written notice of appeal to the Secretary of the Justice Cabinet.

(a) The notice of appeal shall state the point (reasons) on which the appeal is based and shall be on a form provided by the Department of Criminal Justice Training. The form is made a part hereof by reference.

(b) A copy of the order being appealed shall be attached to the notice of appeal.

(c) A copy of the notice of appeal shall be delivered to the Commissioner of the Department of Criminal Justice Training by certified mail.

(2) The appeal shall not be heard de novo but shall be determined upon the audio record and any written or physical evidence introduced at the initial hearing.

(3) The Secretary of the Justice Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.

COMMONWEALTH OF KENTUCKY  
JUSTICE CABINET

In the matter of: (Name)

NOTICE OF APPEAL

Comes \_\_\_\_\_ (name) who appeals from an Order of the Commissioner of the Department of Criminal Justice Training dated \_\_\_\_\_, 19\_\_\_\_, a copy of which is annexed hereto and made a part hereof, and requests that said Order be reversed and held for naught.

The basis and reasons for this appeal are as follows:

This the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

NAME AND ADDRESS:

Served on the Department of Criminal Justice Training by mailing a true copy hereof to the commissioner thereof by certified mail this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

NAME:}

JOHN W. BIZZACK, Ph.D., Commissioner  
STEPHANIE C. BINGHAM, General Counsel  
APPROVED BY AGENCY; May 21, 1999  
FILED WITH LRC: May 21, 1999 at 4 p.m.

JUSTICE CABINET  
Department of Juvenile Justice  
(As Amended at ARRS, August 10, 1999)

505 KAR 1:080. Kentucky Educational Collaborative for State Agency Children.

RELATES TO: KRS 158.135, 158.137, 605.110 [Chapters 158, 161, 605, 610, 630, 635, 640, 645]

STATUTORY AUTHORITY: KRS 158.135, 605.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 605.110(3) requires that children maintained in a facility or program operated or contracted by the Cabinets for Families and Children, Justice, or Health Services shall, so far as possible, receive a common school education. KRS 605.110(3)(d) requires the department to promulgate administrative regulations governing the education of state agency children. This administrative regulation establishes requirements governing the Kentucky Educational Collaborative for State Agency Children. [sets forth policies for complying with KRS 158.135 and 605.110 in the Cabinet for Families and Children, Justice Cabinet, or Cabinet for Health Services; juvenile detention, residential programs, group homes, day treatment, or other programs operated, contracted, or financed through the cabinets. Programs and facilities for foster children, other than therapeutic foster care, are excluded.]

Section 1. Definitions. (1) "Average daily membership" means the average number of state agency children on the KECSAC designated child count days.

(2) "Department" means the Department of Juvenile Justice.

(3) "Educational administrative staff" means a principal, assistant principal, supervisor, coordinator, director, pupil personnel worker or guidance counselor employed or contracted by the Kentucky Educational Collaborative for State Agency Children to provide education services.

(4) "Extended school calendar" means 230 school days, of which at least 210 ~~shall be [are]~~ instructional days[; three (3) are Kentucky Educational Collaborative for State Agency Children approved professional development days;] and the remainder shall [to] be determined by the local school district, as required in KRS 158.070. It is recommended that three (3) of the noninstructional days be used for professional development designed for state agency children teachers.

(5) "Individual education program" or "IEP [(HEP)]" means the instructional program required for state agency children identified as having educational disabilities as governed by 707 KAR 1:210.

(6) "Individual plan of instruction" or "IPI [(IPt)]" means the instructional plan required for state agency children not identified as having educational disabilities.

(7) "Individual treatment plan" or "ITP [(ITP)]" means a social and behavioral intervention plan, including the plan for educational instruction, that is developed for each state agency child being served by a treatment institution or facility.

(8) "KDE" means the Kentucky Department of Education.

(9) "KECSAC" means Kentucky Educational Collaborative for State Agency Children.

(10) "Local school district" means the school district where a state agency child is [children are] provided educational services.

(11) "On-site state agency school program" means a school program operated on the campus of a residential facility or day treatment program.

(12) "Private child care agency" means a private, not state operated, program which provides care or treatment for children on a per child contractual or financed basis.

(13) "Program director" means the administrator at a state operated or contracted institution or day treatment facility or administrator of a private child care agency that is responsible for the safety and security of youth and staff and the operation of the treatment facility.

(14) "Rated capacity" means the capacity of the program as determined by the Cabinets for Families and Children or Health Services or the Justice Cabinet.

(15) "School" means the site where the educational program for state agency children is provided.

(16) "School administrator" means the lead teacher, principal, or lead educator designated by the local district or by KECSAC [the Kentucky Educational Collaborative for State Agency Children (KECSAC)] to be responsible for the operation of the daily education program, and may be the program director of a facility, if the program director has [- The program director may also be the school administrator in some facilities, if they have] appropriate educational certification.

(17) "State agencies" means the Justice Cabinet, the Cabinet for Families and Children (CFC), and the Cabinet for Health Services.

(18) "State agency children" or "SAC" is defined in KRS 158.135(1)(a). [(SAC)] means those children of school age committed to or in the custody of the Cabinets for Families and Children or Justice or Health Services and placed in a state agency operated or contracted institution, facility or day treatment program, or placed or financed through a state agency in a private facility pursuant to child care agreements, and those children of school age in home and community-based services provided as an alternative to intermediate care facility services for mentally retarded as governed by KRS 158.135(1)(a);

(19) "State agency children's fund" means appropriations to support KRS 158.135 previously known as out-of-district funds.

(20) "Teacher preparation" means those courses provided by a public or [and] private college or university [colleges and universities] which lead to teacher certification.



(21) "Therapeutic foster care state agency child" means a youth in therapeutic foster care as defined by KRS 158.135(1)(c). [a specialized foster care placement, as defined in KRS 158.135, with "serious emotional problems" defined as those youth identified as having an emotional behavioral disability (EBD) for educational purposes (as defined in KRS 157.200) or severe emotional disability (SED) (as defined in KRS 200.501 to 200.509).]

(22) "Treatment" means the total array of services utilized to produce a positive change in a child [children] served by the treatment facility.

Section 2. Governance. (1) An interagency advisory group for KECSAC, composed of representatives of the state agencies, KDE, the State Agency Children School Administrators' Association and a superintendent from a school district that provides education to SAC, shall provide recommendations for policy and procedure development. The interagency advisory group shall meet, at a minimum, biannually.

(2) Contracting procedures.

(a) The department shall contract with a university training resource center for the establishment of KECSAC. KECSAC shall be responsible for the oversight or administration of state and federal education funding and the provision of educational services to state agency children. KECSAC shall be financed by the state agency children's fund. KECSAC shall have knowledge and experience in the following:

1. Appropriate statutes and administrative regulations related to Kentucky's system of schools;

2. State and federal statutes pertaining to youth with educational disabilities, e.g. Individuals with Disabilities Education Act, 20 USC 1400 to 1491o, and Section 504 of the Rehabilitation Act, 29 USC 794;

3. Kentucky Unified Juvenile Code, enacted as KRS Chapters 600 through 645, and the operation of agency programs for juvenile offenders, status offenders and dependent children; and

4. Research regarding the education of at-risk, incarcerated and difficult to motivate youth.

(b) KECSAC shall plan programs and state agency children's fund budgets cooperatively with the state agencies, KDE and local school districts [district] providing programs to state agency children. Local school districts shall be notified of projected funding levels by KECSAC by December 1, for the following school year.

(c) The KECSAC annual applications to the department shall constitute the biennial plan. The applications shall contain educational goals and objectives for the biennium for which funding is requested. The goals and objectives shall be consistent with appropriate statutes and administrative regulations related to the system of common schools and the mandates of the Individuals with Disabilities Education Act. The educational goals and objectives shall be compatible with and complementary to the treatment goals for state agency children. The application shall also include strategies for enhancing teacher preparation and professional development for teachers in local districts serving SAC.

(d) KECSAC, with the cooperation of the state agencies and KDE, shall develop written procedures for the operation of the state-wide education system for state agency children.

(3) Staffing.

(a) Teachers and other educational staff shall be employed or contracted by a local school district.

1. If the local school district is not able or willing to provide the educational personnel for the state agency children's treatment facility for the extended school calendar [as defined in Section 1] of this administrative regulation, KECSAC shall:

a. [Shall] Be notified in writing no later than January 1 prior to the start of the next school year of the school district's intent not to provide an extended school calendar; and

b.(i) [May] Contract with another school district for educational staff; or

(ii) [c-May] Contract or employ teachers or educational administrative staff.

2. When filling a teacher or an educational administrative staff vacancy in a state-operated or contracted facility, the local school district or KECSAC shall provide the state agency program director

an opportunity to interview prospective new teachers or educational administrative staff for the on-site state agency school program. The state agency program director shall provide the local school district with interview results regarding the applicant's suitability for teaching in the on-site state agency school program.

(b) Educational administrative staff and teachers employed or contracted by KECSAC to provide educational services for the extended school calendar shall meet Kentucky education certification requirements and shall be evaluated. KECSAC shall evaluate all KECSAC staff employed by the contracted university.

(c) Educational staff employed by a school district [districts] shall be evaluated in accordance with local school district policy.

(d) Each on-site state agency school program shall designate a school administrator.

(e) Education staff employed or contracted by KECSAC to provide educational services for the extended school calendar shall be compensated at rates at least commensurate with public school employees with comparable qualifications, experience and assignments in the school district where the treatment facility is located.

(f) On-site state agency school programs shall have sufficient teachers available with appropriate certification to serve youth identified with educational disabilities as specified in 707 KAR 1:230.

(g) Other specific services identified in an IEP by the admission and release committee as needed for a youth with educational disabilities may be accessed by KECSAC contracting for appropriate extended school calendar services. KECSAC shall comply with the administrative regulations relating to youth with disabilities as provided in 707 KAR Chapter 1. The extended school calendar may be modified if the SAC in therapeutic foster care are included in the school district's extended school program as approved by KECSAC.

(4) Policy application. Interagency agreements, including program goals and objectives, shall be developed between each local school district and treatment provider regarding their mutual responsibility for education and care of state agency children. This agreement shall be reviewed annually. If a conflict arises between the local agencies regarding the development or fulfillment of the inter-agency agreement by either party, it shall be resolved by KECSAC.

(5) Student eligibility. If a specific activity (e.g., football or [;] debate[; etc.]) is not provided to youth in a state or private contracted agency program, the youth shall not lose eligibility to participate based on the requirements in 702 KAR 7:070. Eligibility shall be figured on a month-to-month basis (e.g., nine (9) months in a state agency facility without a formal football program shall leave [leaves] nine (9) months of eligibility in a local school district). The eligibility period shall not exceed one (1) additional year. Other eligibility criteria [however;] shall be met by the youth

Section 3. Finance. (1) The amount of funds generated by state agency children under the Support Education Excellence in Kentucky (SEEK) Program as specified in KRS 157.360 for the guaranteed SEEK base and adjustments shall be sent to the school district providing education for state agency children to be used pursuant to Memoranda of Agreement (MOA) negotiated with KECSAC.

(2) Distribution of state agency children's funds shall be as follows:

(a) State agency children's funds shall be used to fund the Memorandum of Agreement with KECSAC.

(b) State agency children's funds may be used for educational services which benefit state agency programs in a collective manner.

(c) State agency children's funds may be used as matching funds if the match shall increase the amount of funds available to educate state agency children.

(d) After the items in paragraphs (a), (b), and (c) of this subsection have been funded, the remainder of the state agency children's fund appropriation shall be divided by the total number of state agency children to be educated. The resulting per pupil amount shall be allocated for each state agency child.

(3) KECSAC shall be considered the same as a school district for the generation, application, distribution and accountability of state and federal funds, other than SEEK, available to educate on-site state agency school children.

(4) An annual memorandum of agreement shall be negotiated

between KECSAC and each school district providing education to state agency children. The MOA ~~shall~~ ~~[is to]~~ be signed and returned to KECSAC within ninety (90) days of issuance. KECSAC may decrease funding by quarterly increments for noncompliance with the submission deadline. Attachments shall include the state approved budget format. All funds expended for SAC shall be included in the annual school audit. An itemized budget shall be part of the MOA. State agency children's fund distribution shall be based upon SAC average daily membership (ADM) or rated capacity ~~[as defined in Section 4 of this administrative regulation]~~.

(a) Noncompliance with the MOA provisions may result in decreasing SACF allocation as determined by KECSAC. The withholding of funds shall be temporary provided that the school district becomes compliant by the end of the fiscal year.

(b) For a new or expanded program [programs], the state agency children's fund [SAGF] shall be allocated based on the rated or licensed capacity if opened during the first three (3) quarters of the fiscal year. A program [Programs] opened or expanded during the last quarter of the fiscal year shall receive funding based on the rated or licensed capacity for the initial fifteen (15) months of operation. A new or expanded program [programs] may be funded at a lower per-pupil amount based on availability of state agency children's funds.

(5)(a) Each biennium, KECSAC, in consultation with the state agencies and KDE, shall submit a biennial budget plan benchmarked to the projected SEEK increase and projected set-aside to reimburse district's for excess cost.

(b) The state agency children's fund, as specified in KRS 158.135, shall be cost reimbursed to school districts biannually from KDE upon approval by KECSAC and the appropriate state agency.

(c) KECSAC shall develop a procedure by October 1, 1999, for school district's reimbursement of expenses exceeding twenty (20) percent of total amount received from state and federal sources to serve a state agency child.

(6) [KECSAC] As part of the MOA with each local school district, KECSAC shall ensure the development of a plan for professional development of certified staff. A teacher or administrator [All teachers and administrators] new to a SAC on-site program [programs] shall attend Professional Development for New Educators. It is recommended that a SAC school program [programs shall] commit three (3) days of the extended school calendar for teacher participation in the KECSAC approved professional development events designed for SAC teachers. These three (3) days shall be [are] in addition to the Professional Development for New Educators. The school district shall maintain an annual record of professional development for all school district employees in SAC on-site programs.

(7) A school district [School districts] shall ensure that the SAC access all eligible federal and state funding (such as KETS Funding and [; Title I]).

(8) An on-site SAC program [programs] shall have access to textbooks, instructional materials, technology, and equipment comparable to that available in the local school district.

(9) KECSAC shall obtain information from the Kentucky Department of Education and the Workforce Development Cabinet regarding all discretionary and entitlement state, federal and miscellaneous funding opportunities available to local school districts and file applications or reports necessary to procure and use funds for the education of state agency children.

(10) If a state agency plans to open or contract for a new program or to expand an existing SAC program during a biennium, the state agency shall notify KDE and KECSAC by April 1 of the first year of the biennium regarding the projected number of youth to be educated in the new or expanded program.

(11) If youth age sixteen (16) [years] through twenty (20) years enter with or receive a GED while attending a state agency program, that youth shall continue in the state agency program for further academic and vocational training and continue to generate SEEK funds. State agency children funds may be used to:

(a) [SAGF may be expended to] Support a GED preparation program; or

(b) [SAGF may be used to] Educate GED and high school graduates.

(12) The state agencies, the Kentucky Department of Education, the Cabinet for Workforce Development [Workforce Cabinet] and other appropriate agencies shall develop and review annually an interagency agreement defining services and financial responsibilities of each state and local agency providing educational services for state agency children. The agreement shall include procedures for resolving interagency disputes.

(13) If a dispute arises between KECSAC and a local school district that cannot be resolved by the parties, the dispute shall be submitted, for resolution, to the interagency advisory group by written request of either party. The request shall identify in detail the issue in dispute. The interagency advisory group shall schedule a meeting with the parties, during which each party shall explain its position. The interagency advisory group shall render a written report and recommendation to the commissioner of the department responsible for the program in dispute within fifteen (15) days of the meeting. The commissioner shall render a written decision resolving the dispute within fifteen (15) days of receiving the recommendation from the interagency advisory group.

Section 4. Operations. (1) School options for state agency children with an IEP shall be planned, ~~if~~ [when] not restricted by treatment needs, using the least restrictive environment based on specific child needs. Additional days beyond the school year shall [may] take place either at the local public school or on the state agency program site. If the state agency child is not restricted to the treatment site for security purposes, the continuum from least restrictive to most restrictive alternatives shall be [are] as follows:

(a) A program for state agency children may send all of its children to be educated in the local public school where children in the local public school district are assigned or where their IEP indicates placement.

(b) A program for state agency children may send some of its children to be educated in the local public school as in paragraph (a) of this subsection and have on-site state agency school option for other children.

(c) A program for state agency children may have an on-site state agency school for all children due to reasons necessary for the conditions of placement in the state agency program.

(2) Assessments.

(a) The local school district shall complete an informal academic assessment of the educational needs of all SAC, and vocational needs of SAC aged fourteen (14) and up or in eighth grade and above, within the first thirty (30) days after admission to on-site programs. Educational goals and objectives shall be consistent with goals specified in each youth's individual treatment plan.

(b) If the youth is suspected to have an educational disability as governed by 707 KAR 1:180 and 707 KAR 1:190, assessments shall be administered, following required due process procedures.

(3) In a school district [school districts] providing educational services, local school district staff shall coordinate the completion of the required individual education program pursuant to 707 KAR 1:180 and 707 KAR 1:190.

(4) Instructional services.

(a) The teacher pupil ratio for on-site state agency school programs serving state agency children shall average, based on annual average daily attendance, no more than ten (10) students to one (1) teacher without a classroom aide and fifteen (15) students to one (1) teacher with a classroom aide. A classroom that exclusively serves [Classrooms only serving] students with the educational disabilities shall comply with teacher pupil ratios as specified in 707 KAR 1:230, Section 5.

(b) By the 30th school day after admission to a school program, an individual plan of instruction shall be developed by the school district for state agency children not identified with a disability. The individual plan of instruction shall be developed in coordination with the ITP. If a youth is determined to have an educational disability, the IEP requirements as governed by 707 KAR Chapter 1 shall suffice. The IPI shall be in a standardized format, as determined by the KECSAC Interagency Advisory Group.

(c) An educational passport shall be prepared as required by KRS 158.137 and 605.110(3)(e). [The educational passport, as



defined in KRS 158.137, shall be used in on-site programs. For students who are in a program longer than thirty (30) school days, an educational passport shall be prepared by educational staff and delivered to the applicable receiving school or state agency within two (2) school days of the SAC's departure.]

(d) A state agency child [Any-SAG] reading at two (2) or more years below the appropriate grade level, as measured by an educational assessment tool, shall be provided developmental reading, listening and writing instruction.

(5) Accountability.

(a) The assessments and portfolios of state agency children shall be governed by 703 KAR 5:070. [State agency children shall have the same assessments administered as other public school youth in A-5 and A-6 schools as specified in 703 KAR 4:080 and 703 KAR 5:040. The results of the assessments shall be included in the accountability index of the last A-1 school the youth attended prior to admittance to a state agency program or the A-1 school the youth would have attended if the youth had remained in that local school district.]

(b) [State agency children shall develop portfolios consistent with the content requirements of the state's assessment program. A youth's portfolio shall be sent to the receiving school as part of the educational records when the youth is transitioned from the state agency program.

(c) An accountability system shall be designed by KECSAC for state agency children school programs. The memorandum of agreement which shall include [includes] quality of educational services shall be monitored, at a minimum, in conjunction with KDE's IDEA monitoring cycle. Noncompliance with the MOA may result in reduction, elimination, or recoupment of the district's reimbursement from the state agency children's fund [SAGF] as determined by KECSAC.

(c) If [(d)-When] required by the state agency, the SAC school programs shall be in compliance with accreditation standards of the respective professional accrediting association of that state agency.

(6) Transition.

(a) KECSAC shall ensure that transition procedures for SAC moving from the state agency education program to the next instructional or vocational setting are being implemented. Educational staff at an on-site program [on-site programs] shall participate in the transition process.

(b) The transition planning to a postschool setting [post-school settings] shall comply with the transition plan and service requirements of the Individuals with Disabilities Education Act (IDEA), enacted as 20 USC 1400 to 1491o, and 707 KAR 1:220 for students with educational disabilities.

(c) KECSAC shall design and implement a system of educational data collection and information dissemination in order to improve the quality of educational delivery for SAC.

(d) The last school or school district a state agency youth attends prior to placement in a state agency program shall be responsible for forwarding the educational records to the state agency program within five (5) school days of receipt of the request.

(e) The school administrator shall ensure that the educational records of state agency children are forwarded to the receiving school within five (5) school days following the release of the youth from the treatment facility.

RALPH E. KELLY, Ed.D., Commissioner  
MICHAEL KEITH HORN, Office of General Counsel  
APPROVED BY AGENCY: May 13, 1999  
FILED WITH LRC: May 13, 1999 at 2 p.m.

TRANSPORTATION CABINET  
Department of Vehicle Regulation  
Division of Motor Carriers  
Office of General Counsel  
(As Amended at ARRS, August 10, 1999)

601 KAR 14:010. Headgear and eye-protective devices.

RELATES TO: KRS 186.865, 189.285, 49 CFR Part 571.218[SB 158; sec. 2 (1990 RS)]

STATUTORY AUTHORITY: KRS 174.080(1), 186.865, 189.285(5)[49 CFR Part 571.218, SB 158; sec. 2 (1990 RS)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.285(5) requires the secretary to promulgate administrative regulations establishing minimum standards for protective headgear and eye-protective devices to be used by motorcycle operators. KRS 189.515(4) requires the secretary to promulgate administrative regulations establishing approved protective headgear for all-terrain vehicle operators. This administrative regulation establishes the minimum standards and approved headgear and eye-protective devices. [KRS 189.285 establishes the categories of motorcycle operators and passengers who are required to wear protective headgear. KRS 189.285 establishes conditions for the operation of a motorcycle without wearing protective headgear. KRS 186.865 requires the Transportation Cabinet to develop a decal to be attached to the motorcycle license plate. KRS 189.285(5) requires the Secretary of Transportation, to:

(1) Establish [by administrative regulation, to fix] minimum standards for approved protective headgear and [.] approved eye-protective devices;

(2) [and] Prescribe the manner in which protective headgear and eye-protective devices [they] shall be used;

(3) [He is also required to] Maintain and cause to be published a list of approved protective headgear and approved eye-protective devices; and

(4) [Further, he is required to] Prescribe headgear for use with all-terrain vehicles when they are not being operated for agricultural purposes. [This administrative regulation is designed to comply with the statutory requirements.]

Section 1. Definitions. (1) "Health insurance" is defined by KRS 304.5-040.

(2) "Proof" means documentation which establishes that a person possesses health insurance coverage.

Section 2. A [No] person shall not operate [or ride as a passenger on] a motorcycle on a public road, street, or highway unless:

(1) The person wears protective headgear which meets the standards set forth in Section 5 [4] of this administrative regulation; or

(2) A "No Helmet" decal is affixed, in accordance with KRS 186.865(1), to the license plate of the motorcycle being operated.

Section 3. [2:] The protective headgear required when operating an all-terrain vehicle shall meet the standards set forth in Section 5 [4] of this administrative regulation.

Section 4. A [3-No] person shall not operate [or ride as a passenger on] a motorcycle on a public road, street, or highway unless he [unless such person] wears an eye-protective device which meets the standards set forth in Section 6 [5] of this administrative regulation.

Section 5. List of Approved Protective Headgear and Approved Eye-protective Devices. (1) [For] Protective headgear.

(a) [.] A motorcycle helmet shall be approved by the cabinet if it:

1. [that:(a)] Meets the requirements of 49 CFR 571.218; and

2. [(b)] Has been permanently and legibly labeled with the letters "DOT".

(b) [1:] The letters "DOT" shall:

1. [a:] Appear on the outer surface of the helmet;

2. Contrast with the helmet color [b. Be in a color that contrasts with the background];

3. [c:] Be at least one (1) centimeter in height [high]; and

4. [d:] Be placed [located] a minimum of two and nine-tenths (2.9) centimeters and a maximum of three and five-tenths (3.5) centimeters from the bottom edge of the posterior of the helmet.

(2) Eye protection devices. An eye protection device shall be permanently and legibly marked on each lens, in a manner that does not interfere with the vision of the wearer, with:

(a) "VESC-8"; or

(b) If space is limited, "V-8". [For eye protective devices: a motorcycle eye protection device that has been permanently and legibly marked on the structure of each lens in a manner that does

not interfere with the vision of the wearer with:

(a) "VESC-8"; or

(b) If space is limited, "V-8". [Section 4. Federal Motor Vehicle Safety Standards; Motorcycle Helmets as set forth in 49 CFR Part 571.218 effective October 3, 1988 adopted and issued by the National Highway Traffic Safety Administration, U.S. Department of Transportation, specifies the standards for approved protective headgear to be followed in Kentucky.]

Section 5. (1) Minimum Requirements for Motorcyclists' Eye Protection, adopted August 5, 1971, and amended July, 1980 by the Vehicle Equipment Safety Commission are hereby adopted and incorporated by reference in this administrative regulation.

(2) A copy of the standards cited in subsection (1) of this section may be viewed at the Transportation Cabinet, 10th Floor, State Office Building, Frankfort, Kentucky 40622, between 8 a.m. and 4:30 p.m. eastern time on weekdays.]

Section 6. Adoption Without Change. (1) 49 CFR 571.218 (October 1, 1998) is adopted without change. The material may be viewed, copied or obtained from the Transportation Cabinet, Office of General Counsel, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. through 4:30 p.m. [The following shall constitute the lists of approved protective headgear and approved eye protective devices as contemplated by KRS 189.285:

(1) For protective headgear, any motorcycle helmet which has been permanently and legibly labeled with the symbol "DOT". The symbol shall appear on the outer surface in a color that contrasts with the background, in letters at least one (1) centimeter high. It shall be located a minimum of two and nine-tenths (2.9) centimeters and a maximum of three and five-tenths (3.5) centimeters from the bottom edge of the posterior of the helmet.

(2) For eye protective devices, any motorcyclists' eye protection which has been permanently and legibly marked on the structure of each lens in a manner so as not to interfere with the vision of the wearer either "VESC-8" or where space is limited "V-8".]

Section 7. Incorporated by Reference. (1)(a) "Minimum Requirements for Motorcyclists' Eye Protection" July 1980 edition, published by the Vehicle Equipment Safety Commission; and

(b) The "No-Helmet" decal required by the provisions of this administrative regulation.

(2) The material may be viewed, copied or obtained from the Transportation Cabinet, Office of General Counsel, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. through 4:30 p.m.

ED LOGSDON, Commissioner

JAMES C. CODELL, III, Secretary

E. JEFFREY MOSLEY, Executive Director

APPROVED BY AGENCY: May 4, 1999

FILED WITH LRC: May 13, 1999 at 2 p.m.

#### EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

(As Amended at ARRS, August 10, 1999)

#### 704 KAR 3:285. Programs for the gifted and talented.

RELATES TO: KRS 157.196, 157.200(1)(n), 157.224, 157.230

STATUTORY AUTHORITY: KRS 156.070, 157.196(3), 157.220, 157.224

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200(1)(n) includes within the definition of "exceptional children" a category of "exceptional students" who are identified as possessing demonstrated or potential ability to perform at an exceptionally high level in general intellectual aptitude, specific academic aptitude, creative or divergent thinking, psychosocial [psychological] or leadership skills, or in the visual or performing arts. [;] KRS 157.224(1) commits the state to a comprehensive educational program for its exceptional school-aged children, [and] KRS 157.230 requires all school districts

to operate programs for resident exceptional children, primary - grade twelve (12). This administrative regulation establishes the requirements for programs for gifted and talented students, [relates to funding, the provision of appropriate services for identified gifted students, [and] the operation of gifted education programs and a gifted and talented student services plan in compliance with KRS 157.196.]

Section 1. Definitions. [The following definitions shall apply to this administrative regulation:]

(1) "Acceleration options" means various forms of advancing through material or grade levels prior to the prescribed time based on early mastery, such as pretesting in content and being excused to go onto higher level activities, curriculum compacting or linear acceleration, simultaneous or dual enrollment in courses at different grade levels including postsecondary, early exit from school, and grade-skipping.

(2) "Advanced placement and honors courses" means courses emphasizing college-level content based on college board curricula and tests (advanced placement), or the provision of more challenging material through higher levels of content, process and product (honors courses).

(3) "Cluster group" means a group usually consisting of four (4) or more [grouping of approximately four (4) to six (6)] identified students placed in a heterogeneous classroom or other instructional setting with a teacher trained in the appropriate instruction of special needs students, specifically gifted and talented, for the purpose of receiving a differentiated educational experience matched to the student's needs, interests, and ability.

(4) "Collaborative teaching" means a gifted education teacher provides differentiated direct instruction in a regular classroom to a cluster group of identified gifted students in conjunction with the regular classroom teacher.

(5) "Consortium" means a collaboration of schools or districts that pool resources to provide appropriate services for gifted and talented students.

(6) "Consultation services" means the provision of instructional information and materials by the gifted teacher to the regular classroom teacher so that he may provide appropriate and adequate services to the gifted student while in the regular classroom setting.

[(6) "Consortium" means a collaboration of schools or districts that pool resources to provide appropriate services for gifted and talented students.]

(7) "Counseling services" means effectively-based counseling assistance planned in coordination with the gifted teacher and provided by a counselor familiar with the characteristics and socioemotional needs of gifted and talented students.

(8) "Creative or divergent thinking ability" means possessing either potential or demonstrated ability to perform at an exceptionally high level in creative thinking and divergent approaches to conventional tasks as evidenced by innovative or creative reasoning, advanced insight and imagination, and solving problems in unique ways.

(9) "Diagnosis" means the evaluation and determination of the appropriate type and level of service options which [service options] would meet a given [be the most appropriate intervention given an] individual child's interests, needs, and abilities.

(10) "Differentiated service experiences" means educational experiences which extend, replace, or supplement learning beyond the standard curriculum.

(11) "Differentiation" means a method through which educators shall [may] establish a specific, well-thought-out match between learner characteristics in terms of abilities, interests, and needs, and curriculum opportunities in terms of enrichment and acceleration options which maximize learning experiences.

[(11) "Differentiated service experiences" means educational experiences which extend, replace, or supplement learning beyond the standard curriculum.]

(12) "Disadvantaged" means operating under conditions detrimental to normal cognitive or affective growth due to socioeconomic limitations, cultural factors, geographic isolation, or various combinations of these factors to a degree that requires special considerations.

(13) "Distance learning" means learning opportunities offered through the use of computer technology and satellite transmission or optical fiber transmission.

(14) "Extracurricular enrichment opportunities" means differentiated, academically-based activities that supplement classroom instruction and are often after school and competitive in nature, such as academic teams.

(15) "Formal identification" means a process by which a student in grades four (4) through twelve (12) is identified and diagnosed as having gifted characteristics and behaviors using a balanced combination of criteria specific to a category of giftedness - intellectual aptitude, specific academic aptitude, creativity, leadership, or visual and performing arts, [informal measures and formal standardized or normed instruments;] and by which a student may be determined eligible for various levels of services in each category in which the student meets the criteria.

(16) "General intellectual ability" means possessing:

(a) Either the potential or demonstrated ability to perform at an exceptionally high level in general intellectual ability, which is usually reflected in extraordinary performance in a variety of cognitive areas, such as abstract reasoning, logical reasoning, social awareness, memory, nonverbal ability and the analysis, synthesis, and evaluation of information; and

(b) [possessing] A consistently outstanding mental capacity as compared to children of one's age, experience, or environment. [General intellectual ability is usually reflected in extraordinary performance in a variety of cognitive areas, such as abstract reasoning, logical reasoning, social awareness, memory, nonverbal ability, [spatial relations;] and the analysis, synthesis, and evaluation of information;]

(17) "Gifted and talented identification and placement committee" means a school or district committee made up of the gifted education coordinator or a gifted education teacher and representatives from classroom teachers, administrators, counselors, special education teachers and [any] other appropriate personnel who follow district policies and procedures to formally identify and determine level and type of service options.

(18) "Gifted and talented student services plan" means an educational plan that matches a formally identified gifted student's interests, needs, and abilities to differentiated service options and serves as the communication vehicle between the parents and school personnel.

(19) "High potential learners" means those students who typically represent the top quartile (twenty-five (25) percent) [one-third (1/3)] of the entire student population in terms of the degree of demonstrated gifted characteristics and behaviors [achievement] and [frequently] require differentiated service experiences to further develop their interests and abilities. [special enrichment opportunities to remain educationally challenged. In terms of aptitude, students identified as gifted and talented are found in the top five (5) percent of this group;]

(20) "Independent study" means a self-directed course or study of a selected topic under the supervision of a teacher or the auspices of a university.

(21) "Informal selection [identification]" means a process by which a student in the primary program is documented [identified] as having the [gifted] characteristics and behaviors of a high potential learner in one (1) or more categories using a series of informal measures for the purpose of determining eligibility for the talent pool.

(22) "Instructional grouping" means the temporary grouping of students for the purposes of addressing specific continuous progress skill development, socioemotional needs, and interests.

(23) "Magnet school" means a school which is organized around an area of interests, draws students from an entire community, and has no specific entrance standards except interest in the focus of the school (e.g., a magnet school for the arts or a magnet school for science and mathematics).

(24) "Mentorship" means specialized studies, such as an internship [internships], with an adult mentor in the community and under the direction of an educator knowledgeable in gifted education.

(25) "Primary review committee" means primary teachers, counselors, administrators, gifted education personnel, and [any] other appropriate personnel familiar with the child's potential or demonstrated abilities.

(26) "Psychosocial or leadership ability" means possessing either potential or demonstrated ability to perform at an exceptionally high level in social skills and interpersonal qualities such as poise, effective oral and written expression, managerial ability, and the ability, or vi-

sion, to set goals and organize others to successfully reach those goals.

(27) "Resource services" means a service delivery option that:

(a) Entails a part-time grouping of students with gifted characteristics based on the interests, needs and abilities of the students;

(b) [~~This type of service delivery option~~] is designed for accelerated content, special interest groups, process skills development or various combinations of all; and

(c) Is [may be] provided in [the general classroom or in] a pull-out classroom or other appropriate instructional setting.

(28) "Seminars" means discussion-based sessions on specific topics focusing on advanced content and higher level process skills.

(29) "Special school [schools]" means a specialized school [schools] designed to:

(a) Serve gifted students in grades four (4) through twelve (12) in specific academic areas (such as a magnet school [magnet schools] in science and mathematics); or

(b) [to] Develop specific areas of giftedness such as visual and performing arts.

(30) "Specific academic aptitude" means possessing either potential or demonstrated ability to perform at an exceptionally high level in one (1), or very few related, specific academic areas significantly beyond the age, experience or environment of one's chronological peers. [While students with specific academic aptitude are typically of at least above average intellectual ability, they are often extremely capable of high performance in one (1), or a very few related, academic areas;]

(31) "Talent pool" means a group of primary students informally selected [identified] as having [gifted] characteristics and behaviors of a high potential learner and further diagnosed using a series of informal and formal measures to determine differentiated service delivery needs during their stay in the primary program.

(32) "Travel study options" means academically-based United States and overseas travel which may result in high school or university course credit.

(33) "Underachieving" means the development of a significant gap between a student's potential ability and demonstrated achievement to [such] a degree that there is an overall diminished ability to achieve at the expected level of ability.

(34) "Visual or performing arts ability" means possessing either potential or demonstrated ability to perform at an exceptionally high level in the visual or performing arts and demonstrating the potential for outstanding aesthetic production, accomplishment, or creativity in visual [areas such as] art, dance, music, or drama; speech; and in activities requiring exceptional gross or fine motor skills].

Section 2. Policies and Procedures. A [Each] local school district shall have in operation and available for public inspection local board approved policies and procedures which address each requirement in this administrative regulation and are consistent with KRS 157.200, 157.224, 157.230 and 703 KAR 4:040.

Section 3. Identification and Diagnosis of Gifted Characteristics, Behaviors, and Talent and Determination of Eligibility for Services. (1) A [Each] district shall adopt policies and procedures which shall provide for identification and diagnosis of strengths, gifted behaviors and talents through:

(a) Informal selection [identification] and diagnosis in the primary program;

(b) Formal identification and continuous diagnosis of a student [students] [on a three (3)-year cycle] in grades four (4) through twelve (12); and

(c) Provision of multiple service delivery options in primary through grade twelve (12).

(2) A [Each] local school district shall establish a procedure that identifies students displaying gifted and talented behaviors and characteristics as defined in KRS 157.200 and Section 1 of this administrative regulation and allows for determination of eligibility for services based on the student's individual needs, interests and abilities. This procedure shall include a combination of informal measures, formal measures and objective-based eligibility criteria. Determination of appropriateness of level and type of services provided to a student shall be subject to continuous assessment. [and shall be performed on

a three (3)-year basis.]

(3) A [Each] local school district shall provide a system for diagnostic screening and identification of strengths, gifted behaviors and talents which provides equal access for [which gives special consideration to] racial and ethnic minority children, disadvantaged children, and children with disabilities.

(4) District identification and diagnosis procedures for appropriate services shall be based upon a balanced multiple criteria approach, continuous and multiple long-term assessment, and early identification and diagnosis of strengths, gifted behaviors and talents.

(5) A [Each] local school district shall implement a procedure to obtain parental or guardian permission prior to the administration of an [any] individual test [tests, given as a follow-up to a test routinely administered to all students, used in formal identification and prior to official identification and placement. (formal identification and diagnosis of strengths, gifted behaviors and talents, and to notify parents of eligible students of provision of appropriate services.)]

(6) Beginning with the 2001-2002 school year, a local school district shall implement a procedure to obtain information related to the interests, needs, and abilities of an identified student from his parent or guardian for use in determining appropriate services. A parent or guardian of an identified student shall be notified annually of services included in his child's gifted and talented student services plan and specific procedures to follow in requesting a change [changes] in services. [Informal assessment options may be used for placement in the district's talent pool. Formal measures, consistent with this administrative regulation, shall be used for formal identification and diagnosis.]

(7) In the primary program, formal, normed measures may be used for diagnosing the level of instructional service needed by a student and for evaluation of student progress, ~~[-however,]~~ Data from formal, normed measures shall not be used for the purpose of eliminating eligibility for services to a child in the primary program but may be used to discover and include eligible students overlooked by informal assessment.

(8) A [No] single assessment instrument or measure shall not be the basis for ~~[formally identifying or]~~ denying services once a child has been informally selected [identified] and placed in the talent pool.

(9) For children in the primary program, the procedure for selecting a high potential learner [learners] for participation in the primary talent pool [identifying and diagnosing a child's strengths, gifted behaviors, and talent] shall include use of a minimum of three (3) of the following recognized or acceptable assessment options to assess the degree of demonstrated gifted characteristics and behaviors and to determine level of need and most appropriate service interventions [to screen and refer students for services through a talent pool]:

(a) A collection of evidence (e.g., primary portfolios) demonstrating student performance;

(b) Inventory checklists of behaviors specific to gifted categories [Behavior checklists];

(c) Diagnostic data;

(d) Continuous progress data;

(e) Anecdotal records;

(f) Available formal test data;

(g) Parent interview or questionnaire;

(h) Primary review committee recommendation;

(i) Petition system; and

(j) Other valid and reliable documentation.

(10) Exit from the primary program shall be based on criteria established by 703 KAR 4:040.

(11) For a student [students] in grades four (4) through twelve (12), a local school district's procedure for identifying and diagnosing gifted and talented behaviors, and the level of services needed, shall include:

(a) A valid and reliable combination of ~~[formal and informal]~~ measures to identify strengths, gifted behaviors and talents which indicate a need and eligibility for service options;

(b) At least three (3) of the following recognized or acceptable assessment options for identification and diagnosis:

1. A collection of evidence from portfolios demonstrating student performance;

2. Inventory checklists of behaviors specific to gifted categories [Teacher behavior checklist];

3. Continuous progress data;

4. Anecdotal records;

5. Peer nominations;

6. Formal testing data specific to gifted categories;

7. Parent interview or questionnaire;

8. Primary review committee recommendation for those entering the fourth grade;

9. Self-nomination or petition system;

10. Student awards or [critiques] of performance or products specific to gifted categories; and

11. Other valid and reliable documentation; ~~[and]~~

~~[(c) At least one (1) source of data shall be derived from an appropriate formal, normed individual or group measure such as intelligence tests, achievement tests, and aptitude tests.]~~

(12) To qualify as a gifted and talented student [students] in grades four (4) through twelve (12), the following criteria shall be met in ~~[at least]~~ one (1) of ~~these [the following]~~ gifted and talented categories:

(a) General intellectual ability shall be determined by a student score within the ninth stanine on a full scale comprehensive test of intellectual ability ~~[-or a composite score in the ninth stanine on a standardized or normed achievement test]. If [When]~~ a student scores low on ~~[a] formal group measures of intellectual ability [measure of academic strength],~~ yet other documentation shows [factors show] potential, the district shall administer an individual mental ability test. Evidence of general intellectual ability also may include:

1. High performance on additional [an] individual or group intellectual assessment;

2. Observation of applied advanced reasoning ability; or [and]

3. Checklist inventories of behaviors specific to underachieving or disadvantaged gifted learners [Perseverance to complete tasks].

(b) Specific academic aptitude shall be determined by composite scores in the ninth stanine on one (1) or more subject test scores of an achievement test. ~~If [When]~~ a student scores low on a formal group measure of academic strength, yet other documentation shows [factors show] potential, the district shall administer another standardized normed achievement test [an individual mental ability test]. Evidence of specific academic aptitude also may include:

1. High performance on an additional individual or group test of academic aptitude;

2. Student awards or critiques of performances;

3. Off-level testing;

4. Portfolio of high academic performances; or [and]

5. Student progress data.

(c) Creativity shall be determined through the use of informal or formal assessment measures of [which focus on determining] a child's capacity for originality of thought, fluency, elaboration, and flexibility of thought. Documented evidence of creative thinking ability also may include:

1. Creative writing samples;

2. High scores on tests of creative ability (e.g., Williams or [Torrance, etc.];

3. Behavioral checklists or observations specific to [targeting] creative behavior; or [and]

4. Observation of original ideas, [or] products or [;] problem-solving.

(d) Leadership or psychosocial abilities shall be determined by a variety of informal measures ~~[administered by a teacher knowledgeable in the nature and needs of the gifted such as behavioral checklists;]~~ and the documentation of the willingness of a student to assume leadership roles in class, in a student organization [organizations], and in a community activity [community activities]. Evidence of psychosocial or leadership ability also may include:

1. Sociograms (i.e., questionnaires designed to assess leadership characteristics);

2. Peer recommendations;

3. Behavioral checklists or observations specific to [targeting] leadership behavior;

4. Portfolio entries which display leadership qualities; or [and]

5. Offices held by student in extracurricular activities and class government~~[-etc.].~~

(e) Visual and performing arts talent shall be determined through evidence of performance which may include~~[;]~~ auditions, letters of

recommendations, or [and] product or portfolio assessment by specialists or professional artists. Evidence of visual or performing arts also may include:

1. Awards or critiques of performance; or [and]
2. Portfolio of visual or performing arts ability.

Section 4. Procedure for Determining Eligibility for Services. (1) Identification of [The procedure for identifying] gifted characteristics, behaviors and talent shall be based on the following process:

(a) Data gathering. A district [Districts] shall develop a system for [initially] searching the entire school [target] population on a continuous basis for likely candidates for services using both informal and available formal, normed, standardized measures, including measures of nonverbal ability [spatial ability for disadvantaged children and youth];

(b) Data analysis. A district [Districts] shall develop a system for analyzing student data for the purposes of a comparison of the students under consideration for identification [in the talent pool] to local or national norms, including those required in this administrative regulation, and to district-established criteria of eligibility for each category of giftedness [a comparison of the data among the students within the pool, and developing an index of a student's scores relative to others in the pool];

(c) [Selection] Committee for determination of eligibility and services. A [determination. The] school district or school shall assemble a selection and placement committee which shall have four (4) purposes:

1. To provide feedback on the adequacy of the district's identification and diagnostic procedure;
2. To ensure that a variety of views are heard during the selection and placement process;
3. To determine which students meet identification criteria and which services, at what level, shall [should] be included in each identified student's gifted and talented student services plan [should receive services, and at what level]; and
4. To help provide communication and support in the schools and community; [-]

(d) Provision of services. A district [Districts] shall implement articulated services from primary through grade twelve (12) which provide multiple delivery options matched to diagnosed behaviors, strengths and characteristics of individual students; and

(e) Petition and appeal for services. A district [Districts] shall provide a petition system as a safeguard for a student [otherwise eligible students to apply for services] who may have been missed in the identification and diagnosis procedure.

(2) Exceptions and special considerations for eligibility. School personnel shall take into consideration environmental, cultural, and disabling conditions which may mask a child's true abilities that lead to exclusion of otherwise eligible students, such as a student who qualifies as:

- (a) [Any student who qualifies as] An exceptional child as defined in KRS 157.200;
- (b) [Any student who qualifies as] Disadvantaged; or [and]
- (c) [Any student who qualifies as] Underachieving.

Section 5. Program Evaluation. (1) District policies and procedures shall ensure that a program evaluation process [processes] shall be conducted on an annual basis and shall address:

- (a) Overall student progress;
- (b) Student, parent, and faculty attitudes toward the program;
- (c) Community involvement;
- (d) Cost effectiveness;
- (e) The incorporation of gifted education into the regular school program;
- (f) Overall quality of instruction and program personnel credentials; and
- (g) Future program directions and modifications.

(2) Data collected in the annual program evaluation shall be utilized in the school and district instructional planning process.

(3) Beginning with the 2001-2002 school year, local district policies and procedures shall ensure that the school personnel report to a parent or guardian the progress of his child related to the gifted and talented student services plan at least once each semester. [Contin-

ued funding of the local district's gifted education annual plan for services shall be contingent upon the results of the preceding year's evaluation of the overall program.]

Section 6. Service Delivery Options. (1) A student [Students] diagnosed as possessing gifted characteristics, behaviors or [and] talent shall be provided articulated, primary through grade twelve (12) services which:

(a) Are qualitatively differentiated to meet his [their] individual needs;

(b) [-] Result in educational experiences commensurate with his [identified population's] interests, needs and abilities; and

(c) Facilitate the high level attainment of goals established in KRS 158.6451.

(2) For a student [students] in a primary program [programs], services shall be provided within the framework of primary program requirements and shall allow for continuous progress through a differentiated curriculum and flexible grouping and regrouping based on the individual needs, interests, and abilities of the student. [Consistent with 704 KAR 3:440(2), with the two (2) exceptions of the special school and the self-contained classroom, all service delivery options may [shall] be available in the primary program.]

(3) Emphasis on educating gifted students in the general primary classroom, shall not preclude the continued, appropriate use of resource services, acceleration options, or [any-of] the specialized service options contained in subsection (5) of this section. A recommendation for a service [Recommendations for services] shall be made on an individual basis.

(4) Grouping for instructional purposes and multiple services delivery options shall be utilized in a local district gifted education plan [plans]. Student grouping formats shall include grouping for instructional purposes based on student interests, abilities, and needs, including social and emotional. [Example of alternative grouping arrangements are listed in subsection (5) of this section.]

(5) There shall be [Local school districts shall implement] multiple service delivery options with no single service option existing alone, districtwide, at a [any] grade level. These service delivery options shall be differentiated to [such] a degree as to be consistent with [the language and intent of] KRS 157.200(1). Both grouping for instructional purposes; [-] and multiple service delivery options [-] may include [such alternatives as]:

- (a) Various acceleration options (e.g., early exit from primary, grade skipping, content and curriculum in one (1) or more subjects from a higher grade level);
  - (b) Advanced placement and honors courses;
  - (c) Collaborative teaching and consultation services;
  - (d) Special counseling services;
  - (e) Differentiated study experiences for individuals and cluster groups in the regular classroom;
  - (f) Distance learning;
  - (g) Enrichment services during the school day (not extracurricular);
  - (h) Independent study;
  - (i) Mentorships;
  - (j) Resource services delivered in a [the general classroom or] pull-out classroom or other appropriate instructional setting;
  - (k) Seminars;
  - (l) [Cluster grouping;
  - (m) Travel study options; or
  - (n) Special schools or self-contained classrooms, grades four through twelve (12) only;
  - (o) Itinerant services; and
  - (p) Special summer sessions].
- (6) With the exception of an academic competition or [academic competitions and] optional extracurricular offering [offerings], services shall be provided during the regular school hours.

Section 7. Curriculum. (1) A comprehensive framework or course of study for children and youth who are diagnosed as possessing gifted characteristics, behaviors and talent shall be based on a [each] district or school's curricula required to meet the goals established in KRS 158.6451.

(2) A [Each] school shall differentiate, replace, supplement, or



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modify curricula to facilitate high level attainment of the learning goals established in KRS 158.6451 and to assist students identified and diagnosed as gifted and talented to further develop their individual interest, needs and abilities.

Section 8. Personnel. A [Each] local school district shall ensure that direct services to students identified as demonstrating gifted and talented behaviors and characteristics shall be provided by professionally qualified and certified personnel as required by the Education Professional Standards Board.

(1) A teacher shall be appropriately endorsed in gifted education in accordance with 704 KAR 20:280 if the teacher works:

(a) [Teachers of gifted, who include those who work] directly with identified gifted pupils in addition to the regularly assigned teacher; [teacher(s)] or

(b) For at least one-half (1/2) of the regular school day in a classroom made up only of properly identified gifted students[; shall be appropriately endorsed in gifted education (704 KAR 20:280)].

(2) All other personnel working with gifted students shall be prepared through appropriate professional development to address the individual needs, interests, and abilities of the students. [personnel providing services to gifted and talented students are prepared through appropriate credentials or professional development to address the individual needs, interests and abilities of the students.]

Section 9. Budget; Funding. (1) State funds for gifted education shall be used specifically for direct services to students who are gifted and talented. Direct services to students identified as demonstrating gifted and talented behaviors and characteristics shall be provided by professionally qualified and certified personnel as required by the Education Professional Standards Board in 704 KAR 20:280. Seventy-five (75) percent of a district's gifted education allocation shall be used to employ properly certified personnel to provide direct instructional services.

(2) A local district [Any] budget decision impacting state funds for gifted education [decisions made] after the annual submission of the local district [gifted] education plan [application] shall be coordinated through the district gifted education coordinator. If the change will cause a major or significant adjustment to the district gifted education budget, the change shall be submitted to the Kentucky Department of Education for approval as an amendment.

(3) A district [Districts] receiving state gifted education funding shall designate a gifted education coordinator to:

- (a) Oversee the district gifted education operation;
  - (b) Serve as liaison between the district and the state;
  - (c) Ensure internal compliance with state statutes and administrative regulations; and
  - (d) Administer and revise the gifted education program budget.
- (4) State funding to a district [districts] shall be contingent upon:
- (a) Employing properly certified personnel to administer and teach in the program;
  - (b) The annual submission of a local district gifted education year-end report [plan-application];
  - (c) A summative evaluation of the program and student progress; and
  - (d) Complying with [all mandated elements within] this administrative regulation.

Section 10. Procedural Safeguards. A school district shall establish a grievance procedure through which a parent, guardian or student [parents and students] may resolve a concern [concerns] regarding the appropriate and adequate provision of talent pool services or services addressed in a formally identified student's gifted and talented student services plan. This districtwide grievance procedure shall address:

- (1) How, and by whom, the grievance procedure is initiated;
- (2) The process for determining the need to evaluate or reevaluate the child for appropriate services;
- (3) The criteria for determining if placement of the child needs revision;
- (4) Procedures for ensuring that appropriate services are provided to all identified students consistent with KRS 157.200 and 157.230; and

(5) Procedures for ensuring the participation of the parent or guardian [parents], a regular education teacher of the student, a gifted education teacher or coordinator, administrator, and a counselor in addressing a grievance.

WILMER S. CODY, Commissioner  
HELEN MOUNTJOY, Chairperson  
KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: June 9, 1999

FILED WITH LRC: June 10, 1999 at 11 am.

### PUBLIC PROTECTION AND REGULATION CABINET Kentucky Board of Tax Appeals (As Amended at ARRS, August 10, 1999)

**802 KAR 1:010. Hearing procedures [Rules of practice and procedure].**

RELATES TO: KRS Chapter 13B, 131.340, 131.355, 131.365, 131.370 [131.310-131.370; 131.345]

STATUTORY AUTHORITY: KRS 13B.170, 131.340(1) [131.345]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 13B.170 authorizes the Kentucky Board of Tax Appeals to promulgate administrative regulations that are necessary to carry out the provisions of KRS Chapter 13B. This administrative regulation supplements the provisions of KRS 131.310 through 131.370, 133.120 and Chapter 13B. [KRS 131.345 provides that "Appeals to the Kentucky Board of Tax Appeals shall be in accordance with rules prescribed by the board." The following rules have been adopted in compliance with that authority.]

Section 1. **Formal Administrative Hearings. A person aggrieved by a final ruling, order or determination of an agency of state or county government affecting revenue and taxation, may petition the board for a formal hearing in accordance with KRS Chapter 13B.**

(1) A petition shall be:

- (a) In writing;
- (b) Signed by the petitioner;
- (c) Styled "Petition of Appeal";
- (d) Filed in person at 1003 Twilight Trail, Suite A-1, Frankfort, Kentucky or mailed to the board's principal office at P.O. Box 2120 Frankfort, Kentucky 40602-2120;
- (e) Contain a brief statement of the law and facts in issue; and
- (f) Contain the appellant's position as to the law and facts.

(2) Filings by facsimile or other electronic means shall not be accepted.

(3) If an appeal originates from a final ruling, order, or determination of a county board of assessment, the appellant shall file:

- (a) An original and two (2) copies of the petition of appeal; and
- (b) Three (3) copies of the county board of assessments appeals' final ruling, order or determination.

(4) If an appeal originates from a final ruling, order, or determination of a state government agency, the appellant shall:

- (a) File an original and four (4) copies of the petition of appeal; and
- (b) File five (5) copies of the state government agency's final ruling, order, or determination.

(5) If an appellant fails to comply with subsection 1(c) or (d) of this section, notice of noncompliance shall be given by the board to the appellant.

### Section 2. Representation in Proceedings Before the Board.

(1) If a party is represented by an attorney in proceedings before the board, the attorney shall file an entry of appearance within thirty (30) days after the date on which the petition of appeals is filed. An appellant's attorney shall not be required to file an entry of appearance if he files the petition on behalf of the appellant.



(2) An attorney admitted to practice in another state, but not in the Commonwealth of Kentucky, shall be permitted to represent a party before the board if the attorney complies with Supreme Court Rule 3.030(2).

(3) An individual who is not an attorney shall not represent any other individual, corporation, trust, estate, or partnership.

Section 3. Discovery. (1) A request to obtain discovery shall be filed with the board or hearing officer.

(2) The request shall:

(a) Specify the type of discovery requested;

(b) Where applicable, describe in sufficient detail:

1. Names and addresses of persons or items;

2. Documents, other items, or places; and

(c) State the reason discovery is requested.

(3) The board or hearing officer may deny, limit, or require discovery.

(4) Discovery may be obtained by:

(a) Written or oral depositions;

(b) Interrogatories;

(c) Production or inspection of documents or things;

(d) Permission to photograph, or enter upon land or other property; or

(e) Physical or mental examination.

(5) Sanctions. If a party fails to obey an order to provide or permit discovery, the hearing officer may order that the:

(a) Matters the complying party was seeking to prove through discovery shall be taken as established for the purposes of the hearing; and

(b) Noncomplying party shall be prohibited from introducing related matters at the hearing.

Section 4. Briefs. (1) A party shall file with the board or hearing officer when permitted:

(a) An original and three (3) copies of a brief; and

(b) Attach to each brief a copy of any cited authority from a state other than Kentucky.

(2) A party shall file with the brief:

(a) Proposed findings of fact, conclusions of law; and

(b) The final order if the appeal is heard by the board, or recommended order, if the appeal is heard by the hearing officer.

(3) A brief shall be typewritten or printed. A photocopy will be accepted. A copy of a brief shall be clearly legible and double spaced, except for quotations, on paper eight and one-half (8 1/2) inches wide and eleven (11) inches long, with margins of not less than one (1) inch and a font size of not less than twelve (12) point font.

Section 5. Motions, Responsive Pleadings, and Time Computation. (1) Except as provided in Section 1 of this administrative regulation, a party shall file an original and three (3) copies of a pleading or motion with the board. A pleading or motion, except the original petition of appeal, shall be accompanied by a certification that a copy have been served on each interested party.

(2) A party shall file an original and three (3) copies of a response to a motion within ten (10) days from the date on which the motion is served.

(3) A movant shall file an original and three (3) copies of a reply to a party's response to his motion within ten (10) days from the date on which the response is served.

(4) KRS 446.030 shall apply to computation of time. Petition of Appeal. (1) A document or pleading which initiates an appeal to the Kentucky Board of Tax Appeals shall be styled "Petition of Appeal." The petition and subsequent pleadings shall refer to the appealing party as "appellant", and to the responding party as "appellee".

(2) Petitions of appeal to the board shall be filed in person or by mail at the principal office of the board in Frankfort, Kentucky. Filings by facsimile or other electronic means shall not be accepted. The petition [Appeals to the Board. (1) All appeals from rulings, orders or determinations of any state or county agency shall be filed with the board by filing a complaint or petition of appeal with the board at its offices at

Frankfort, Kentucky, within thirty (30) days from the date of the mailing of the agency's ruling, order or determination.

(2) Except as provided in subsection (3) of this section, such appeal shall be filed in quintuplicate and shall contain a brief statement of the law or facts in issue and the appellant's [petitioner's] position as to the law or facts. [Said appeal shall have attached thereto a copy of the final ruling, order or determination of the agency appealed from.]

(3) In appeals from final rulings, orders, or determinations of a county board of assessment appeals, the appellant shall file an original and two (2) copies of the petition of appeal and shall include three (3) copies of the county board of assessment appeals' final ruling, order or determination.

(4) In appeals from final rulings, orders or determinations of a state government agency, the appellant shall file an original and four (4) copies of the petition of appeal and shall include five (5) copies of the state government agency's final ruling, order or determination.

(5) If an appellant fails to comply with subsections (3) or (4) of this section, the petition of appeal shall be accepted by the board; however, failure by an appellant to remedy noncompliance after notice shall subject the appellant's petition to dismissal.

Section 2. Representation in Proceedings Before the Board. (1) If a party is represented by an attorney in proceedings before the board, his attorney shall file an entry of appearance within thirty (30) days after the date on which the petition of appeal is filed. An appellant's attorney shall not be required to file an entry of appearance if he files the petition on behalf of the appellant.

(2) An attorney admitted to practice in another state, but not in the Commonwealth of Kentucky, shall be permitted to represent a party before the board if the attorney complies with Supreme Court Rule (SCR) 3.030(2). [All appeals from final rulings of a county Board of Assessment Appeals shall be appealed in like manner, except that such appeal shall be filed in triplicate.

Section 2. Hearings. (1) Hearings shall be held at the offices of the board at Frankfort, Kentucky, except that a case may be assigned for hearing elsewhere in the Commonwealth of Kentucky when deemed necessary to afford a taxpayer or interested party an opportunity to appear before the board with as little inconvenience and expense as practicable.

(2) All appeals shall be heard by the full board, provided that one (1) member thereof may be authorized to hear an individual appeal pursuant to order entered of record by the board.

(3) Appeals shall be assigned for hearing upon motion of any interested party or the board may, in its discretion, assign any appeal for hearing, having due regard for the convenience of the parties. Except where an appeal is assigned for hearing by agreement of the parties, all interested parties shall be given reasonable notice of a hearing date.]

(3) [(4)] Parties to actions filed with this board shall [may] be represented at the hearings as follows:

(a) An individual may represent himself in hearings before the board;

(b) An individual who is not an attorney shall [may] not represent any other individual, corporation, trust, estate, partnership or artificial entity [corporations or individuals] before the board;

(c) An attorney who is not licensed to practice in Kentucky may practice before the board if he obtains local counsel in compliance with RAP 3.030(b);

(5) All hearings shall be formally reported by the reporter for the board];

Section 3. Discovery. (1) The parties shall conclude discovery at least fifteen (15) days prior to the date scheduled for hearing an appeal. Discovery shall be conducted under the Kentucky Rules of Civil Procedure, to the extent not in conflict with KRS Chapter 13B, 131.310-131.370, 133.120, or with this administrative regulation. [Motions to compel discovery shall be governed by GR 37.01. Failure to comply with discovery may subject the noncomplying party to the sanctions set forth in GR 37.02 through GR 37.05, including but not limited to limitation of proof, judgment against the noncomplying party, and involuntary dismissal.]

(2) A party may introduce the testimony of a witness by deposition

at a hearing before the board or its hearing officer. [Procedures and Evidence. (1) The Rules of Civil Procedure shall govern in all procedural matters coming before this board.

(2) The rules of evidence governing civil proceedings in the Commonwealth of Kentucky shall, insofar as practicable, govern hearings before the board.

(3) Evidence may be introduced by oral testimony at a hearing before the board or by deposition. The Kentucky [provisions of the] Rules of Civil Procedure shall govern [apply to] the taking of depositions in proceedings before the board or its hearing officer. A deposition [No depositions] shall not be included in the evidentiary record [considered,] unless it is filed with the board within ten (10) days after the date of the hearing. The board or its hearing officer shall extend the time to file a deposition only upon a showing of good cause by the party requesting the extension. [submission of the appeal, it has been filed with the board; provided, however, that the board may, for good cause shown and upon motion filed within said ten (10) days grant an extension of time to file any deposition.

(4) The petitioner or appellant shall be required to complete his evidence in chief and so announce before respondent or appellee shall be required to introduce evidence, unless otherwise ordered by the board.]

(3) [(5)] The parties to an appeal may stipulate the relevant facts [in issue] in whole or in part. If the relevant facts are stipulated in whole, a hearing shall not be required. [Said] Stipulations of fact shall be written [reduced to writing] and filed with the board prior to the hearing of an appeal. The board or its hearing officer shall extend the time to file stipulations of fact only upon a showing of good cause by the party requesting the extension.

(4) Upon motion of a party or by order of the board or its hearing officer, a prehearing conference may be scheduled directing the attorneys for the parties to appear. [All parties are encouraged to stipulate facts whenever possible.

(6) Discovery by parties shall be concluded fifteen (15) days prior to the time assigned for hearing by the board.]

Section 4. Procedure and Evidence. (1) KRS Chapter 13B shall govern all procedural and evidentiary matters before the board.

(2) In evidentiary matters [in which KRS Chapter 13B is not dispositive,] the Kentucky Rules of Evidence shall guide the board unless they are in conflict [be instructive, but not conclusive, to the extent they are consistent] with KRS Chapter 13B, KRS 131.310-.370, 133.120 and this administrative regulation.

Section 5. Order of Proof at Hearing. (1) At the hearing, the appellant shall first produce his evidence; the appellee will then produce his evidence. The appellant shall ordinarily exhaust his evidence before the appellee begins; however, the order of proof may be regulated by the board or its hearing officer to expedite the hearing and enable the board or its hearing officer to obtain a clear view of the whole evidence.

(2) Evidence produced by a party shall be subject to questioning by the adverse party, the board, or its hearing officer.

(3) After the parties offer evidence in chief, they shall be confined to rebutting evidence, unless the board or its hearing officer for good reasons in furtherance of justice permits them to offer additional evidence in chief. [Parties' Failure to Appear at Hearing. (1) Where petitioner or appellant fails to appear at the hearing of his case, and no good cause is shown for his failure to appear, the case may be ordered dismissed for lack of prosecution by the board.

(2) Where the respondent or appellee fails to appear at the hearing of a case and no good cause is shown for his failure to appear, the board or any designated member thereof may proceed with the hearing of the case and it shall thereafter be submitted as provided by these rules.

Section 5. Appeal; When and How Submitted. When all interested parties have announced through in presenting evidence or after all interested parties have had a reasonable opportunity to present evidence, the board may order the appeal to be submitted for a final ruling or order. Upon request of either party or upon the board's own motion, the order of submission may give the parties time within which to file briefs. Upon motion of any party and for good cause, the order of submission may be set aside and leave given to any party to take

additional evidence.]

Section 6. Briefs. (1) The board or its hearing officer may order the parties to file briefs stating the factual and legal issues to be addressed by the board in its final order or by the hearing officer in his recommended order.

(2) Each party shall file with the board an original and three (3) copies of a brief, and shall append to a brief copies of any cited authorities from states other than Kentucky.

(3) Each party shall file with the brief proposed findings of fact, conclusions of law, and final order, if the appeal is heard by the board, or recommended order, if the appeal is heard by the hearing officer.

(4) Briefs shall be typewritten or printed [and filed in quadruplicate with the board. A certification shall accompany any brief to the effect that copies have been served upon all interested parties as provided by the Rules of Civil Procedure]. Photostatic copies will be accepted in lieu of typewritten copies. All copies of the brief must be clearly legible and double spaced except for quotations on paper eight and one-half (8 1/2) inches wide and eleven (11) inches long, with margins of not less than one (1) inch and a font size of not less than twelve (12) point font.

Section 7. Motions, Responsive Pleadings and Time Computation.

(1) A party shall file an [The] original and three (3) copies of any pleadings and motions [motion shall be filed] with the board. All pleadings and motions [and said motion] shall be accompanied by a certification that copies have been served on all interested parties as required by the Rules of Civil Procedure.

(2) A party shall file an original and three (3) copies of a response to a motion within ten (10) days from the date on which the motion is served [filed]. The board or its hearing officer may consider a party's failure to respond to a motion as agreement to the action requested by the motion.

(3) A movant may file an original and three (3) copies of a reply to a party's response to his motion within ten (10) days from the date on which the response is filed.

(4) CR 6.05 shall apply to computation of time when a party is served by mail; however, when the board orders some act or pleading to be filed by a particular calendar date, CR 6.05 shall not apply even if a party is served by mail.

(5) The board or its hearing officer may modify response and reply times upon consideration of any scheduled hearing dates or upon good cause shown by the parties.

(6) The board or its hearing officer shall grant a motion for continuance of a hearing only upon a showing of good cause by the party requesting the continuance.

Section 8. Subpoenas. Any member of the board or its hearing officer shall issue a subpoena only upon a request in writing by a party. [Any member of the board, on the request in writing of any party to the appeal before it, or his attorney, shall issue subpoenas requiring the attendance of witnesses and the giving of testimony and subpoena duces tecum requiring the production of any returns, books, papers, documents, correspondence, and other evidence pertaining to the matter under inquiry in accordance with the Rules of Civil Procedure.]

Section 9. Records and Costs. (1) No record filed with the board is subject to withdrawal by any person, except on order of the board.

(2) The expense of causing hearing proceedings to be recorded in the manner required by KRS Chapter 13B [Expenses of reporting hearings] shall be paid by the state from the appropriation of the board. If any party desires to have the evidence at a hearing transcribed, he shall cause the reporter to prepare one (1) original transcript to be filed with the board and such additional copies as said party may desire. The party requesting a transcript of evidence shall pay for the original and any requested [copy or] copies. If other parties request copies of the transcript, each party shall pay for his own requested copy. [Any other interested party may request a copy or copies of said transcript and shall pay for the same.]]

GEORGE H. HELTON, Chairman  
ROBERT G. LAYTON, Staff Attorney

APPROVED BY AGENCY: September 10, 1998

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

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Department of Housing, Buildings and Construction**  
**Division of Plumbing**  
**(As Amended at ARRS, August 10, 1999)**

**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.**

RELATES TO: KRS 318.010, 318.130, 318.150 [Chapter 318]

STATUTORY AUTHORITY: KRS 318.130

NECESSITY, FUNCTION, AND CONFORMITY: [The department is directed by] KRS 318.130 requires the department, through the State Plumbing Code Committee, to promulgate an administrative regulation establishing [adopt and put into effect] a State Plumbing Code. This administrative regulation establishes [relates to] the standards for the proper installation of copper pipe and fittings for water and waste piping. [This amendment is necessary to allow for new technology in the joining of copper pipe and fittings. This amendment was approved by the Plumbing Code Committee and the Board of Housing.]

Section 1. The installation of copper, brass and seamless stainless steel tubing water and waste piping shall be made according to the [recommended] procedures established in this administrative regulation to [since care taken in installing will] assure the satisfactory performance of the plumbing water distribution and drainage system [systems].

Section 2. Cutting, Reaming and Sizing. (1) The tube shall be cut to exact length with a square cut using:

- (a) A tube cutter;
- (b) A [cutters,] hacksaw blade; or
- (c) An abrasive saw.

(2) The tube shall have burrs and slivers removed by using a reamer or other appropriate tool.

(3) The tube shall be brought to true dimensions and roundness by using a sizing tool consisting [which consists] of a plug and ring.

Section 3. Cleaning. The surface [Surfaces] to be joined shall be clean and free from oil, grease and heavy oxides. The end of the tube shall be cleaned with a fine sand cloth or a special wire brush [Clean the end of the tube] a distance slightly more than is required to enter the socket of the fitting [with fine sand cloth or special wire brushes].

Section 4. Joining Techniques. (1) Soldered joints. In accordance with 815 KAR 20:060, the following procedures shall be used to solder a joint:

(a) After cleaning, the surfaces shall be covered with a thin film of mildly corrosive liquid or petroleum based pastes that contain chlorides of zinc and ammonium. Self-cleaning flux shall not be used in place of the cleaning pipe.

(b) Excess flux shall be wiped off within the fitting socket.

(c) The tube end shall be inserted into the socket, with the tube firmly seated against the end of the socket.

(d) Excess flux shall be removed with a rag.

(e) Heat shall be applied to the fitting and then moved in order to heat as large an area as possible. The fitting and joint shall:

- 1. Not be overheated; and
- 2. Be heated until the solder melts on contact with the pipe and flows by capillary attraction into the joint.

(f) The heat shall be removed.

(g) The fitting and joint shall be cooled before moving.

(2) Brazed joints. The following procedures shall be used for a brazed joint:

(a)1. Except as provided in subparagraph 2 of this paragraph, after cleaning, the surface of the tube end and the fitting socket shall be covered with a thin film of flux in accordance with the recommendations of the manufacturer of the brazing

filler metal being used. Effort shall be made to avoid getting flux inside the tube.

2. Flux may be omitted if joining copper tube to wrought copper fittings with copper-phosphorus alloys (B-cup Series) which are self-fluxing on copper.

(b) The tube end shall be inserted into the socket hard against the stop and turn if possible.

(c) Heat shall be applied to the parts to be joined, with:

- 1. The tube heated first; and
- 2. The fitting at the base of the cup heated next.

(d) Brazing wire, rod or strip shall be applied at the point where the tube enters the socket of the fitting.

(e) The heat shall be removed.

(f) The fitting and joint shall be cooled.

(3) Flared joints; impact tools. The following procedures shall be used for a flared joint:

(a) The joints shall be cut, reamed, sized, and cleaned pursuant to Sections 2 and 3 of this administrative regulation.

(b) The coupling nut shall be slipped over the end of the tube.

(c) The flaring tool shall:

- 1. Be inserted into the tube end; and

2. Be driven by hammer strokes to expand the end of the tube to the desired flare.

(d) The fitting shall be placed squarely against the flare.

(e) The coupling nut shall be engaged with the fitting threads.

(f) The joint shall be tightened with two (2) wrenches, one (1) on the nut and one (1) on the fitting.

(4) Screw type flaring block.

(a) The procedures established in subsection (3)(a) and (b) of this section shall be followed for impact flaring.

(b) The tube shall be clamped in the flaring block so that the tube is slightly above the block.

(c) The yoke of the flaring tool shall be placed on the block so that the beveled end of the compression cone is over the tube end.

(d) The compressor screw shall be turned down firmly, forming the flare between the chamber in the flaring block and the beveled compressor cone.

(e) The flaring tool shall be removed and assembled pursuant to subsection (3)(d), (e), and (f) of this section.

(5) Mechanically formed tee connection.

(a) A mechanically-formed tee connection shall be approved for use in a domestic hot and cold water distribution system above ground only.

(b) A mechanically extracted collar shall be formed in a continuous operation consisting of drilling a pilot hole and drawing out the tube surface to form a collar having a height of not less than three (3) times the thickness of the tube wall. The collaring device shall be fully adjustable so to insure proper tolerance and complete uniformity of the joint.

(c) All joints shall be brazed in accordance with subsection (2) of this section and the manufacturer's instructions. A soldered joint shall not be permitted.

(6) Mechanical couplings. Types K and L copper tubing systems from two (2) inch through six (6) inch and used for water distribution may be installed using mechanical pipe couplings of a bolted type with a flush seal gasket along with grooved end copper fittings. Couplings shall be of the angle pad design to obtain rigidity. [Soldered joints. After cleaning, cover the surfaces with a thin film of mildly corrosive liquid or petroleum based pastes that contain chlorides of zinc and ammonium. Self-cleaning flux shall not be used in lieu of cleaning pipe as outlined in Section 3 of this administrative regulation. Wipe off excess flux in fitting socket. Insert tube end into socket, making sure the tube is firmly seated against the end of the socket. Remove excess flux with a rag. Apply heat to the fitting and then move in order to heat as large an area as possible. Do not overheat. When the joint is hot enough, the solder will melt on contact with the pipe and will flow by capillary attraction into joint. Remove heat and allow to cool before moving (refer to 815 KAR 20:060).

(2) Brazed joints. After cleaning, cover the surface of the tube end

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and the fitting socket with a thin film of flux in accordance with the recommendations of the manufacturer of the brazing filler metal being used. Avoid getting flux inside the tube itself. Flux may be omitted when joining copper tube to wrought copper fittings with copper-phosphorus alloys (B-cup Series) which are self-fluxing on copper. Insert tube end into socket hard against the stop and turn if possible. Apply heat to parts to be joined, heating the tube first, then the fitting at the base of the cup. Apply brazing wire, rod or strip where tube enters the socket of the fitting. Remove heat and allow to cool:

- (3) Flared joints; impact tools:
  - (a) See Sections 2 and 3 of this administrative regulation.
  - (b) Slip the coupling nut over the end of the tube.
  - (c) Insert flaring tool into the tube end and drive the flaring tool by hammer strokes expanding the end of the tube to the desired flare.
  - (d) Place the fitting squarely against the flare. Engage the coupling nut with the fitting threads. Tighten with two (2) wrenches, one (1) on the nut and one (1) on the fitting.
  - (4) Screw type flaring block:
    - (a) Follow subsection (3)(a) and (b) of this section for impact flaring.
    - (b) Clamp the tube in the flaring block so that the tube is slightly above the block. Place the yoke of the flaring tool on the block so that the beveled end of the compression cone is over the tube end. Turn the compressor screw down firmly, forming the flare between the chamber in the flaring block and the beveled compressor cone. Remove the flaring tool and assemble as in subsection (3)(d) of this section.
  - (5) Mechanically formed tee connection:
    - (a) For use in domestic hot and cold water distribution systems above ground only.
    - (b) Mechanically extracted collars shall be formed in a continuous operation consisting of drilling a pilot hole and drawing out the tube surface to form a collar having a height of not less than three (3) times the thickness of the tube wall. The collaring device shall be fully adjustable so to insure proper tolerance and complete uniformity of the joint.
    - (c) The joining branch tube shall be no less than one (1) pipe size smaller than the main and shall be notched and dimpled in a single process to set the proper penetration of the branch tube into the fitting to assure a free flow joint.
    - (d) All joints shall be brazed in accordance with subsection (2) of this section and the manufacturer's instructions. NOTE: Soldered joints shall not be permitted.
  - (6) Mechanical couplings. Types K and L copper tubing systems from two (2) inch through six (6) inch and used for water distribution may be installed using mechanical pipe couplings of a bolted type with a flush seal gasket along with grooved end copper fittings. Couplings shall be of the angle pad design to obtain rigidity.]

Section 5. Hangers and Supports. Hangers, anchors and supports shall be of material of sufficient strength to support the piping and its contents. Hangers, anchors and supports shall be securely attached to the building construction at sufficiently close intervals to support the piping and its contents. Provisions shall be made to allow for expansion, contraction, structural settlement and vibrations.

- (1) Vertical piping.
  - (a) Copper tubing shall be supported;
    - 1. At each story for piping one and one-half (1 1/2) inches and larger in diameter; **and**
    - 2. At each story and not more than ten (10) foot intervals for piping one and one-quarter (1 1/4) inches and smaller in diameter[; it shall be supported at each story and not more than ten (10) foot intervals].
  - (b) Supports shall be of copper material of sufficient strength which will not adversely react with the piping material.
- (2) Horizontal piping.
  - (a) Copper tubing shall be supported at;
    - 1. Six (6) foot intervals for one (1) inch and smaller in diameter; **and**
    - 2. Ten (10) foot intervals for one and one-quarter (1 1/4) inch and larger.
  - (b) Supports shall be of copper material of sufficient strength which will not adversely react with the piping material.

FRANK PHIEFFER, Chairman  
CHARLES A. COTTON, Commissioner  
RONALD MCCLOUD, Secretary  
JUDITH G. WALDEN, Office of General Counsel  
APPROVED BY AGENCY: June 14, 1999  
FILED WITH LRC: June 15, 1999 at 9 a.m.

### PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction Division of Plumbing (As Amended at ARRS, August 10, 1999)

#### 815 KAR 20:110. Traps and clean-outs.

RELATES TO: KRS **318.010, 318.130, 318.150** [Chapter 318]  
STATUTORY AUTHORITY: KRS [318.010;] 318.130  
NECESSITY, FUNCTION, AND CONFORMITY: [The department is directed by] KRS 318.130 requires the department, through the State Plumbing Code Committee, to promulgate an administrative regulation establishing [adopt and put into effect] a State Plumbing Code. This administrative regulation **establishes requirements for** [relates to the quality, location and the placing of] traps and clean-outs to prevent harmful gases and odors from entering a building or home [buildings and homes] that is [are] served by a plumbing system and [systems] [; This administrative regulation also] identifies the manufacturer's specification number of the material accepted in an installation. [those installations. This amendment is necessary to allow the use of plastic devices (see Section 14 of this administrative regulation) which have, in fact, been utilized for several years with success.]

Section 1. Traps, Kind and Minimum Size. **(1) A** [Every] Trap shall be self-cleaning.

**(2) A trap** [Traps] for a bathtub, lavatory, sink or [bathtubs; lavatories, sinks and] other similar fixture [fixtures] shall either be tubular brass, tubular ABS or PVC produced and labeled as ASTM F-409, cast brass, cast iron, lead or schedule 40 PVC (polyvinyl chloride) or ABS (acrylonitrile-butadiene-styrene) **trap**.

**(3) A** [traps;] tubular or schedule 40 PVC or ABS **p-trap shall** [p-traps may] be either the union-joint or solvent welded type.

**(4) A** tubular brass **trap** [traps] shall be seventeen (17) gauge.

**(5) A** tubular brass, tubular PVC or tubular ABS **trap** [traps] shall not be installed below the finished floor serving a fixture.

**(6) A trap** [Traps] shall have a full-bore, smooth interior waterway.

**(7) The threads in a** cast brass **or** [and] cast iron **trap** [traps] shall be tapped out of solid metal.

**(8) A lead trap** [Lead traps] shall be extra heavy.

Section 2. Traps, Prohibited. A trap which depends upon the action of a movable part [parts] or concealed interior partition [partitions] for its seal shall not be used.

Section 3. Traps, Where Required. **(1) A** fixture shall be separately trapped by a water-seal trap placed as near as possible to the fixture but not to exceed ten (10) inches from the bottom of the fixture to the dip of the seal.

**(2) Waste from a bathtub or other fixture shall not discharge into a water closet bend.**

**(3) A** fixture shall not be double trapped.

Section 4. Water Seal. A fixture trap shall have a water seal not less than two (2) inches or more than four (4) inches.

Section 5. Trap Clean-outs. A trap clean-out [Trap clean-outs] shall be optional.

Section 6. Trap Levels and Protection. A trap [Traps] shall be set true with respect to its [their] water seal [seals] and shall be protected from frost and evaporation.

Section 7. Pipe Clean-outs. **(1) The** bodies of clean-out ferrules shall be made in a standard pipe size [sizes], conforming in thickness to that of the pipe and fittings and shall not extend less than one-

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quarter (1/4) inch above the hub in which it is placed.

(2) The clean-out cap or plug shall be heavy red brass not less than one-eighth (1/8) inch thick and shall have a raised nut or recessed pocket for removal.

Section 8. Pipe Clean-outs, Where Required. In a building served by a stack over forty-five (45) feet in height, a clean-out shall be provided at the base of each vertical waste or soil stack. There shall be at least one (1) clean-out in the building drain with a full-size branch inside the wall or outside the building at a point not to exceed two (2) feet from the foundation wall. If located outside the building, the clean-out shall [must] be extended to the finished grade for accessibility. A clean-out shall be of the same nominal size as the pipe it serves up to four (4) inches and shall not be less than four (4) inches for larger pipe. [A clean-out shall be easily accessible and shall be provided at the base of each vertical waste or soil stack. There shall be at least two (2) clean-outs in the house drain, one (1) at or near the base of the stack and the other with full-size branch inside the wall or outside the building at a point not beyond two (2) feet from the foundation wall. Clean-outs shall be of the same nominal size as the pipe it serves up to four (4) inches, and shall not be less than four (4) inches for larger pipe.]

Section 9. Manholes. An underground clean-out [Underground clean-outs] in a building, except if [where] a clean-out is [clean-outs are] flush with the floor or wall, shall be made accessible by a manhole or with a proper cover.

Section 10. Clean-outs (Equivalents). A floor or wall connection of a fixture trap, whether bolted or screwed to the floor or wall, shall be regarded as a clean-out with the exception of the clean-out where the house drain enters a building.

Section 11. Grease Traps. (1) If a grease trap is installed, it shall be:

- (a) Placed as near to the fixture it serves as practical; and
- (b) [shall be] Approved by the department.
- (2) A grease trap [Grease-traps] used inside a building shall:
  - (a) Have a sealed cover; and
  - (b) [shall] Be properly vented.
- (3) A grease trap [Grease-traps] shall be installed for a restaurant, [or a] [restaurants and] food service establishment or [establishments] [and] other business establishment as required by:
  - (a) Applicable administrative regulations promulgated by [establishments deemed necessary by] the Department of Housing, Buildings and Construction; or
  - (b) [as required by] Municipal ordinance.
- (4) If a food establishment uses [food establishments use] a private sewage system, a grease trap [traps] shall be installed as required by [the Cabinet for Human Resources administrative regulation] 902 KAR 10:085.

Section 12. Sand Traps. A sand trap [Sand-traps] shall be readily accessible and shall meet the requirements established in the applicable administrative regulations promulgated by [of] the Department of Housing, Buildings and Construction.

Section 13. Basement Floor Drains. (1) A basement floor drain shall:

- (a) Connect to a trap;
  - (b) [and] Be readily accessible for cleaning; and
  - (c) [shall] Be of sufficient size to serve the purpose intended.
- (2) If a drain is [drains are] subject to back flow or back pressure, the drain [drains] shall be equipped with a backwater valve approved by administrative regulation of the Department of Housing, Buildings and Construction.

Section 14. Back Water Valves. A back water valve shall be:

- (1) Of noncorrosive material; and
- (2) [shall be] Constructed to insure a positive mechanical seal except if [when] discharging waste [wastes].

Section 15. Residential Utility Room Floor Drains. A two (2) inch

floor drain with an individual waste and vent may be installed in a residential utility room.

Section 16. Directional Flow Fittings and Continuous-waste. A kitchen sink unit or fixture [units, or fixtures] with more than one (1) unit may be connected with a continuous-waste, if a directional flow fitting is used. Continuous-waste shall be either seventeen (17) gauge tubular brass or schedule 40 ABS or PVC or tubular ABS or PVC material.

FRANK PHIEFFER, Chairman  
CHARLES A. COTTON, Commissioner  
RONALD MCCLOUD, Secretary  
JUDITH G. WALDEN, Office of General Counsel  
APPROVED BY AGENCY: June 14, 1999  
FILED WITH LRC: June 15, 1999 at 9 a.m.

### PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction Division of Fire Prevention (As Amended at ARRS, August 10, 1999)

815 KAR 35:030. Kentucky certification of electrical contractors.

RELATES TO: KRS 227.450, 227.489, 227.490, 227.4901 [227.450 through 227.500]

STATUTORY AUTHORITY: KRS 227.489, 227.4901

NECESSITY, FUNCTION, AND CONFORMITY: ~~[In 1990, the General Assembly enacted] KRS 227.4901(1) and (2) requires [which requires that] the Department of Housing, Buildings and Construction, with advice from the Electrical Advisory Committee, to select and approve an examination designed to determine the competency of electrical contractors under the National Electrical Code, and to certify those individuals passing the examination. KRS 227.4901(5) requires the department [and] to collect and compile reports on disciplinary actions taken against licensed electrical contractors by cities and counties, and to submit quarterly reports of these actions to each city or county that licenses electrical contractors. This administrative regulation establishes the examination and certification requirements for electrical contractors [is necessary [in order] to establish procedures of administration and reasonable fees to carry on the certification program]. [This amendment is necessary in order to reduce the administrative burden on the department, reduce the "red tape" for contractors and maintain flexibility in maintaining certification.]~~

Section 1. Definitions. (1) ~~["NAIE" means the examination based upon the National Electrical Code which is developed, administered and scored by the National Assessment Institute.~~

(2) ~~"NCPCCI" means the National Certification Program for Construction Code Inspectors.~~

(3) ~~"Kentucky Certificate of Electrical Contractor Examination" means the written document issued by the department which certifies that a [the] person [whose name] [is listed] [thereon] has successfully completed the examination required by this administrative regulation.~~

(2) ~~"NCPCCI" means the National Certification Program for Construction Code Inspectors.~~

(3) ~~"Standard Master Electrical Exam" means the Kentucky Certified Electrical Contractor Examination based upon the National Electrical Code which is developed, administered and scored by Experior Assessments.~~

Section 2. Approved Examinations. (1) ~~A person [After the effective date of this amendment, any person] seeking to obtain a Kentucky Certificate of Electrical Contractor Examination shall pass the examination known as the Standard Master Electrical Exam [NAIE].~~

(2) The department shall issue or renew a Kentucky Certificate of Electrical Contractor Examination to a [any] person who complies with the terms of this administrative regulation.

Section 3. Application for Certificate. (1) An application shall be made to the department by the individual seeking certification on Form



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SFM-EL-2, Application for Electrical Contractor Certification [forms incorporated by reference in Section 5 of this administrative regulation].

(2) The original application shall be accompanied by a fee of \$100 to cover the administrative costs of processing the application, verifying examination scores and issuing a **certificate** [certificates].

(3) The Kentucky Certificate of Electrical Contractor Examination **shall not be considered** [is not] a license to do business as an electrical contractor.

Section 4. Renewal of Certificates. (1) General. **A person seeking renewal of a certificate shall:**

**(a) Submit a completed form SFM-EL-2A, Renewal Application for Electrical Contractor Certification; and**

**(b) Pay an annual renewal fee** [Each person seeking certification pursuant to this administrative regulation shall be required to pay an additional annual renewal fee in the sum] of twenty-five (25) dollars no later than June 30 of each year in order to maintain the certification.

(2) Delinquent renewal fee. A [Any] certified electrical contractor who fails to renew his certification [on or] before July 1 of each year may have his certification renewed upon payment of a delinquent renewal fee of \$100. If the **fee is** [fees are] not paid by January 1 of the following year, the certification shall be automatically cancelled.

(3) Reinstatement. A [Any] certificate that has been revoked or cancelled **shall** [may] be reinstated upon:

**(a) Petition to the commissioner if the electrical contractor submits evidence that he has passed the examination; and**

**(b) Payment of:**

**1. Unpaid renewal fees; and**

**2. A reinstatement fee of \$100.** [for good reason shown in his sole discretion and upon payment of any unpaid renewal fees plus a reinstatement fee of \$100:]

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

**(a) Form SFM-EL-2, Application for Electrical Contractor Certification, April, 1996; and**

**(b) Form SFM-EL-2A, Renewal Application for Electrical Contractor Certification, April, 1996.**

(2) This material may be inspected, copied, or obtained at the Department of Housing, Buildings and Construction, Electrical Section, 1047 US 127 South, Suite 1, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Electrical Contractor Certification Application Forms: (1) Application for electrical contractor certification. Each applicant seeking certification as an electrical contractor shall submit the Application for Electrical Contractor Certification Form SFM-EL-2, April 1996, hereby incorporated by reference, to the Department of Housing. Copies of the application form are available at the Department of Housing, Buildings and Construction, Electrical Section, 1047 U.S. 127 South, Suite 1, Frankfort, Kentucky 40601, between 8 a.m. and 4:30 p.m., Monday through Friday.

(2) Renewal application for electrical contractor certification. Each applicant seeking renewal of his application for electrical contractor certification shall submit the Renewal Application for Electrical Contractor Certification Form SFM-EL-2A, April 1996, hereby incorporated by reference to the Department of Housing. Copies of the renewal application form are available at the Department of Housing, Buildings and Construction, Electrical Section, 1047 U.S. 127 South, Suite 1, Frankfort, Kentucky 40601, between 8 a.m. and 4:30 p.m., Monday through Friday.]

CHARLES A. COTTON, Commissioner

RONALD MCCLOUD, Secretary

JUDITH G. WALDEN, Office of General Counsel

APPROVED BY AGENCY: June 14, 1999

FILED WITH LRC: June 15, 1999 at 9 a.m.

PUBLIC PROTECTION AND REGULATION CABINET  
Commission on Fire Protection Personnel  
Standards and Education  
Office of the State Fire Marshal  
(As Amended at ARRS, August 10, 1999)

815 KAR 45:080. Volunteer fire department aid.

RELATES TO: KRS 75.400, 75.410, 75.440, 95A.210, 95A.262, [Chapter 95A:] 136.392

STATUTORY AUTHORITY: KRS 95A.262(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 95.262(2) requires the Commission on Fire Protection Personnel Standards and Education [is required by KRS 95A.262] to allot funds to local volunteer fire departments in order to promote better fire protection through better facilities and equipment. This administrative regulation **establishes the requirements for** [sets out standards and procedures for determining the use of] volunteer fire department aid.

Section 1. Definitions. (1) **"Certified training" means firefighter training given or verified by an instructor certified pursuant to 815 KAR 45:090 and recorded by the commission.**

(2) "Certified volunteer firefighter" means an individual who has received at least 150 hours of certified training [as defined by the Commission on Fire Protection Personnel Standards and Education] and who receives at least twenty (20) hours of [defined and] certified training annually.

[(2) "Certified training" means firefighter training given or verified by an instructor certified pursuant to 815 KAR 45:090 and recorded by the commission.]

(3) "Commission" **is** [means commission as] defined by KRS 95A.210(1).

(4) "Fire apparatus" means a motorized vehicle specifically designed to perform firefighting operations, equipped with a pump having a minimum capacity of pumping 250 gallons per minute and with sufficient space to carry fire hose and other fire suppression equipment.

(5) **"Newly formed fire department" means a fire department which meets the requirements established in KRS 95A.262(2) for a qualifying department.**

(6) **"Volunteer fire department" is defined in KRS 75.400(5).** [means a fire department recognized by the commission as having a membership of more than fifty (50) percent of its members being full time volunteer firefighters.]

(6) "Newly formed department" means a fire department which has organized to the point of having a minimum of twelve (12) members, a chief and having either in their possession or on order at least one (1) operational fire apparatus. The department shall also have available from any source for the year in which the allotment is to be made funds, equipment, land and buildings of sufficient value to match or exceed the amount of the aid allotment.]

Section 2. Eligibility. (1) To qualify to receive [aid under the] volunteer fire department aid, **a volunteer fire department shall meet the requirements established in KRS 95A.262 and this administrative regulation.** [law, volunteer fire departments in cities of all classes, fire prevention districts organized pursuant to KRS Chapter 75, county districts established under authority of KRS 67.083 and all other organized volunteer fire departments registered as nonprofit corporations shall maintain at least twelve (12) firefighters, a chief and at least one (1) operational fire apparatus, as required by KRS 95A.262(2):

(2) A fire department or entity eligible for and receiving aid shall have a minimum of fifty (50) percent of its firefighters certified as required by this administrative regulation.]

**(2) A newly formed** [(3) Effective April 1, 1999, any new] fire department applying to be recognized by the [Fire] commission for funding and benefits **shall** [must] have twelve (12) firefighters [members and a chief that are not qualifying another fire department for volunteer fire department aid. [January 1, 2001, no firefighter who is listed on a fire department roster for purposes of qualifying that department for volunteer fire department aid may be listed as part of a roster qualifying any other fire department for volunteer fire department aid:]



~~(3) [(4)] [A fire department or entity anticipating receiving aid shall maintain a current roster of those firefighters who qualify them for the following year's volunteer fire department aid check and submit a copy of the roster to the commission.~~

~~(5) After December 31, 2000, if two (2) or more fire departments contain the name of the same firefighter on its roster, no fire department shall use that firefighter in its calculation toward qualification for receiving aid.~~

~~(6) A fire department or other eligible entity requesting aid [for any year] shall provide proof of purchase expenditures for the previous year's aid. The proof shall be submitted by June 30 of each year on form KSA-2, Proof of Purchase.~~

~~(4) [(5)] [(7)] Certification of personnel shall be determined from Form KFS-2, Firefighter Application, [July 14, 1998] which shall be submitted to the commission regarding the active or inactive status of an existing member, the departure of a member, or the entry of a new member. [existing members as well as departure of members and entry of new members.~~

~~(6) [(8)] New members of a fire department shall have two (2) years to become certified before being counted as personnel to determine qualification of the fifty (50) percent of personnel certified for eligibility of state aid funding.~~

~~(7) [(9)] To be eligible to receive funds, a newly formed fire department shall have fifty (50) percent of its membership with at least half of their training hours toward certification by July 31 within their first year of existence and plans to receive the balance of the required hours for certification within the second year of their existence. Each successive year, they shall meet the requirements of the commission to retain certification.]~~

Section 3. Participation Requirement. (1) ~~[It shall be the responsibility of]~~ The chief officer or his appointed representative of the department ~~shall [to]~~ furnish the information required by the commission for determination of eligibility.

(2) All training hours for the department for the previous twelve (12) months shall be submitted by December 31 ~~[31\*]~~.

(3) A volunteer fire department seeking aid pursuant to **KRS 95A.262 shall submit to the commission a completed:**

**(a) Form KSA-1, Fire Department Information; and**

**(b) Form KFS-3, Fire Department Application.** ~~[the authority of KRS Chapter 95A shall file Form KSA-1 and KFS-3, July 14, 1998, and submit to the office of the commission.]~~

Section 4. Purposes for which Volunteer Aid May be Used. (1) An approved equipment list of items which ~~may [can]~~ be purchased with volunteer fire department aid pursuant to **KRS 95A.262 and** this administrative regulation shall be supplied with each check.

(2) Funds shall not be expended for an item not on the approved list unless written permission to spend the funds for other purposes is granted by the **commission and** fire department aid administrator **pursuant to Section 5 of this administrative regulation.**

(3) Proof of purchase shall be:

**(a) Submitted in the form of an invoice [invoices] and cancelled check;**

**(b) [checks and shall be] Recorded on Form KSA-2, Proof of Purchase; and**

**(c) [July 14, 1998, and] Submitted to the commission.**

(4) Proof of purchase documentation shall be returned by June 30 of the year following receipt of the check.

(5) The commission or its designee may make an inspection of the applicant's fire department to determine comparative needs within the department before making the allotment. The inspection may ~~[also]~~ include an accounting to assure that equipment previously purchased is currently in the possession of the fire department.

Section 5. Processing Applications for and Expenditure of Aid. (1) ~~(a) If the [Allotment shall not be expended for any purpose other than that for which it is approved without the approval of the commission.~~

~~(2) If approved allotment is insufficient to cover the cost of equipment or other approved purpose [purposes], funds granted for a fiscal year may be deposited in a [any] bank authorized by the applicant to be held for a period not to exceed five (5) years from the initial~~

request.

~~(b) If additional time beyond the five (5) years is needed, a written request shall be made to the commission giving reasons why additional time is needed.~~

**(c) The funds** ~~[This] shall be held in a special and separate bank account marked "Fire Department Aid Fund."~~

~~(2) [(3)] If an allotment is granted to a fire department and is to be used for the purchase of equipment other than that listed on the approved equipment list or for another [any other] purpose, the chief of the fire department shall:~~

~~(a) Request, in writing, permission to use the allotment for other equipment or purposes; or~~

~~(b) Refund the grant-in-aid allotment.~~

**(3) The amount expended for a firefighter to attend a fire-related school or class shall:**

~~(a) [(4) An amount expended for expense of firefighters in attending fire related school or classes shall] Not exceed ten (10) percent of the aid amount allotted for that fire department; and~~

~~(b) Be listed [for a fire department. This shall be an item entered] on Form KSA-2, Proof of Purchase [July 14, 1998], with receipts.~~

~~(4) [(5)] If expenditure is made of an allotted fund [any allotted funds], copies of receipted bills shall be forwarded by the volunteer fire department aid coordinator to the commission. If the grant is to be used toward the retirement of a preexisting debt for purchase of land, buildings or equipment, proof of the expenditure in the form of an affidavit or cancelled note shall be furnished to the commission. A false statement made knowingly by an applicant shall call for refund of grant monies and prosecution under existing statutes.~~

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Fire Department Information, Form KSA-1, July 14, 1998;

(b) Firefighter Application ~~[for Certification of Personnel]~~, Form KFS-2, July 14, 1998;

(c) Fire Department Application, Form KFS-3, July 14, 1998; **and**

(d) Proof of Purchase, Form KSA-2, July 14, 1998.

(2) This material may be inspected, copied, or obtained at the Commission on Fire Protection Personnel Standards and Education, 1049 U.S. 127 South, Suite #5, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GERALD STEWART, Chairman

RONALD MCCLOUD, Secretary

JUDITH G. WALDEN, Office of General Counsel

APPROVED BY AGENCY: June 14, 1999

FILED WITH LRC: June 15, 1999 at 9 a.m.

**CABINET FOR HEALTH SERVICES  
Department for Medicaid Services  
Division of Member and Provider Services  
(As Amended at ARRS, August 10, 1999)**

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

RELATES TO: KRS 199.680, 205.634 [205.520, 42-GR 431.615, 440.130, 447 Subpart B, 42 USC 1396a, 1396d, 1396e]

STATUTORY AUTHORITY: KRS 199.680, 205.634 [194.130, 194A.050, 199.011, 199.640, 199.670, 205.520, 205.634, 1998 Ky. Acts ch. 615]

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 199.680(3) and 205.634(4) require the department to promulgate an administrative regulation establishing the requirements for a determination of the availability of providers of residential care within Kentucky. KRS 199.680(1) and 205.634(2) prohibit the reimbursement of an out-of-state provider of residential care for children whose care is paid by state general funds or state administered federal funds unless a determination has been made that a provider in Kentucky is not capable or willing to provide comparable services to the child. [The Cabinet for Health**

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~~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) "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 by the department per child to an in-state facility for comparable residential care.

(2) "Comparable services" mean services provided by an in-state residential provider equal to or surpassing [or surpass] services provided by an out-of-state residential provider.

(3) "Department" means the Department for Medicaid Services or its designated agent.

(4) "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).

(5) "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. ["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. Exceptions and Exclusions. [Instructions and Exceptions:] (1) The department shall not preauthorize or reimburse an out-of-state provider for a Medicaid-eligible child except as provided by KRS 199.680 and 205.534. [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 it is determined [the participating out-of-state provider presents documentation] that there is no [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's residence [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) An [Components of treatment shall include clinical program descriptions, 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 payment [payments] made by the department during the residential episode of care shall be [are] excluded from the calculation of comparable cost per child.

(3) [(4)] A participating in-state or [and] out-of-state provider [providers] shall meet the provider qualification criteria established in 907 KAR 1:034 or [and] 907 KAR 3:030.

Section 3. Procedures for Placement. (1) The following actions [procedures] shall occur before [be performed prior to] an out-of-state placement:

(a) The department or its designated agent shall document that there is no in-state provider with comparable services and costs capable of and willing to serve a specific child.

(b) The department or its designated agent shall obtain all necessary information, both demographic and medical, about each child who presents for review and services.

(c) The information shall include, at a minimum:

1. Child's demographics;

2. Child's parent or legal guardian's name and address;

3. Child's clinical history, placements and diagnoses;

4. Child's proposed treatment plan, including the estimated date of discharge and a proposed transition plan to the home and community; and

5. [Any] Other pertinent information regarding the child's case, including [like] special medical needs.

(d) [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.

(e) 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.

(e) [(d)] The department shall create a database of participating in-state and out-of-state providers containing each participating provider's identifying information, clinical program descriptions, staff credentials, staffing models, quality improvement plan, utilization management, protocols and opportunity for family interaction, discharge and outcome management, services, costs, licensure status, and negotiated payment rates by the department [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 established in KRS 199.680(1) and 205.634(2) [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: July 2, 1999

FILED WITH LRC: July 2, 1999 at 10 a.m.

CABINET FOR HEALTH SERVICES  
Department for Mental Health and  
Mental Retardation Services  
Division of Mental Health  
(As Amended at ARRS, August 10, 1999)

908 KAR 2:210. Domestic violence offender treatment certification standards.

RELATES TO: KRS 403.715 to 403.785

STATUTORY AUTHORITY: KRS 194A.030, 403.7505

NECESSITY, FUNCTION, AND CONFORMITY: KRS 403.7505 authorizes the Cabinet for Health Services to promulgate administrative regulations establishing certification standards for mental health professionals providing court-ordered treatment services for domestic violence offenders. The purpose of this administrative regulation is to establish provider certification requirements and standards for services. This administrative regulation is necessary to assure the quality of court ordered services and reduce the danger of physical injury or death for victims of ineffectively treated domestic violence perpetrators.

Section 1. Definitions. (1) "Assessment" means the evaluation of the offender's characteristics, history of abusive behavior, risk of harm to self and others, and capacity to benefit from treatment.

(2) "Associate provider" means an individual that has been certified to provide services in accordance with the requirements of this administrative regulation only under the direct supervision of an autonomous provider.

(3) "Autonomous provider" means a mental health professional that has been licensed or certified pursuant to KRS Chapters 309, 311, 314, 319, or 335 that has been certified by the cabinet for unsupervised clinical practice in a domestic violence program.

(4) "Cabinet" means the Cabinet for Health Services.

(5) "Client" means any individual who has been charged with or convicted of a criminal offense related to domestic violence or who is a respondent in a protective order issued by a court pursuant to KRS 403, and who has been admitted to a program.

(6) "Court-ordered," means an order by any district, family or circuit court judge for an offender to be assessed by a provider to determine the offender's eligibility for admission to a program.

(7) "Domestic violence" is defined in KRS 403.720(1). [~~means any act or threat of physical or sexual assault or abuse; psychological or emotional abuse; or the destruction of property or pets intended to elicit (illicit) fear in the victim. It includes criminal offenses against a victim, [and] violations of emergency protective orders and domestic violence orders, physical injury, serious physical injury, sexual abuse, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault between family members or members of an unmarried couple.]~~]

(8) "Offender" means any individual who has been charged with or convicted of a criminal offense related to domestic violence or who is a respondent in a protective order issued by a court pursuant to KRS Chapter 403.

(9) "Program" means the services provided in accordance with the requirements of this administrative regulation to offenders who have been referred by a court for assessment or treatment related to domestic violence.

(10) "Provider" means an associate provider or an autonomous provider.

(11) "Screening" means the actions taken by associate or autonomous providers to determine an offender's eligibility for admission to the program.

(12) "Treatment" means counseling and educational services that focus on the cessation of violence by an offender. Treatment includes individual and group services using a comprehensive curriculum of content relating to domestic violence.

Section 2. Certification Procedures. (1) The cabinet shall certify an individual as an associate provider or an autonomous provider if: (a) the applicant meets the applicable qualifications specified in Section 4 of this administrative regulation; and

(b) ~~An applicant that requests certification as an autonomous provider meets all the requirements specified in Section 4 of this administrative regulation except those in subsection (2)(a), (b) or (e) of this section and requests certification before January 1, 1999.~~

(2) An individual may apply to be certified as an associate provider or an autonomous provider by submitting:

(a) A written request for certification to the cabinet; and

(b) Documentary evidence of qualifications; and

(c) A copy of the curriculum to be used in the program; and

(d) Evidence that the individual has remedied the cause for the denial or revocation if a certification has been denied or revoked in accordance with Section 3 of this administrative regulation; ~~evi-~~

~~dence that the individual has remedied the cause for the revocation].~~

(3) A request for certification shall be submitted to the Sexual and Domestic Violence Program Specialist, Department for Mental Health and Mental Retardation Services Division of Mental Health.

(4) The cabinet shall determine that a request is incomplete if:

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

(b) The cabinet can not verify the authenticity of the documentation of qualifications.

(5) If the cabinet determines that a request is incomplete it shall return the request to the sender and specify additional documentation that is required or the documentation that can not be verified.

(6) The cabinet shall respond to [approve or deny] the request for certification in writing no later than sixty (60) working days after receiving a complete request for certification.

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

(8) The cabinet shall renew the certification of an associate provider or an autonomous provider upon request if the provider submits documentation of completion of at least eight (8) hours per year of continuing education related to domestic violence unless his certification has been revoked in accordance with Section 3 of this administrative regulation.

(9) The cabinet may form a committee of individuals with expertise in domestic violence to provide recommendations to the cabinet on the certification of providers.

Section 3. Denial or Revocation of Certification. (1) The cabinet may deny a request for certification or revoke the certification of a provider if the cabinet determines that the provider:

(a) Has been convicted of or pled guilty to a felony [criminal] offense or a misdemeanor offense if the crime negatively impacts the delivery of services to clients; [including misdemeanors if the crime is against persons; or]

(b) Has had a domestic violence protective order issued against him within the previous five (5) [two (2)] years; ~~or]~~

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

(d) Has had a sanction applied against a license [any licensure] or certification held by the applicant or provider at any time in the past two (2) years or currently has a sanction applied against a license or certification; ~~or]~~

(e) Has provided domestic violence offender assessment or treatment services without supervision if supervision is required by Section 5(1) or (2) of this administrative regulation; ~~or]~~

(f) Has falsified any information in a request for certification; ~~or]~~

(g) Has failed to meet the requirements for maintenance of certification set forth in Section 2(8) of this administrative regulation; ~~or]~~

(h) Has failed to implement a corrective action plan imposed by the cabinet in accordance with Section 12(4)(a) or (b) of this administrative regulation;

(i) Has submitted a curriculum or amended a previously approved curriculum in a manner which is inconsistent with any provision of this administrative regulation or with generally accepted program standards for domestic violence treatment; or

(j) Has practiced in a manner which is inconsistent with or in violation of a provision of this administrative regulation.

(2) An applicant or a provider may appeal a denial of a request for certification or a revocation of certification. An appeal shall:

(a) Be submitted in writing to the Sexual and Domestic Violence Program Specialist, Department for Mental Health and Mental Retardation Services Division of Mental Health; and

(b) Specify the reason the provider believes the denial or revocation is unwarranted and;

(c) May include information or documentation supporting the appellant's position.

(3) If an applicant or a provider appeals a certification decision the cabinet shall appoint a hearing officer and conduct an administrative hearing in accordance with KRS Chapter 13B.

(4) An applicant or provider who has had his certification revoked shall be ineligible for certification or recertification until the second anniversary of the date his certificate was revoked.

Section 4. Qualifications of Certified Providers. (1) The qualifica-

tions of an associate provider ~~shall be~~ [are]:

(a) A bachelors degree from an accredited university or college in a mental health related discipline; ~~and~~

(b) Completion of twenty-four (24) clock hours of specialty training in domestic violence including:

1. Characteristics and dynamics of domestic violence;
2. Clinical profiling of domestic violence offenders;
3. Risk assessment and lethality of domestic violence offenders;
4. Treatment of offenders;
5. Effective services for victims and child witnesses of domestic violence;

6. Safety planning for victims; and

7. Criminal sanctions for domestic violence and legal remedies for victims.

(c) Four (4) years of full-time postbachelors degree work experience totaling at least 8000 hours that shall ~~may~~ include general clinical experience ~~or~~ ~~and~~ direct case experience related to domestic violence;

(d) Being a party to a written agreement to receive the supervision required by Section 5(2) of this administrative regulation; and

(e) Written recommendations for certification from ~~two (2) victim advocates as defined in KRS Chapter 421, at least one (1) of whom works in an agency separate from the applicant, [representatives of two (2) victims advocate agencies.]~~

(2) The qualifications of an autonomous provider shall be [are]:

(a) An advanced degree from an accredited university or college in a mental health discipline that is regulated by licensure or certification under the statutes of the Commonwealth of Kentucky; ~~and~~

(b) Possession of a certificate or license to practice under the laws of the Commonwealth of Kentucky in one (1) of the following disciplines:

1. Psychology;
2. Social work;
3. Medicine if board eligible in psychiatry and neurology;
4. Psychiatric nursing;
5. Marriage and family therapy;
6. Professional counseling; or
7. Art therapy; and

(c) 150 hours of clinical experience providing domestic violence services under the direct supervision of one (1) of the licensed or certified professionals specified in paragraph (b) of this subsection of which eighty (80) percent of the time shall have been with offenders and twenty (20) percent with victims; and

(d) Completion of the training specified in subsection (1)(b) of this section; ~~and~~

(e) A written recommendation for certification from the professional that provided the supervision required by paragraph (c) of this subsection; and

(f) Written recommendations for certification from ~~two (2) victim advocates as defined in KRS Chapter 421, at least one (1) of whom works in an agency separate from the applicant, [representatives of two (2) victims advocate agencies.]~~

Section 5. Scope of Practice and Supervision Requirements. (1) ~~Under the supervision of an autonomous provider, an associate provider [may under the supervision of an autonomous provider]:~~

(a) Screen, assess, plan and provide treatment services under the supervision of an autonomous provider to offenders and clients of a program; ~~and~~

(b) Consult with the courts, prosecutors, law enforcement, other agencies, mental health providers and others regarding the assessment or treatment needs of clients; ~~or~~ ~~and~~

(c) Have contact with the victims of offenders who are clients of the program in accordance with Section 7 of this administrative regulation.

(2) An associate provider that provides the services specified in subsection (1) of this section shall participate in at least one (1) hour per week of face-to-face supervision including:

- (a) Case discussion;
- (b) Review of reading assignments;
- (c) Skill building; and

(d) Review of audio or video tapes of actual clinical practice provided by the associate provider.

(3) A certified autonomous provider may provide screening, assessment, treatment and consultation services independently and supervise associate providers if he has:

(a) Participated in a three (3) hour training program in clinical supervision that has been approved by a mental health licensing board or by the cabinet; and

(b) Been in the practice of domestic violence offender treatment for a period of at least one (1) year.

(4) A certified autonomous provider who supervises associate providers shall:

(a) Provide ~~supervisees~~ the supervision required by subsection (2) of this section; ~~and~~

(b) Directly observe the supervisees' practice in person or through video or audio tapes of the supervisees' clinical practice; and

(c) Assure that supervisees provide services in accordance with ~~all~~ the provisions of this administrative regulation.

(5) A supervisor shall not supervise more than six (6) associate providers concurrently.

Section 6. General Service Standards. (1) Services provided to offenders referred by a court for domestic violence services shall be based on the following premises regarding violent conduct, the roles of offenders, and the effects of domestic violence on victims:

(a) Domestic violence constitutes a health hazard to victims who may experience short and long-term effects from the abuse. Immediate and long-term cessation of the domestic violence is the priority purpose for treatment.

(b) Domestic violence in its various forms is criminal behavior.

(c) Services shall be designed to enhance and promote the safety of identified and identifiable victims including spouses, live-in partners, children and other family members.

(d) Victims are not responsible for the violent behavior of offenders and services shall not promote the concept of mutual responsibility in explaining domestic violence.

(e) The offender is accountable for domestic violence, which is the product of individual choice and learned traits. The offender's psychopathology, substance abuse, other disorders, or cultural background are not explanatory causes of the offenses but can influence the offender's behavior.

(f) Cooperation and service coordination between law enforcement, the courts, probation and parole agencies, the Department for ~~Community-Based~~ ~~[Social]~~ Services, spouse abuse centers and other victim advocates, chemical dependency professionals, and other mental health professionals is necessary to assure effective treatment and the safety of victims and potential victims.

(2) A provider shall give each offender or client a written document that explains the complaint process of the program.

(3) A provider shall treat offenders with respect and dignity at all times and shall not discriminate against an offender based on race, ethnicity, gender, age, religion or disability.

(4) An offender shall have the right to complain verbally or in writing to the provider, the referring court, or the cabinet, ~~and~~ A provider shall not take ~~any~~ adverse action against an offender that makes a complaint.

(5) A provider shall adjust fees based upon the client's ability to pay. If a court has made a finding that a client is indigent prior to making a referral for treatment ~~[that a client is indigent]~~, a court may order a client to perform community service in lieu of payment of a fee.

(6) A provider shall comply with ~~any and all~~ federal laws pertaining to research with human subjects and shall protect the privacy of a ~~client~~ ~~[any clients]~~ who ~~gives~~ ~~[give]~~ consent to participate in any provider sponsored research activities.

(7) The provider shall provide clean and comfortable facilities for client services that meet applicable fire safety codes and handicapped accessibility codes.

(8) The provider shall comply with all federal and state laws applicable to the confidentiality of client records.

Section 7. Contact with Victims. (1) If an offender consents to a victim's participation in assessment or treatment services a provider shall:

(a) Attempt to contact the victim within five (5) days of the offender's admission to the program; ~~and~~

(b) Offer the victim an opportunity to participate in the assessment or treatment of the offender by disclosing information about the offender and the circumstances of the violence; ~~and~~

(c) Interview victims who consent to participate in an assessment of the offender; ~~and~~

(d) Provide the victim information about the program, its possible benefits, the limitations of services, and the degree to which the offender's participation may or may not result in increased safety for the victim; and

(e) Educate the victim about community services, which are available to assist in meeting current or future protection needs of the victim and family members.

(2) Providers shall document their efforts to contact victims.

(3) Victim interviews shall not be conducted in the presence of the offender.

(4) If a victim does not consent to participate, ~~or~~ withdraws consent to participate, or refuses to participate or provide information, a provider shall not attempt to coerce or persuade the victim to participate.

Section 8. Screening Procedures. (1) A provider shall establish:

(a) Eligibility criteria for participation in a program which may include an offender's admission of responsibility for a domestic violence related offense and may not be based solely on an offender's inability to pay for services; ~~and~~

(b) Procedures for acceptance of referrals of offenders from a court following charges of a domestic violence related offense or as a condition of a protective order issued pursuant to KRS Chapter 403; and

(c) Procedures for notifying ~~Notification of~~ the referring court if an offender is determined not to be eligible for a provider's services. The notice shall:

1. Specify ~~including~~ the reasons the offender is determined to be ineligible;

2. The ~~therefore and any~~ referrals made in accordance with Section 9(2) of this administrative regulation if any; and

3. Be made no later than five (5) days after the determination is made. ~~decision.~~

(2) An offender shall be provided with ~~all of~~ the following information prior to receiving assessment or treatment services:

(a) The limitations on confidentiality including:

1. The duties of providers to warn and protect intended victims of threats to harm under the provisions of KRS 202A.400;

2. The requirements to report abuse in accordance with KRS 209.030 or 620.030; and

3. The fact that information disclosed to the provider or other clients may be used against them in civil or criminal proceedings;

(b) The relationship of the provider to the referring court including duties to make reports pertaining to the client to the courts, prosecutors, probation and parole officers, law enforcement, the victim, and any other named party or agency that might be involved in the coordination of the client's services;

(c) The offender's responsibility for paying fees for services and policies regarding noncompliance with payment of fees;

(d) The expected length of treatment participation and the terms for discharge from the program including grounds for involuntary discharge;

(e) An explanation of the requirements of Section 6 of this administrative regulation;

(f) ~~An explanation of the rights set forth in this subsection;~~

(g) A description of the services that will be provided to the offender including requirements for participation; and

(h) ~~Notification that, at the discretion of the court, failure to comply with program requirements may result in a citation for contempt of court; and~~

(i) ~~An explanation of procedures for victim participation in screening, admission and treatment services.~~

Section 9. Assessment and Admission Procedures. (1) If an offender is determined to be eligible for domestic violence services offered by the provider in accordance with Section 8(1) of this ad-

ministrative regulation an assessment of the offender's treatment needs shall be performed. The assessment shall include consideration of the offender's:

(a) History of abusive behavior including degree of harm and type of violent conduct;

(b) Criminal history;

(c) Risk of harm to self and others;

(d) Medical history;

(e) History of mental or emotional disorder;

(f) Current mental status;

(g) ~~The presence of any~~ Co-occurring disorders such as mental illness, ~~or~~ substance abuse, or dependence;

(h) ~~The offender's~~ Ability to benefit from the approved program content and methods; ~~English language services and from group settings;~~ and

(i) ~~May include a review any~~ Relevant public records, police reports and other available collateral sources of information on the offender.

(2) Pursuant to the provisions of Section 7 of this administrative regulation a provider may interview a victim ~~subject to the provisions of Section 7 of this administrative regulation~~ and consider information provided by a victim in the assessment if an offender consents for a victim to participate in an assessment.

(3) If, upon assessment, a provider determines that the offender is unlikely to benefit from services due to a high risk of lethality or other factors a provider shall refer the offender to services more likely to benefit the offender.

(4) A provider may refer an offender to mental health or substance abuse treatment services as a prerequisite for admission or completion of a domestic violence offender treatment program.

(5) A provider shall notify the referring court no later than five (5) days after making a determination based on an assessment if the offender shall be admitted to a program or not, and referrals made, if any. The court shall be notified within twenty-four (24) hours if the provider chooses not to admit an offender to a program based on the offender's lethality or other issues related to the safety of the victim.

(6) An offender shall be admitted for domestic violence treatment upon providing a written consent for treatment and agreeing in writing to comply with all program rules and guidelines and providing written authorization for a provider to release information to ~~all~~ the ~~referring or service coordinating~~ parties identified in subsections (4) and (5) of this section ~~above~~.

(7) If the provider chooses not to admit an offender to the program due to the offender's inability to benefit from the program or the offender's reasonably foreseeable risk of harm to the victim or others, the provider shall notify the victim of the decision not to admit the offender. Providers shall document their efforts to contact victims.

Section 10. Treatment Procedures. (1) A provider shall make individual and group services available to clients at least once weekly.

(2) A program shall offer separate groups for male and female offenders.

(3) ~~(a)~~ Group services may involve a minimum of two (2) clients but shall not exceed twelve (12) clients at any time unless two (2) providers facilitate each group session.

~~(3)~~ If two (2) providers facilitate a group, it may include a total of fifteen (15) participants.

(4) Group services shall be scheduled in at least one and one-half (1 1/2) hour sessions.

(5) A client shall participate for a minimum period of twenty (20) weeks ~~and a recommended period of fifty (50) weeks~~.

(6) Noncourt-referred clients may participate in group services with court-referred clients.

(7) The provider shall establish a core curriculum for group participation that covers the essential features of domestic violence including:

(a) Definition of domestic violence in its various forms, including physical, sexual, psychological and environmental abuse;

(b) Exploration of the effects of domestic violence on victims and witnesses to the domestic violence;

(c) Discussion of civil and criminal law related to [the legal dimensions of] domestic violence;

(d) Description of the cycle of violence and other dynamics of domestic violence;

(e) Instruction of clients about their responsibility for the domestic violence behavior;

(f) Confrontation of the client's use of power, control and coercion in intimate relationships;

(g) Confrontation of rigid sex role stereotypes;

(h) Challenge of the client's pattern of aggressive reactions in conflict situations with victims;

(i) Exploration of the actual and perceived role of alcohol and drug abuse in the domestic violence;

(j) Exploration of constructive and nonviolent methods for expressing anger and resolving conflict in relationships, including the use of "time outs", stress management, anger reduction and constructive verbal methods for resolving conflict;

(k) Development of relapse prevention techniques; and

(l) Promotion of aftercare services where indicated.

(8) If group services for female offenders are offered, the curriculum required by subsection (7) of this section shall [may] be amended to relate specifically to female offenders.

(9) A provider shall execute all duties to warn and protect under the provisions of KRS 202A.400 if intended victims have been threatened by a client of the program [under the provisions of KRS 202A.400].

(10) A provider shall notify the victim of the discharge or termination of a client from a program. If the discharge or termination is based on the offender's lethality or other issues related to the safety of the victim, the provider shall immediately make every reasonable attempt to contact the victim. Providers shall document their efforts to contact victims.

(11) A provider shall not offer or provide marital counseling or family therapy to any client or victim until the client has successfully completed the program and has not demonstrated violence in the relationship for at least six (6) months since the successful completion of the program. [at least six (6) months of nonviolent behavior in the relationship.]

(12) A provider shall not offer or provide marital counseling or family therapy to any client or victim if there is a foreseeable risk of harm to the victim resulting from the marital services or if a provider believes that the victim may be agreeing to participate because of coercion or threat from the offender.

Section 11. Involuntary Discharge from a Program. (1) A provider shall dismiss from the program an [any] offender that:

(a) Fails to attend more than ten (10) percent of scheduled appointments; [or]

(b) Fails to actively participate in services or complete assignments; [or]

(c) Fails to assume financial responsibility for services as ordered by the court; [or]

(d) Violates any provision of a court order; or

(e) Reports a reoccurrence of domestic violence or other behaviors that, in the provider's professional judgment, are associated with increased risk of harm to the victim. [poses a threat to the safety of a victim.]

(2) A provider shall notify the referring court no later than five (5) days after a decision to discharge an offender from the program and shall specify the reason for the discharge. If the provider involuntarily discharges an offender due to the offender's inability to benefit from the program or due to a reasonably foreseeable risk of harm to the victim, the provider shall notify the court within twenty-four (24) hours after the decision to discharge the offender.

(3) A provider shall immediately notify the victim of the involuntary discharge of a client. A provider shall document an effort to contact a victim.

Section 12. Monitoring. (1) The cabinet shall:

(a) Investigate signed written complaints received about providers if the complaints allege a failure to comply with the provisions of this administrative regulation; and

(b) Refer any complaints against providers which relate to un-

ethical practice or practice which may be outside the practice of a provider to the appropriate licensure or certification board.

(2) The cabinet may evaluate a certified provider's adherence to the provisions of this administrative regulation on its own initiative.

(3) Monitoring by cabinet staff may include [any of] the following activities:

(a) Interviewing offenders or victims if they consent to be interviewed;

(b) Reviewing service records maintained by providers on offenders that have been referred by a court in accordance with this administrative regulation;

(c) Direct observation of services provided to offenders unless an offender objects to being observed;

(d) Interviewing judicial, correctional, or police officials, victim advocates or [and] other agency personnel that interact regularly with a certified provider in relation to offender services.

(4) If the cabinet determines that a certified provider has failed to comply with provisions of this administrative regulation the cabinet shall notify the provider in writing of its determination and may:

(a) Require the provider to submit a corrective action plan; [or]

(b) Impose a corrective action plan upon the provider; or

(c) Revoke a provider's certification in accordance with Section 3 of this administrative regulation.

(5) The cabinet shall notify an autonomous provider that supervises an associate provider if it determines that an associate provider has failed to adhere to the provisions of this administrative regulation and the autonomous provider shall be responsible to assure that corrective action is taken.

ELIZABETH R. WACHTEL, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: June 15, 1999

FILED WITH LRC: June 15, 1999 at 11 a.m.

**CABINET FOR FAMILIES AND CHILDREN**  
**Department for Community-Based Services**  
**Division of Policy Development**  
**(As Amended at ARRS, August 10, 1999)**

**922 KAR 1:130. Kinship Care Program.**

RELATES TO: KRS [194B.050(1);] 205.200(2), (3), 605.120(4), **EO 98-731, Section IV., A** [42 USC 601 et. seq.]

STATUTORY AUTHORITY: KRS 194B.050(1), 205.200(2), (3), 605.120(4), **605.150(1)**, 42 USC 601(a)(1) [et seq.; EO 98-731]

NECESSITY, FUNCTION, AND CONFORMITY: KRS **605.120(4) encourages the cabinet to develop a pilot kinship care project.** [194B.050(1) requires the Secretary of the Cabinet for Families and Children to promulgate administrative regulations necessary to operate programs and fulfill responsibilities vested in the Cabinet for Families and Children.] This administrative regulation **establishes** [sets forth the development of] the Kinship Care Program in Kentucky.

Section 1. Establishing the Program. (1) The Kinship **Care** Program shall serve a child who is:

(a) In need of protection and unable to remain in his parental home;

(b) Removed from his parental home for a protection issue;

(c) In [a] placement with a caring relative who [that] has been determined **by the Cabinet for Families and Children** to be a preferable [and viable] alternative to placement with a nonrelative [by the Cabinet for Families and Children];

(d) At risk of commitment to the Cabinet for Families and Children due to abuse or neglect;

(e) Currently in a nonrelative foster care placement; or

(f) In a child-only Kentucky Transitional Assistance Program (K-TAP) case, with a prior protection case on record and the relative placement arranged by the cabinet.

(2) This program shall provide:

(a) Financial assistance; and



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(b) [A] Case-management service to each nonparental relative caring for the child in his home.

Section 2. Program Requirement. (1) A relative whose home is being considered for placement of a child shall:

- (a) Receive an approved home evaluation by Cabinet for Families and Children staff;
- (b) Pass a criminal record check;
- (c) Be free of a substantiated child or adult abuse or neglect report; and
- (d) If there has been a conviction or substantiation on a charge other than minor traffic offenses, provide evidence of rehabilitation by submitting ~~[a statement from an appropriate justice agency attesting to the individual's rehabilitation and]~~ a character reference from:

1. A person with good standing in the community, not a relative or close friend; and

2. An employer or other person able to attest to the person's character. If rehabilitation has been sufficiently demonstrated, the [; and from the employer, who are aware of the conviction and who can attest to the person's behavior since the conviction. Permission to proceed shall be given by the] service region administrator or his designee shall authorize the evaluation to continue without prejudice.

(2) Upon completion of the requirement listed in subsection (1) of this section, the cabinet and the relative shall execute a Statement of Rights and Responsibilities, incorporated by reference ~~[enter into a written agreement with the Cabinet for Families and Children that shall detail the responsibility and commitment of the:~~

- (a) ~~Relative as a caretaker of the child; and~~
- (b) ~~Department for Community-Based Services, Division of Protection and Permanency, regarding the placement of the child within the home of the relative;]~~

(3) The responsibility of the relative shall include:

- (a) Cooperation in a child support activity pursuant to 42 USC 608(a)(2); and
- (b) Participation in an annual eligibility review pursuant to 921 KAR 2:040, Section 2(2)(c).

(4) The Cabinet for Families and Children shall recommend to the court that the caretaker relative be granted temporary custody of the child.

(5) The Cabinet for Families and Children shall, after a period of twelve (12) months from the date of placement:

- (a) Review the placement;
- (b) Draft a recommendation to the court ~~[review the placement after a twelve (12) month period. This review shall lead to a cabinet recommendation]~~ regarding permanent custody or guardianship.

Section 3. The Pilot Program. (1) The Kinship Care Pilot Program shall be initiated on October 1, 1999 ~~[Beginning October 1, 1999, the cabinet shall make available in a selected area, the Kinship Care Program].~~

(2) Placement of a child or sibling group shall be made in a selected pilot county.

(3) After placement, if a caretaker relative changes his residence to a county not included in the selected pilot area, assistance shall continue through coordination of designated staff between the:

- (a) Selected pilot county; and
  - (b) New county of residence.
- (4) The cabinet shall expand the Kinship Care Program, to the extent funding shall be available, until statewide implementation is completed.

Section 4. Financial and Eligibility Criteria. (1) The monthly payment scale and child's income limit shall be as follows:

Number of Eligible Children	Monthly Payment and Income Limit
1 Child	\$ 300
2 Children	\$ 600
3 Children	\$ 900
4 Children	\$1,200
5 Children	\$1,500

6 or More Children	1,800
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(2) The resource limit and countable resources of the child shall be the same as a K-TAP child pursuant to 904 KAR 2:016, Section 2.

(3) Except for the income limit in subsection (1) of this section, countable income of the child shall be the same as a K-TAP child pursuant to 904 KAR 2:016, Section 4(3).

(4) The child shall meet technical eligibility requirements pursuant to 904 KAR 2:006.

(5) The child shall be eligible for payment ~~[child's eligibility for payment shall be ongoing]~~ until the child:

- (a) Leaves the home of the relative; or
- (b) Has attained the age of nineteen (19) and is no longer a full-time student in:
  - 1. Elementary school;
  - 2. Secondary school; or
  - 3. An equivalent level of vocational or technical school.

(6) A one (1) time start-up amount of up to \$500 per child shall be provided for the purpose of supplying each child's immediate need for: ~~[A start-up cost amount shall be provided that equals a total amount for a sibling group, calculated as the number of children multiplied by \$500. The provision of this one (1) time start-up cost amount shall assist each child in getting established in the home for any immediate need related to:]~~

- (a) Clothing;
- (b) School supplies ~~[A school supply];~~
- (c) Additional furniture;
- (d) A deposit for a larger apartment; or
- (e) Other items or services needed to assist the child in establishing himself in the new environment ~~[Any other need falling into this category],~~ as determined by the Cabinet for Families and Children.

(7) A caretaker relative shall be excluded from the Kinship Care case.

(8) Income or resources of a ~~[the]~~ caretaker relative shall be disregarded.

Section 5. Support Services. (1) The Cabinet for Families and Children shall make available to a ~~[the]~~ caretaker relative when needed ~~[on a case-by-case basis]:~~

- (a) A child care subsidy pursuant to 922 KAR 2:160; and
  - (b) Respite child care.
- (2) Family counseling shall be provided to the child and caretaker relative, if needed, as determined by the cabinet.
- (3) Referral to an available support group shall be provided for the caretaker relative, if requested.

(4) A case-management service shall be supplied to the caretaker relative and child through the Cabinet for Families and Children for a at least ~~[minimal period of]~~ twelve (12) months.

(5) A ~~[The]~~ caretaker relative shall be referred to available parenting training.

Section 6. Incorporated by Reference. (1) "Kinship Care Program Statement of Rights and Responsibilities (8/99)", is incorporated by reference.

(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 MILLER, Secretary  
 CHARLES P. LAWRENCE, Attorney  
 APPROVED BY AGENCY: June 14, 1999  
 FILED WITH LRC: June 15, 1999 at noon

ADMINISTRATIVE REGULATIONS AMENDED AFTER HEARING  
OR RECEIPT OF WRITTEN COMMENTS

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY  
(Amended After Hearing)

11 KAR 12:020. General rules for investments and fund transfers.

RELATES TO: KRS 164A.310(4), 164A.325(7), 164A.335(1), 164A.375

STATUTORY AUTHORITY: KRS 164A.325(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.300 through 164A.380 confer certain powers and duties upon the Kentucky educational savings plan trust to invest funds and to utilize the administrative fund to support its activities. This administrative regulation establishes [sets forth] the policy for investments and fund transfers. ~~[This amendment is necessary to eliminate certain defined terms that are being placed in a separate administrative regulation and to reflect amendments to KRS 164A.300 through 164A.380 that provide for a separate organization to administer the endowment fund.]~~

Section 1. ~~[Definitions. "Administrative fund" (as defined in KRS 164A.305(2)):~~

~~Section 2.] Investments. (1) The program administrator, any investment manager, and any trustee or depository institution holding funds received pursuant to KRS 164A.335 shall adhere to the following standards:~~

~~(a) Safety of principal at the time of a projected cash need shall be paramount for all investment situations.~~

~~(b) Liquidity of investments shall be assured for funds which may be needed to satisfy short term cash flow needs; and~~

~~(c) Except as provided in paragraphs (a) and (b), maximizing investment yield shall be the prime objective of any investment.~~

~~(2) In accordance with the standards established in subsection (1) of this section, the board through the program administrator or any investment manager may invest funds received pursuant to KRS 164A.335 [may be invested] in any of the following solely in the interest of the participants and beneficiaries and for the exclusive purposes of providing benefits to beneficiaries and defraying reasonable expenses of administering the plan:~~

~~(a) Deposits or banker's acceptances with commercial banks whose outstanding indebtedness is rated A or better by a nationally recognized rating service, and deposits with any financial institution to the extent fully insured by the Federal Deposit Insurance Corporation or other U.S. government insurance entity;~~

~~(b) U.S. Treasury securities, obligations backed by the full faith and credit of the United States government, and U. S. government agency securities;~~

~~(c) Repurchase agreements, both overnight and term, must be governed by a Public Securities Association or equivalent master repurchase agreement including the appropriate annexes. These agreements shall be collateralized at 100 percent with U.S. Treasury securities, U.S. government agency securities, and other obligations backed by the full faith and credit of the United States government. Collateral shall be held by a third party custodian.~~

~~(d) Bank certificates of deposit rate A/A-1 or better by a nationally recognized rating service.~~

~~(e) State or municipal obligations rated in one (1) of the two (2) top classifications by a nationally recognized rating service (at least AA or Aa, SP-2 or MIG-2/VMIG-2).~~

~~(f) Obligations of any U.S. corporation, if the obligations are rated at least AA or As by a nationally recognized rating service.~~

~~(g) Collateralized mortgage or credit card obligations, mortgage backed securities, or similar securities that are collateralized at 100 percent, provided that the obligations are either fully insured by a U.S. government insurance entity or are issued by a corporation whose obligations would be an authorized investment.~~

~~(h) Commercial paper rated in the highest classification as established by a nationally recognized rating service (A-1 or Prime-1).~~

~~(i) Mutual funds, including money market funds, equity funds,~~

~~international funds, growth funds, income funds, and funds combining one (1) or more of the foregoing investment options which, at the time of making the investment, are, by law, permitted for the investment of funds by fiduciaries in this state [consisting of securities which would be authorized investments]; and~~

~~(j) Other investments [as] approved by the board of directors with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent investor acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.~~

~~Section 2. [The following minimum rates of interest borne by the investment made by the participant shall apply to participation agreements executed by the program administrator:~~

~~(1) Four (4) percent guaranteed by the trust on a payment credited to the account of a participant before October 1, 1999; and~~

~~(2) Zero percent guaranteed by the trust on a payment credited to the account of a participant on and after October 1, 1999.~~

Section 3.] Administrative Fund. The costs of administering the Kentucky educational savings plan trust shall be paid out of the administrative fund. Funds shall be transferred periodically to the administrative fund from the program fund. Fund transfers may be made quarterly, or more or less frequently, as the program administrator determines is necessary to cover the administrative costs of the trust. The total amount transferred to the administrative fund during any trust year shall not exceed four (4) percent of the total investment earnings accruing and credited to the program fund during that trust year. Monies transferred to the administrative fund pursuant to KRS 164A.335(1) and this administrative regulation shall be deposited in accordance with KRS 41.070(2).

WAYNE STRATTON, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: April 26, 1999

FILED WITH LRC: July 29, 1999 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Richard F. Casey

(1) Type and number of entities affected: This administrative regulation establishes the policy for investments and fund transfers for accounts administered by KHEAA in the Kentucky Educational Savings Plan Trust. As of April 30, 1999, the Kentucky Educational Savings Plan Trust had 2,989 open accounts.

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

(a) Cost of Living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The proposed amendment is anticipated to have no effect on cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent from the public comments received: The amendment is anticipated to have no effect on the cost of doing business by any entity.

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

1. First year following implementation: The amendment affects no change in the compliance, reporting or paperwork requirements of any participant and is anticipated to have no effect upon competition.

2. Second and subsequent years: Same as #1 above.

(3) Effect on the promulgating body:

(a) Direct and indirect costs or savings:

1. First year: The amendment modifies the standards for investment of Kentucky Educational Savings Plan Trust funds in mutual funds and other investments approved by the board for the

benefit of participants and specifies a minimum rate of interest on investments guaranteed by the board. It has no direct or indirect costs or savings on the promulgating body.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There is no change in the paperwork or reporting requirements for the promulgating body.

(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: This amendment merely modifies the standards for investments in mutual funds and other investments approved by the board and adds a specified minimum rate of interest on investments guaranteed by the Kentucky Educational Savings Plan Trust. Therefore, no revenue is necessary for implementation or enforcement of the amendment.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments were received. The amendment establishes a minimum rate of interest on investments guaranteed by the Kentucky Educational Savings Plan Trust. However, the amendment is anticipated to have no economic impact on the area.

(b) Kentucky: Same as (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered. The proposed amendment modifies the standards for investments in mutual funds and other investments approved by the board and lowers to zero the minimum rate of interest on investments guaranteed by the Kentucky Educational Savings Plan Trust to make administration of the trust consistent with similar state educational savings plans. This proposed change avails participants the opportunity to invest in a more balanced and competitive savings plan. A more balanced and competitive savings plan has the potential to increase yields.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no effect upon public health or the environment resulting from the adoption of this amendment.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: None

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

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

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

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

(10) Any additional information of comments: None

(11) Tiering: Was tiering applied? No. The concept of tiering is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute, and consequently does not inherently result in disproportionate impacts on certain classes or regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by 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. The regulation provides equal treatment and opportunity for all applicants and recipients.

PUBLIC PROTECTION AND REGULATION CABINET  
Department of Charitable Gaming  
(Amended After Hearing)

820 KAR 1:030. Charity game ticket standards.

RELATES TO: KRS 238.545(1), (2)

STATUTORY AUTHORITY: KRS 238.515(2), (9), 238.545(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: The Department of Charitable Gaming is authorized to establish reasonable standards for the conduct of charitable gaming and to establish certain standards for charity game ticket construction, distribution and rules of play. This administrative regulation establishes standards for the construction and distribution of charity game tickets and for the conduct of play of charity game tickets.

Section 1. Charity Game Ticket Construction Standards. The following standards shall govern the construction of charity game tickets:

(1) Charity game tickets shall be constructed so that concealed numbers, symbols, or winner protection features cannot be viewed or determined from the outside of the charity game ticket using a high intensity lamp of 500 watts, with or without utilizing a focusing lens.

(2) The deal shall be designed, constructed, glued and assembled in a manner to prevent determination of a winning or losing ticket without removing the tabs or otherwise uncovering the symbols or numbers as intended.

(3) Each charity game ticket in a deal shall bear the same serial number. If a seal card is used with a charity game ticket deal, then the seal card shall bear the same serial number as each charity game ticket. Only one (1) serial number shall be used in a deal. No serial number used in a deal of charity game tickets shall be repeated by the same manufacturer on that same manufacturer's form within a three (3) year period.

(4) If the charity game ticket utilizes a window, then the numbers or symbols on the [a] charity game ticket shall be fully visible in the window and shall be placed so that no part of a symbol or number remains covered when the tab is removed. Displacement of the symbol(s) to the left or right in a window may be used for increased game security. Additional security devices or methods, including a laminate underneath a window, may be used by a manufacturer.

(5) If the charity game ticket utilizes a window, then, the window slits on each charity game ticket shall be perforated on the three (3) cut sides. All charity game tickets shall be glued on all four (4) edges and between each window. The glue shall be of sufficient strength and type to prevent the undetectable separation or delamination of the charity game ticket.

(6) The following information shall be printed on a charity game ticket measuring one and one-fourth (1 1/4) inches by two and one-fourth (2 1/4) inches or larger, unopened:

(a) The name of the manufacturer, or its distinctive logo;

(b) The name of the game;

(c) The manufacturer's form number;

(d) The price per individual charity game ticket, unless accompanied by a flare or seal card with that information;

(e) The unique minimum five (5) digit game serial number, printed on the game information side of the charity game ticket; and

(f) The number of winners and respective winning numbers or symbols, and specific prize amounts, unless accompanied by a flare with that information.

(7) The following information shall be printed on a charity game ticket measuring less than one and one-fourth (1 1/4) inches by two and one-fourth (2 1/4) inches, unopened:

(a) The name of the manufacturer, or its distinctive logo; and

(b) The unique minimum five (5) digit game serial number, printed on the game information side of the charity game ticket.

Section 2. Randomization. The following randomization standards shall govern the manufacture of charity game tickets:

(1) The deal shall be assembled so that winning tickets are placed throughout the deal.

(2) The deal shall be assembled and packaged in a manner which prevents isolation of winning tickets from variations in size, the ap-

pearance of a cut edge, or other markings of the tickets.

(3) The deal shall be assembled and packaged in a manner which prevents detection of winning tickets through variations in printing graphics or colors.

(4) Winning charity game tickets shall be distributed and mixed among all other charity game tickets in a deal so as to eliminate any pattern between deals, or portions of deals, from which the location or approximate location of any winning charity game ticket may be determined.

(5) The charity game ticket deal shall be assembled so that no placement of winning or losing charity game tickets exists that allows the possibility of prize manipulation.

Section 3. Packaging and Distribution. (1) Each deal's package, box, or other container shall be sealed at the manufacturer's factory with a seal which includes a warning to the purchaser that the deal may have been tampered with if the package, box or other container was received by the purchaser with the seal broken.

(2) A deal's serial number shall be clearly and legibly placed on:

(a) The outside of the deal's package, box or other container; or

(b) On the inside of the deal's package, box or other container if it is clearly visible from the outside.

(3) Manufacturers shall seal or tape, with a tamper-resistant seal or tape, every entry point into a container of charity game tickets prior to shipment. The seal or tape shall be constructed to guarantee that should the container be opened or tampered with, such tampering or opening would be easily discernible.

Section 4. Flares or Seal Cards. Every deal of charity game tickets shall contain a flare or a seal card that has printed or affixed on it, by the manufacturer, the following information:

(1) The name of the game;

(2) The manufacturer's name or logo;

(3) The manufacturer's form number;

(4) The ticket count;

(5) The prize structure that includes the number of winning charity game tickets by denomination, with their respective winning symbols or number combinations;

(6) The cost per play; and

(7) The game serial number.

Section 5. Tracking by Manufacturer. Every manufacturer of charity game tickets shall maintain records sufficient to track each deal of charity game tickets from the manufacturer to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by department staff.

Section 6. Tracking by Distributor. Every distributor of charity game tickets shall maintain records sufficient to track each deal of charity game tickets from purchase by the distributor to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by department staff.

Section 7. Defects. (1) Should a defect in packaging or in the construction of a charity game ticket game be discovered by, or reported to the department, the department shall take immediate steps to notify the manufacturer of the game containing the alleged defect.

(2) Should the department, in consultation with the manufacturer, determine that a defect actually exists, and should the department determine that the defect affects game security or otherwise threatens public confidence in the game, the department may, with respect to deals for use still located within the Commonwealth of Kentucky, require the manufacturer to:

(a) Recall the deals affected that have not been sold at retail to licensed organizations;

(b) Recall the deals, by form number, from the distributor level; or

(c) Issue a total recall of all affected deals.

(3) In choosing and directing a particular recall from subsection (2) of this section, the department shall be guided in each circumstance by any combination of the following factors:

(a) The nature of the defect;

(b) Whether the defect affected game security;

(c) Whether the defect affected game playability;

(d) Whether the defect was limited to a specific number of deals of a particular form number;

(e) Whether the defect was easily detectable by a charitable gaming organization;

(f) Whether the defect was easily detectable by members of the general public;

(g) Whether the defect threatens public confidence in the game; or

(h) Whether the defect is capable of being used to adversely affect the fair play of the game.

Section 8. Rules of Play. The following rules of play govern the conduct and sale of charity game tickets:

(1) The flare or seal card described in Section 4 of this administrative regulation shall be posted by the licensed charitable organization in the vicinity of the deal and in full and complete view of the players while the deal is in play.

(2) Charity game tickets shall not be sold to the public from the original packing box or container.

(3) If a deal of charity game tickets is received in two (2) or more boxes, packages or containers, all of the charity game tickets from the boxes, packages or containers shall be placed out for play at the same time.

(4) [No] Charity game tickets which have been marked, defaced, altered, tampered with, received in packaging that is not tamper-resistant, or otherwise constructed in a manner which tends to deceive the public or affect the chances of winning or losing shall not be placed into play.

(5) All winning charity game tickets shall have the winning symbol or number defaced or punched by an authorized representative of the charitable organization immediately after redemption.

(6) All winning charity game tickets with a prize value of fifty (50) dollars and above, all seal card winners with a prize value of fifty (50) dollars and above, and all unsold charity game tickets shall be retained by the licensed charitable organization for a period of twelve (12) months to allow auditing by the staff of the department.

(7) All used nonwinning charity game tickets and seal cards, and all winning and unsold charity game tickets and seal cards which have been retained for the required twelve (12) month period, shall be disposed of by burning, shredding, destroying or defacing in some manner to prevent reuse of any charity game ticket or seal card or any portion thereof.

(8) An authorized representative of the charitable organization conducting the event at which charity game tickets are sold shall verify the serial numbers or winner protections for all winning charity game tickets redeemed.

(9) If a deal is not played to completion and there remain unsold winning charity game tickets, the licensed charitable organization conducting the gaming shall sell the remaining charity game tickets on the next appointed date for charitable gaming activities. If no future date is anticipated, the licensed charitable organization shall, after making every effort to sell the entire deal, consider the deal closed or completed, and shall retain all unsold charity game tickets as required in subsection (6) of this section. If no winning charity game tickets remain in the deal, the licensed charitable organization shall consider the deal closed or completed and shall retain unsold charity game tickets as required in subsection (6) of this section. Under no circumstances is a licensed charitable organization other than the licensed charitable organization which initiated the deal to complete play of the deal.

(10) If a seal card from a deal or deals is not played to completion, the licensed charitable organization shall sell the remaining charity game tickets necessary to play out the seal card on the next appointed date for charitable gaming activities. If no future date is anticipated, the licensed charitable organization shall, after making every effort to sell the entire deal, consider the deal closed or completed, and shall retain all unsold charity game tickets as required in subsection (6) of this section. Under no circumstances is a licensed charitable organization other than the licensed charitable organization which initiated the seal card from the deal to complete play of the deal or the seal card.

(11) No individual involved in any capacity in the conduct of a charitable gaming event at which charity game tickets are sold shall be permitted to purchase or play charitable game tickets.

(12) No charity game ticket shall be sold to the public at a price

different than that printed on the charity game ticket or upon the flare or seal card which accompanies the charity game ticket.

(13) A holder of a winning charity game ticket shall have sixty (60) days to redeem the winning ticket. If the prize is not claimed within sixty (60) days, then the prize shall be considered unclaimed and be retained as property of the organization.

(14) Before placing a deal into play, the charitable organization shall verify that the serial number on the charity game tickets within each deal match the serial number on the flare or seal card by conducting a random sampling of charity game tickets within each deal.

Section 9. Automated Charity Game Ticket Dispensers. (1) Approval of a automated charity game ticket dispensers. No automated charity game ticket dispenser may be sold, leased or otherwise furnished to any person in the state unless a dispenser which is identical to the dispenser intended to be sold, leased or otherwise furnished has been first presented to the department by its manufacturer, at the manufacturer's expense, for review by the department or has been certified by an independent testing laboratory that the dispenser satisfies the manufacturing requirements set forth in subsection (2) of this section, and the dispenser has been approved by the department. If granted, approval extends only to the specific dispenser model approved, and any modification shall first be approved by the department. The department may keep the dispenser for further testing and evaluation for as long as the department deems necessary.

(2) Manufacturing requirements. Each automated charity game ticket dispenser shall:

- (a) Contain a three (3) prong ground and surge protector, and shall be capable of withstanding static electricity;
- (b) Contain columns which accommodates different sized charity game tickets;
- (c) Be constructed so that customers can see how many charity game tickets remain within the dispenser or have resettable counters visible to the customer indicating the number of charity game tickets left in each column of the dispenser;
- (d) Have an outlet or tray to catch dispensed charity game tickets;
- (e) Accurately dispense the correct number of charity game tickets;
- (f) Contain one (1) or more player buttons on the front of the dispenser to dispense charity game tickets when pressed;
- (g) Have a minimum of two (2) and a maximum of eight (8) columns in a separate locking compartment;
- (h) Contain a luminated electronic display to display the value of the currency;
- (i) Be capable, in the event a malfunction occurs or the electrical power is interrupted after currency has been validated, of accurately redisplaying the value of the currency after the malfunction or power is restored;
- (j) Not dispense any credits or redeem a winning charity game ticket;
- (k) If using bill acceptors or similar devices that do not return change, clearly disclose that fact to the customer;
- (l) Not have a video screen or produce audio sounds except for security alarms;
- (m) Not resemble a slot machine or other gambling device;
- (n) Contain the manufacturer's name, dispenser's serial number and model number, and date of manufacture, all of which shall be permanently affixed to the side of the dispenser;
- (o) Have an on/off switch in an inconspicuous location on the exterior of the dispenser;
- (p) Not record test sales of charity game tickets or currency acceptances on the dispenser's accounting meters;
- (q) Contain a nonresettable accounting meter for total currency validated and for total of charity game tickets dispensed and shall be capable of retaining this information for six (6) months after power has been disconnected;
- (r) Contain an EPROM microchip which holds the dispenser's programming code and which is identical in all respects to the manufacturer's EPROM microchip approved by the department;
- (s) Contain a RAM or EPROM microchip equipped with a RAM microchip which shall maintain the same information as required in paragraph (q) of this subsection for six (6) months after power has

been disconnected and which is installed with a tamper-proof seal inside the dispenser;

(t) Automatically discontinue operation when any non-resettable accounting meter, RAM microchip, or EPROM microchip is disconnected;

(u) Contain at least one (1) electronic currency validator which shall:

1. Only validate United States currency;
2. Not validate currency in denominations in excess of twenty (20) dollars;
3. Transmit the value of validated currency to the charity game ticket dispenser;
4. Be equipped with mechanisms to ensure that charity game tickets will not be dispensed unless the currency was validated and retained;
5. Be capable of preventing acceptance of known counterfeit currency;
6. Return any invalid currency to the player;
7. Have at least one (1) removable stacker box capable of stacking bills or a removable drop box contained in a separate locked compartment; and
8. Automatically discontinue accepting or validating currency if a malfunction occurs or if electrical power to the dispenser or currency validator is interrupted.

(3) Automated charity game ticket dispensing limitations. The following limitations apply to the use of automated charity game ticket dispensers:

- (a) No charitable gaming organization shall use the dispenser until any previous user has removed its charity game tickets and money from the dispenser;
- (b) Each charitable organization operating the dispenser shall place upon the dispenser an identification label which displays the organization's name and license number;
- (c) The keys to open the locked doors to the dispenser's ticket dispensing area and cash box shall be solely in the possession and control of the designated chairperson of the charitable organization conducting the charitable gaming session;
- (d) No person shall put out any charity game ticket deal in a dispenser unless the entire deal shall be sold solely from the dispenser. All charity game tickets in any one column shall have the same serial number. Each charity game ticket deal shall be placed in a minimum of two (2) columns to ensure randomization;
- (e) No licensee may display, use or otherwise furnish a dispenser which has in any manner been tampered with or which otherwise may deceive the public or affect a person's chances of winning;
- (f) No charity game ticket deal shall be placed in the dispenser until the entire deal of charity game tickets previously in the dispenser has been played out or permanently removed; and
- (g) No charity game tickets once placed in the dispenser shall be removed from the dispenser, except for those charity game tickets actually played by consumers, removed by department representatives or law enforcement agencies, temporarily removed during necessary repair and maintenance or removed at the end of the gaming session.
- (4) Inspection. The department or its authorized representatives may examine and inspect any automated charity game ticket dispenser. The examination and inspection shall include immediate access to the dispenser and unlimited inspection of all parts of the dispenser.
- (5) Recordkeeping.
  - (a) Each licensed charitable organization shall maintain the following information in connection with its use of an automated charity game ticket dispenser:
    1. Date of purchase or lease of each dispenser;
    2. Model and serial number of each dispenser;
    3. Purchase or lease price of each dispenser;
    4. Name, address and license number of the distributor from whom the dispenser was purchased, leased or otherwise furnished; and
    5. A record of all maintenance and repairs relating to the dispenser.
  - (b) Manufacturers and distributors shall maintain the following information in connection with each sale or lease of a dispenser:

1. Date of sale or lease;
2. Quantity sold or leased;
3. Cost per dispenser;
4. Model and serial number of each dispenser; and
5. Name, address and license number of the purchaser or lessee;
- (c) All records, reports and receipts relating to dispenser sales, maintenance and repairs required to be maintained shall be retained for a period of three (3) years for examination by the department.

(6) Defects. If the department detects or discovers any defect or malfunction with the dispenser, which is not temporary in nature, that affects the integrity or security of the charity game ticket game, the department may direct the manufacturer, distributor or organization to cease the sale, lease or use of the dispenser, as applicable, and may require the manufacturer to correct the defect, malfunction or problem or recall the dispenser immediately upon notification by the department to the manufacturer. If the manufacturer, distributor or organization detects or discovers any defect or malfunction with the dispenser, which is not temporary in nature, such entity shall immediately remove the dispenser from use and notify the department of such action.

RONALD B. MCCLOUD, Secretary

RAY FRANKLIN, Commissioner

SCOTT JONES, General Counsel

APPROVED BY AGENCY: August 4, 1999

FILED WITH LRC: August 5, 1999 at 10 a.m.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Scott Jones

(1) Type and number of entities affected: All licensed manufacturers (currently 22), licensed distributors (currently 48), and licensed charitable organizations (currently 759).

(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: 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: The charitable organizations will be required to take steps to ensure continuing compliance with the limitations established by the administrative regulation. Additionally, manufacturers and distributors will be required to comply with the manufacturing requirements contained in this regulation.

2. Second year and subsequent years: The charitable organizations will be required to take steps to ensure continuing compliance with the limitations established by the administrative regulation. Additionally, manufacturers and distributors will be required to comply with the manufacturing requirements contained in this regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Department inspectors will ensure that licensees meet the charity game ticket standards.

2. Continuing costs or savings: Department inspectors will ensure that licensees meet the charity game ticket standards.

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: Charitable Gaming Regulatory Account (KRS 238.570(2)).

(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 the 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: 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: 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 does not apply. The standards for charity game tickets must apply uniformly to all licensees to ensure fair competition and to maintain the integrity of the games.

#### PUBLIC PROTECTION AND REGULATION CABINET

##### Department of Charitable Gaming

(Amended After Hearing)

#### 820 KAR 1:040. Bingo standards.

RELATES TO: KRS 238.545

STATUTORY AUTHORITY: KRS 238.515(2), (9)

NECESSITY, FUNCTION, AND CONFORMITY: The Department of Charitable Gaming is authorized to establish reasonable standards for the conduct of charitable gaming and to establish standards for the construction and distribution of bingo materials and equipment and rules of play. This administrative regulation establishes standards for the construction and distribution of bingo materials and equipment and for the conduct of play of bingo.

Section 1. Bingo Material Construction Standards. The following standards shall govern the construction of bingo materials:

(1) The paper used shall be of sufficient weight and quality to allow for clearly readable numbers and to prevent ink from spreading or bleeding through a packet thereby obscuring other numbers or cards.

(2) Perm numbers shall be displayed in the center square of the card.

(3) Numbers printed on the card shall be randomly assigned.

(4) Each set of cards shall be comprised of cards bearing the same serial number. No serial number shall be repeated by the same manufacturer within one (1) year.

(5) Cards assembled in books or packets shall be glued. Staples shall not be used.

(6) A label shall be placed on, or be visible from, the exterior of each carton of bingo cards listing the following information:

(a) Type of product;

(b) Number of booklets or loose sheets;

(c) Series numbers;

(d) Serial number of the top sheet;

(e) Number of cases;

(f) Cut of paper; and

(g) Color of paper.

Section 2. Bingo Equipment Approval. (1) All bingo equipment, including but not limited to, designators, receptacles, display boards, other selection devices, and other bingo equipment used in the selection and display of game numbers, shall be made available for inspection or testing by the department at any time.

(2) Equipment referenced in subsection (1) of this section shall assure randomness and be free of any defects when used in a bingo game.

Section 3. Tracking by Manufacturer. Every manufacturer of bingo materials shall maintain records sufficient to track the bingo materials from the manufacturer to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by department staff.



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Section 4. Tracking by Distributor. Every distributor of bingo materials shall maintain records sufficient to track the bingo materials from purchase by the distributor to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by department staff.

Section 5. Rules of Play. The following rules of play govern the conduct of bingo games:

(1) All individuals involved in any way in the conduct of bingo shall be trained in the proper conduct of the game and the control of funds.

(2) Except for Braille cards intended for use by blind players, bingo cards shall not be reserved by the charitable organization for any player(s). Legally blind players may use their own cards if the licensee does not make Braille cards available.

(3) No two (2) sets of disposable paper bingo cards shall be sold for use in the same game if they have the same series number.

(4) Before selecting or calling the first number in a game, the bingo caller shall call out the amount of the game prize to be awarded.

(5) Before selecting and calling the first number in a game, the bingo caller shall announce the pattern or arrangement of squares to be covered to win the game. This information shall also be posted in a conspicuous place or listed in an occasion program.

(6) All selection equipment shall be free of defects.

(7) After selecting each number, the bingo caller shall:

(a) Clearly announce the number;

(b) Display the ball or other device used as a designator in a manner allowing the players to see the number;

(c) Cause the designator to be placed in a receptacle so as to prevent it from being placed back in the selection pool; and

(d) Enter each letter and number called on a flash board or similar device for player viewing.

(8) Neither a player nor the charitable organization may separate cards on one (1) sheet or from a packet.

(9) All players shall be physically present at the location where the bingo game is held to play the game or to claim a prize offered.

(10) Winners are determined when the preannounced pattern of squares is covered by a player on a card.

(11) It is the player's responsibility to notify the game operator or caller that the player has a winning bingo combination as announced. When a player declares a winning card, the following steps are required for winner verification:

(a) The game shall be stopped before the next number is called. If the next number has already been called, it shall be secured to ensure that if the declared "bingo" is invalid, the game may continue.

(b) A volunteer for the charitable organization shall take the winning card from the player, holding it in front of a neutral player, and call back the perm number if an electronic verifier or verifier book is used. If any other system is used, a volunteer for the charitable organization shall take the winning card from the player, holding it in front of a neutral player, and call back the winning combination.

(12) If more than one (1) winner is declared in a bingo game, the following method of awarding prizes shall apply:

(a) Cash prizes shall be divided equally among the verified winners.

(b) If the prize is something other than cash and cannot be divided among winners, prizes of equal proportionate value shall be awarded.

(13) Any individual involved in any capacity in the conduct of a charitable gaming event at which bingo cards are sold is prohibited from purchasing or playing bingo cards, unless the individual's duties are completed for the evening.

(14) A charitable organization that has "house rules" concerning its bingo session shall post those rules in at least two (2) conspicuous locations within the gaming facility and announce them prior to the commencement of the bingo session.

(15) Every ball in the bingo machine or other device used as a designator shall be placed out for verification at the commencement, at the completion, and during intermission, if any, of each bingo session.

Section 6. Winner Verification and Registration. (1) Manufacturers of bingo cards shall make available for purchase a verification book or other system for all cards manufactured.

(2) The charitable organization conducting a bingo game shall use

a reliable verification system that corresponds with the set of cards in play.

Section 7. Prizes. (1) The values of bingo cards or free packets or charity game tickets awarded players, whether awarded as door or bingo prizes, as birthday prizes, or for any other reason, shall be included in the prize limit of \$5,000 per twenty-four (24) hour period prescribed in KRS 238.545(1).

(2) Each bingo winner shall be determined and every prize shall be awarded and delivered on the same day on which the bingo was conducted.

(3) Carryover, cumulative or progressive games or prizes connected to a bingo game or conditioned on winning a bingo game shall be permitted only if prizes awarded on carryover, cumulative or progressive games are included in the prize limit of \$5,000 per twenty-four (24) hour period prescribed in KRS 238.545(1) regardless of the method by which a player is eligible to participate. The licensed charitable organization shall be responsible for ensuring that the value of any carryover, cumulative or progressive game prize, when added to the values of the other prizes of the same date or occasion, does not exceed the \$5,000 limit. All receipts on carryover, cumulative or progressive games shall be reported to the department as gross receipts for the date collected pursuant to KRS 238.550.

(4) Any method by which players pay money to be eligible for a drawing, whether or not connected to a bingo game or conditioned on winning a bingo game, shall be considered a raffle.

(5) Each licensed charitable organization awarding a door prize of a value exceeding thirty (30) dollars shall maintain accurate records of the following:

(a) The name and address of the individual to whom the door prize was awarded;

(b) The date on which the door prize was awarded;

(c) A description of the door prize;

(d) The fair market value of the door prize; and

(e) An acknowledgment by the individual to whom the door prize was awarded verifying the information in this subsection and verifying receipt of the door prize.

(6) All door prizes shall be initiated and awarded on the same date and shall be included in the prize limit of \$5,000 per twenty-four (24) hour period as prescribed in KRS 238.545(1).

Section 8. Twenty-four (24) Hour Period Defined. "Twenty-four (24) hour period", for purposes of the bingo prize limits and the frequency and duration of the conduct of bingo established in KRS 238.545(1), means a twenty-four (24) hour period commencing at 12:01 a.m. and ending at 12 midnight.

RONALD B. MCCLOUD, Secretary

RAY FRANKLIN, Commissioner

SCOTT JONES, General Counsel

APPROVED BY AGENCY: August 4, 1999

FILED WITH LRC: August 5, 1999 at 10 a.m.

### REGULATORY IMPACT ANALYSIS

Contact Person: Scott Jones

(1) Type and number of entities affected: All licensed manufacturers (currently 22), licensed distributors (currently 48), licensed charitable organizations (currently 759).

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

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

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

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

1. First year following implementation: The charitable organizations will be required to take steps to ensure continuing compliance with the limitations established by the administrative regulation. Additionally, manufacturers and distributors will be required to com-

ply with the manufacturing requirements contained in this regulation.

2. Second year and subsequent years: The charitable organizations will be required to take steps to ensure continuing compliance with the limitations established by the administrative regulation. Additionally, manufacturers and distributors will be required to comply with the manufacturing requirements contained in this regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Department inspectors will ensure that licensees meet the charity game ticket standards.

2. Continuing costs or savings: Department inspectors will ensure that licensees meet the charity game ticket standards.

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: Charitable Gaming Regulatory Account (KRS 238.570(2)).

(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 the 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: Not applicable.

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable

(9) Identify any statute, administrative regulation or government policy, which may be in conflict, overlapping, or duplication: 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 does not apply. This regulation applies evenly to all licensees to ensure fair compensation and the integrity of the games.

**CABINET FOR FAMILIES AND CHILDREN**  
**Department for Community-Based Services**  
**Division of Policy Development**  
**(Amended After Hearing)**

**921 KAR 1:020. Child Support Program: confidentiality, program administration contracts, and agreements.**

RELATES TO: KRS 194B.050(1), 205.175, 205.710-205.800, 205.990(1), (2), (4), (5), 405.520, 406.035, 45 CFR 302.34, [303-21; 303-105;] 303.107, 31 USC 7502, 42 USC 651 et seq., EO 98-731

STATUTORY AUTHORITY: KRS 194B.050(1), 205.175, 205.710-205.800, **405.430(9), (13)**, 405.520, 406.035, 42 USC 651 et seq., EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: KRS 205.710 to 205.800 provide that the Cabinet for Families and Children administer the Child Support Program (CSP). This administrative regulation specifies the procedures for safeguarding information and entering into program administration contracts and cooperative agreements.

Section 1. Safeguarding Information. (1) If the cabinet determines there is reasonable cause to believe evidence of domestic violence or child abuse, records shall not be opened [open] or published.

(2) The use or disclosure of information concerning an applicant or recipient of CSP services or the noncustodial parent, or obligor, shall be limited to:

(a) The administration of the CSP or other federal or federally

assisted program that [which] provides assistance or services directly to an individual [individuals] on the basis of need; or

(b) An investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of a program specified in this section.

Section 2. Program Administration Contract [Contracts]. (1) As permitted by KRS 205.712(6) [(4)] to 205.800, a program administration contract initiated by the cabinet with another government entity [local officials] shall:

(a) Contain a clear description of specific duties, functions and responsibilities of each party in administration of the CSP;

(b) Specify clear and definite standards that [which] meet federal requirements;

(c) Specify financial reimbursement arrangements including:

1. Budget estimate;

2. Covered expenditures;

3. Methods of determining costs; and

4. Billing procedures for the child support agency;

(d) Specify record maintenance and format requirements;

(e) Contain appropriate reporting requirements;

(f) Contain the requirements for compliance with 31 USC 7502;

(g) Provide the beginning and end dates of the program administration contract, review or renewal provisions, and termination circumstances; and

(h) Provide audit criteria.

(2) If another government entity [an official] contracts with the cabinet, reimbursement for child support activities shall be provided when billing is submitted in accordance with procedures:

(a) Established by the cabinet; and

(b) Specified in the contract.

(3) The contracted government entity [official] shall provide the cabinet in timely fashion statistical information concerning CSP activities as prescribed by the cabinet and specified in the contract.

(4) If no contract is executed with a local law enforcement official, a referral for child support activities may be made to a local law enforcement official [officials] in accordance with the official's [officials'] statutory obligations, but the official [officials] shall not be eligible for reimbursement as specified in subsection (2) of this section.

Section 3. An Agreement with a Financial Institution. The cabinet shall enter into an agreement [agreements] with a financial institution [institutions] pursuant to KRS 205.712(14), 205.772 and 205.774 to conduct a financial data match.

(1) The cabinet or its agent shall implement the data exchange. The cabinet or its agent shall:

(a) Have access to all identifying information for each obligated parent who owes an arrearage and who the cabinet has identified to a financial institution [records of a financial institution obtained] through a data match for the purpose of monitoring and auditing; and

(b) Have access to all identifying information available to a financial institution if deemed necessary by the cabinet to provide service to a recipient of child support services.

(2) The cabinet shall pay a financial institution a fee not to exceed \$250 per fiscal year quarter, or the actual cost to the financial institution for operating the data match, whichever is less.

(3) A financial institution shall:

(a) Exchange information by way of an automated data exchange system; and

(b) [Adopt policies and procedures and] Maintain security to assure that information received from the cabinet or its agent concerning a recipient of child support services shall be maintained and safeguarded as confidential and shall not be copied or given to any other entity without the written permission of the cabinet or the recipient of child support services; and

(c) Incur no liability for:

1. Disclosing a financial record to the cabinet for the establishment, modification, or enforcement of a child support obligation of the account holder; or

2. Encumbering or surrendering an asset held by a financial institution in response to an order to withhold or order to deliver issued by the cabinet, or any other action taken by a financial insti-

tution in good faith; or

3. Providing all files to the cabinet or its authorized agent in accordance with an approved format as described by the Financial Institution Data Match Specifications Handbook incorporated by reference in Section 4 of this administrative regulation.

(4) If a financial data match occurs, a financial institution shall:

(a) Hold, encumber or surrender an account to the cabinet upon receipt of an order to withhold or order to deliver; and

(b) Address and send to the cabinet or its authorized agent as designated, all notices, paperwork, tapes or other communication resulting from a financial institution data match program; and

(c) Submit all data files to the cabinet or its authorized agent as designated.

(5) The match of an account holder to a delinquent obligor record provided by the cabinet does not constitute a levy and no account will be held, encumbered, or surrendered to the cabinet without a financial institution having received an order to withhold or order to deliver from the cabinet.

(6) The information provided to the cabinet on a quarterly basis by a financial institution shall be provided in the format prescribed by the Financial Institution Data Match Specifications Handbook, incorporated by reference in Section 4 of this administrative regulation, using either Method One or Method Two.

(a) If a financial institution agrees to provide the information according to Method One, the financial institution shall:

1. Submit by March 31, June 30, September 30, and December 31 of each calendar year, data files of all open accounts to the cabinet, or the cabinet's authorized agent, for the data match.

2. Report all information required by the cabinet or the cabinet's authorized agent on any account maintained by a financial institution.

(b) If a financial institution agrees to provide the information according to Method Two, the financial institution shall:

1. Request the cabinet to send the inquiry file to the financial institution's agent; and

2. Match the inquiry file of obligors identified and provided by the cabinet, or by the cabinet's authorized agent, against all open accounts maintained by a financial institution; and

3. Submit a report of all matched accounts to the cabinet or its authorized agent within thirty (30) days of receipt of the inquiry file.

Section 4. Incorporation by Reference. (1) "Financial Institution Data Match Specifications Handbook", edition 3/99, is incorporated by reference.

(2) This material may be inspected, copied or obtained at the Department for Community-Based Services, 275 East Main Street, Frankfort, Kentucky, 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: August 2, 1999

FILED WITH LRC: August 3, 1999 at 4 p.m.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Director

(1) Type and number of entities affected: This administrative regulation specifies requirements for confidentiality, administration contracts and agreements. The administrative regulation is being revised to include requirements for the implementation of agreements between the child support agency and financial institutions for the provision of financial data matches on delinquent obligors' accounts and assets. As many as 300 banking institutions could be involved. This number does not include credit unions, brokerage firms etc. that could also be affected as well.

(2) Direct and indirect costs or savings on 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 public comments received. No comments were received regarding 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 public comments received. No comments were received regarding the cost of doing business.

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The state share of revenues is projected to be \$516,000 in state fiscal year 1999 with state expenditures of \$261,100 out of total expenditures of \$768,000 (the federal government, HHS, reimburses the state 66% of total expenditures) resulting in revenues exceeding expenditures by \$254,900. Note that any excess revenues generated by this amendment to the administrative regulation will help to offset the increased expenditures for other child support administrative regulations recently amended due to federal welfare reform legislation.

2. Continuing costs or savings: For state fiscal year 2000, the state share of revenues is projected to be \$464,400 with state share expenditures of \$490,900 out of total expenditures of \$561,600 resulting in revenues exceeding expenditures by \$273,500. Note that any excess revenues generated by this amendment to this administrative regulation will help to offset the increased expenditures for other recently amended child support administrative regulations due to federal welfare reform legislation.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: A public hearing was held for the Notice of Intent but no comments were received.

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

(6) To the extent available from 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: A public hearing was held for the Notice of Intent but no public comments were received.

(b) Kentucky: A public hearing was held but no public comments were received.

(7) Assessment of alternative methods; reasons why alternatives rejected: Alternative methods were not considered because of the necessity to comply with statutory 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: These amendments will make it possible for more assets to be located and thus more child support may be collected in delinquent child support cases. None

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

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

(9) Identify any statute, administrative regulation or government policy 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? No. The purpose of the administrative regulation amendment is to allow the cabinet to enter into agreements with financial institutions in order to locate assets. Tiering is not applicable.

#### FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government.

This administrative regulation will not affect local government.

3. State the aspect or service of local government to which this administrative regulation relates. None

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation will not affect local government.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 666(a)(17).
2. State compliance standards. None
3. Minimum or uniform standards contained in the federal mandate. Minimum standards stated in the mandate have been met.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No. State standards are not more restrictive than federal language.
5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. No stricter standards.

#### CABINET FOR FAMILIES AND CHILDREN Department for Community-Based Services Division of Policy Development (Amended After Hearing)

#### 922 KAR 2:160. Child day care assistance program.

RELATES TO: KRS 13B.050(2), (3), 13B.080, 13B.090, 13B.110, 13B.120, 199.892-896, 199.898(1)(c), 202A.011, Chapter 620, 45 CFR 98, 256, 257, 7 USC 2015(d), 20 USC 1432, 42 USC 601 et seq., 1998 Ky. Acts ch. 615

STATUTORY AUTHORITY: KRS 194B.050(1), 199.892, 199.8994, EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194B.050(1) [194.050] and 199.8994 provide that the Secretary for the Cabinet for Families and Children shall promulgate [adopt] administrative regulations necessary to operate programs and fulfill the responsibilities vested in the Cabinet for Families and Children and provide uniform administration of child day care funds. This administrative regulation is necessary to enable the Cabinet for Families and Children to qualify to receive federal funds under the Social Services Block Grant, Child Care and Development Fund and for child care services pursuant to 904 KAR 2:017 and 921 KAR 3:042. The function of this administrative regulation is to establish procedures for the implementation of child day care assistance program to the extent funding shall be available.

Section 1. Definitions. (1) ~~"Attending a job training or educational program" means regular and scheduled participation in a program offering appropriate skills training or education required by K-TAP and if postsecondary, consistent with employment goals and if a teen parent, participation in education leading to a high school diploma or a general equivalency diploma.~~

(2) "Cabinet" means the Cabinet for Families and Children.

(3) ~~"Center-based child care" means a Type I licensed child day care facility.~~

(2) "Certificate" means a payment mechanism provided by the cabinet or designee and used by a family to secure child day care from the provider of choice.

(3) "Certified family child care home" means a home pursuant to [as governed by] KRS 199.898(1)(c) and 922 KAR 2:100.

(4) "Child care and development fund, (CCDF)" means child care assistance provided to a family [families] throughout the state to improve the affordability, quality and availability a of child care service [services] for;

(a) A low-income family to;

1. Work;

2. To attend an education or training program leading to self-sufficiency;

(b) Participation [; participate] in K-TAP; or

(c) ~~For a child-protective service case [for protection and teen parents].~~

(5) "Child protective service case" means a case that [registered for services in which the case file] contains case documentation that substantiates child abuse, neglect, dependency or exploitation. This category may [also] include a service [services] to prevent abuse, neglect, dependency or exploitation, including;

(a) A multiproblem family;

(b) A [families or] teen parent;

(c) An adoption subsidized child including a child whose adoption shall be at risk of disruption;

(d) A child who shall be placed into a relative placement pursuant to 922 KAR 1:130; and

(e) A child and a family in a homeless or spouse abuse shelter or transitional housing [parents].

(6) "Corporal physical discipline" means the deliberate infliction of physical pain and does not include spontaneous physical contact, that shall be [which is] intended to protect a child from immediate danger.

(7) "Day care" means the provision of essential child care for a portion of a day on a regular basis and shall be [is] designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development and supervision.

(8) "Dependent care disregard" means a method of allowing a deduction from the gross income for a child care expense [expenses] for K-TAP and a medical assistance recipient [recipients] with earned income and for a food stamp recipient [recipients] with earned income or who shall be [are] in training or an educational program that shall be [programs which are] preparatory to employment. This deduction allows the K-TAP recipient to retain more income to pay a child care expense [expenses].

(9) "Eligibility requirement [requirements]" means that for a family to qualify for child day care funds, except in those instances where day care shall be [is] provided for a child protective service case [services-cases], a family shall meet both need and income status criteria.

(10) "Employment" means public or private, full- or part-time, permanent or temporary work for a wage that is [which wages are] paid, including self-employment.

~~(13) "Enrolled or enrollment" means the process by which unregulated providers become eligible for GGDF by completing the application for provider enrollment and obtaining approval by the Department for Community-Based Services.~~

(11) "Family" means one (1) or more adults and children related by blood or law, including a stepparent, or [stepparents, and] other person standing in loco parentis who shall be [is] operating or functioning in the place of the parent, residing in the same residence.

(12) "Family child care" means:

(a) A certified family child care home pursuant to [homes-as governed-by] 922 KAR 2:100; or

(b) Unregulated care provided for no more than three (3) unrelated children.

~~(16) "Family child care counselor" means cabinet or designee staff who work strictly with the day care assistance program. The family child care counselor may provide services to families through the following federally funded programs: Social Services Block Grant, (SSBG), Child Care and Development Fund, (CCDF), Food Stamp Employment and Training Program (FSETP), and other federally funded programs that the cabinet deems the best interest of parents may be served through the child day care assistance program.~~

(13) "Food Stamp Employment and Training Program (FSETP)" means a program administered by the cabinet and operated by the Workforce Development Cabinet, Department for Employment Services, pursuant to 921 KAR 3:042.

~~(18) "Group home child care" means a Type II licensed child day care facility.~~

(14) "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 [who are deprived of parental support or care due to:

(a) Death, continued voluntary or involuntary absence of a par-

ent;

(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.~~

(15) "Licensed child day care facility" means a facility pursuant to [as governed by] KRS 199.894.

(16) "Physical or mental incapacity" means a child under the age of nineteen (19) who has multiple or a severe ~~problem~~ [problems] diagnosed by a physician or qualified professional, as defined in KRS 202A.011, that prevent the child from caring for himself for a part of the day.

(17) "Priority" means [Priorities] mean that a [the] client group [groups] identified for receipt of child day care ~~shall be~~ [are] ranked by priority.

(18) "Provider" means owner, operator or employee, including a volunteer, who works in a Type I or Type II licensed child day care facility, certified family child care home, relative or enrolled home.

(19) "Relative provider" means a person:

(a) At least eighteen (18) years of age;

(b) Who provides a child care ~~service~~ [services] only to a:

1. Grandchild;

2. Great grandchild;

3. Niece or nephew; or

4. Sibling, who resides in a separate residence; and

(c) Who ~~shall be~~ [is] related to the ~~child~~ [children] served by:

1. Marriage;

2. Blood relationship; or

3. Court decree.

(20) "Social services block grant, (SSBG)" means funding for child care assistance provided by a licensed or certified provider for a family receiving a protective or preventive service [providers for families receiving protective and preventive services, which may include multiproblem families or teen parents, and low income working parents].

(21) "Special needs child" means a child who has multiple or a severe ~~problem~~ [problems], and the severity of the disability ~~shall require~~ [requires] ongoing specialized care as defined under [PL 105-17, Title I Part G, Section 632 or] 20 USC 1432.

(22) "Type I licensed child day care facility" means a facility:

(a) Other than a dwelling unit ~~that~~ [which] regularly receives four (4) or more children for day care, including children of a staff member; or

(b) A facility, including a dwelling unit, ~~that~~ [which] regularly provides day care for thirteen (13) or more children, including children of a staff member.

(c) If a preschool child [children] of [any] day care staff ~~receives~~ [receive] care in the facility, ~~he~~ [they] shall be included in the number for which the facility ~~shall be~~ [is] licensed.

(23) "Type II licensed child day care facility" means a home or dwelling unit ~~that~~ [which] regularly provides care apart from a parent [parents] for seven (7) to twelve (12) children, including the provider's own preschool children.

~~[(29) "Unmet need" means a list that may be maintained by the cabinet or designee staff once funds are obligated in a contract area. The list is based on the availability of allocated day care funds in each area.]~~

(24) "Unregulated provider" means a child care provider who ~~shall not be~~ [is not] subject to be licensed or certified by the state or federal government.

(25) "Without regard to income" means that SSBG or a CCDF child day care ~~service~~ [services] for a child protective ~~case~~ [cases] may be provided or purchased without regard to family income.

(26) "Working" means public or private, full- or part-time, permanent or temporary employment for wages by a single parent or in a two (2) parent family when both shall be employed or when one (1) shall be employed and the other shall be in education or training or shall not be able to provide appropriate care and supervision.

Section 2. Technical Eligibility for CCDF. A child shall be eligible for a ~~service~~ [services] if he:

(1) Is under the age of thirteen (13) or is under the age of nineteen (19) and:

(a) Is physically or mentally incapable of caring for himself as verified by the written determination of:

1. A physician;

2. A licensed or certified psychologist;

3. A qualified mental health professional as defined in KRS 202A.011; or

4. As accepted by a collateral agency (~~school~~ [schools], comprehensive care center); or

(b) Is under court supervision;

(2) Resides with a family whose income does not exceed:

(a) 160 [150] percent of poverty at the time of application; or

(b) 160 [150] percent of poverty at the time of reauthorization;

(c) To the extent necessary, the eligibility requirement relating to the percent of poverty may be increased based on the availability of state and federal funds.

(d) Except a child protective ~~service~~ [services] case ~~shall be~~ [is] eligible without regard to income.

(3) Resides with a parent [parents] or K-TAP specified relative whose K-TAP case has been discontinued and needs child care assistance to accept or retain employment.

(a) The family remains eligible for child care assistance for a period of twelve (12) consecutive months from the date of discontinuance from K-TAP and the family's income does not exceed eighty-five (85) percent of state median income, ~~excluding an employment retention bonus provided to the former K-TAP recipient; and~~

(b) The family shall be responsible for the maximum copayment amount specified in the child care daily parent copayment schedule.

(4) Resides with a parent [parents] or K-TAP specified relative who ~~shall be~~ [are] working, participating in K-TAP, ~~shall be a teen parent~~ [are teen parents] in education, or in need of protection. A K-TAP family shall comply with eligibility and limitations pursuant to 904 KAR 2:017, Kentucky Works supportive services.

(5) Resides with a parent [parents] or specified relative who ~~shall be a~~ [are] non-K-TAP ~~adult in an~~ [adults in a postsecondary] education program, such as vocational school or college, ~~education or a training program consistent with an employment goal,~~ if the family income meets the guidelines listed in subsection (2)(a) of this section.

(6) Copayment requirement.

(a) ~~Except for a protective service case where the copayment may be waived,~~ a family receiving child day care assistance shall be required to contribute toward the payment based on the family's income as described in Section 6(3) of this administrative regulation.

(b) ~~Unless a satisfactory arrangement shall be made to make full payment,~~ an individual who fails to cooperate in paying the required copayment [copayments] may be [;] subject to a notice and a hearing requirement, and [notices and hearing requirements;] lose eligibility for the period of time a back copayment shall be [copayments are] owed[~~, unless satisfactory arrangements are made to make full payment.~~]

(c) In a situation [situations] where the court ~~shall be~~ [is] involved, a parent [parents] may be ordered to pay for part or all of the cost of day care for his child. A voluntary payment by the parent [their child. Voluntary payments by parents] may be accepted.

(7) An [Other] eligibility condition [conditions] or a priority requirement [requirements] including childhood development and a before- and after-school care service [services], may be established in addition to Sections 3 through 6 of this administrative regulation as long as they shall not:

(a) Discriminate against children on the basis of:

1. Race;

2. National origin;

3. Ethnic background;

4. Sex;

5. Religious affiliation; or

6. Disability.

(b) Limit a parental right pursuant to [rights as governed by] Section 5 or 6(4) of this administrative regulation.

(8) A family [Families] shall not be eligible for child care assistance if care ~~shall be~~ [is] provided by:

(a) A parent or stepparent [Parents or stepparents];

(b) A legal guardian [Legal guardians];

(c) a member [Members] of the K-TAP or food stamp assistance unit or a person [persons] living in a home that [-which] includes the child in need of care;

(d) A provider [Providers] not meeting an applicable standard [standards] of state and local law or not enrolled pursuant to Section 6 of this administrative regulation; and

(e) An alternative program [Alternative programs] such as Head Start, state preschool and kindergarten that shall be [which are] available and accessible for the time [hours] child care shall be [is] needed.

Section 3. Technical Eligibility for SSBG. (1) The child shall have met the requirements pursuant to [specified in] Section 2(1) of this administrative regulation.

(2) The Department for Community Based Services case record shall:

(a) Substantiate child abuse, neglect, dependency or exploitation; or

(b) Provide documentation that a family has a need for a child care service [services] and with the use of child care the need for a protective service [services] may be prevented.

(c) Provide case-by-case documentation if the copayment is waived.

(3) A working parent [Working parents] may be eligible if:

(a) A child care need exists [Child care needs exist] in order to allow the parent to work;

(b) The family shall be [is] income eligible pursuant to [as specified in] Section 2(2) of this administrative regulation; and

(c) A CCDF fund shall be [CCDF funds are] obligated.

Section 4. Technical Eligibility for Dependent Care Pursuant to the Food Stamp Employment and Training Program, (FSETP).

(1) A dependent individual of a FSETP participant shall be eligible for service [services] if he:

(a) Shall be [is] under the age of thirteen (13); or

(b) Regardless of his age, shall be [is] physically or mentally incapable of caring for himself as verified by the written determination of:

1. A physician;

2. A licensed or certified psychologist;

3. A qualified mental health professional as defined in KRS 202A.011;

4. A Department for Community Based Services worker indicating that the dependent qualifies as a special needs child;

5. A collateral agency (schools, comprehensive care center); or

(c) Shall be [is] disabled pursuant to 921 KAR 3:010, Section 1(9); or

(d) Shall be [is] under court supervision; and

(e) Resides with an adult household member who:

1. Shall be [is] responsible for his care; and

2. Shall be [is] subject to and complying with FSETP, pursuant to 921 KAR 3:042.

(2) A family [Families] shall not be eligible for FSETP child care assistance if child care shall be [is] provided by:

(a) A member of the food stamp household;

(b) A food stamp household member who has been exempted from participation in FSETP because he shall be [is] responsible for the care of a household member who shall be [is] under six (6) years of age; or

(c) The food stamp household resides in a Kentucky Domestic Violence Center (KDVC) shelter and child care shall be [is] provided onsite; or

(d) The FSETP participant shall be [is] a K-TAP recipient.

Section 5. Parental Rights and Responsibilities. (1) Unless an alternative program [programs] such as Head Start, state preschool or [and] kindergarten shall be [are] available and accessible for the time care shall be [hours care is] needed, a parent of an eligible child who receives or shall be [is] offered a child care service [services] subject to the availability of state and federal funds shall be offered a choice:

(a) To enroll the child with an eligible child care provider that has a grant or contract, selected by the parent to the maximum extent

practicable; or

(b) To receive a child care certificate, the DSS-76, a Child Day Care Service [Services] Agreement and Child Care Certificate, that [which] shall:

1. Be issued to the parent;

2. Be of value commensurate with the value of a child care service [services] provided in Section 5(1)(b) of this administrative regulation;

3. If chosen by the parent, be used for a child care service [services] provided by a sectarian or nonsectarian organization or agency;

4. Not be considered a contract or grant to the provider but assistance to the parent;

5. Allow a parent [parents] to choose from a variety of child care categories in compliance with federal regulations governing a child day care program [programs] including:

a. A licensed child care provider [providers];

b. A certified family child care provider [providers] (CFCCP); [and]

c. An unregulated child care provider [providers] enrolled with the Department for Community Based Services; or

d. A relative provider [providers] as defined in Section 1 of this administrative regulation. [-and]

6. Unless an exception shall be authorized by the Cabinet for Families and Children or its designee, a parent may change his provider a maximum of three (3) times in a twelve (12) month period.

7. Inform the parent and the provider [parents and providers] that the agreement may be terminated upon notice that the Department for Community Based Services has determined that a condition or a circumstance [conditions or circumstances] at the child day care location places a child [premises place children] at risk of abuse, neglect, or exploitation pursuant to KRS Chapter 620.

(2) A provider of a child care service [Providers of child care services] shall afford the parent [parents] unlimited access to his child [their children] and to the provider during normal hours of operation and whenever the child shall be [is] in the care of the provider.

(3) The cabinet or designee shall:

(a) Maintain a record of every substantiated parental complaint [complaints]; and

(b) Make information regarding the parental complaint [complaints] available to the public upon request.

(4) The cabinet or designee shall make available through a brochure, handout, [brochures, handouts,] and information shared by the service delivery agent [agents], to the parent [parents] and general public, consumer education about the parental option [options] relating to a child care service [services] including:

(a) The full range of child care providers available;

(b) Licensing and regulatory requirements;

(c) Information and criteria regarding the TANF exception for a single custodial parent who has demonstrated inability to obtain a needed child care service [services] for a child under six (6) years of age and information regarding the counting of time exempted toward the time limit on federal benefits; and

(d) Complaint procedures.

(5) Unless there is an exception pursuant to KRS 214.036, a parent shall present to the cabinet or designee a current immunization certificate showing that the child is immunized in order to receive a child care service from an unregulated provider.

Section 6. State and Provider Requirements. (1) The cabinet shall assure that a provider of a child care service [providers of child care services] funded under CCDF, SSBG, FSETP and other local, state, federal funds under the child day care assistance program:

(a) Shall comply with licensing and regulatory requirements pursuant to [as governed by] 922 KAR 2:001, 905 KAR 2:090, 922 KAR 2:100, 922 KAR 2:110, 922 [905] KAR 2:120; and

(b) With the exception of a provider who shall not be [these providers who are not] required to be licensed or certified pursuant to [as governed by] 922 KAR 2:001, 905 KAR 2:090, 922 KAR 2:100, 922 KAR 2:110, 922 KAR 2:120 and shall not be a relative provider. He [are not relative providers. They] shall be enrolled with the cabinet to meet the minimum health and safety standards. A



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provider [Providers] requesting enrollment shall complete the DSS-1297, Application for Child Care Provider Enrollment: In Child's Home or the DSS-1295, Application for Child Care Provider Enrollment: In Provider's Home and DSS-1296, Child Care Provider Enrollment Self Assessment, and meet the following requirements:

1. The provider shall be at least eighteen (18) years of age;
2. The provider and each adult residing in the home shall be free of tuberculosis, as stated by a qualified physician or health care specialist;
3. The provider and each adult residing in the home shall submit to a criminal records check conducted within the past year by the Kentucky State Police;
4. The provider and each adult residing in the home shall not be found by the cabinet or court to have abused or neglected an adult or child;
5. The provider shall sign an agreement not to use any form of corporal physical discipline on the child [children] entrusted into his [their] care; and
6. The provider shall complete the enrollment process every three (3) years.
7. The provider shall have at least one (1) telephone in working order.

(c) The department may deny or terminate an agreement with an unregulated provider if a condition or circumstance [conditions or circumstances] at the child care premises places the child [children] at risk of abuse, neglect, or exploitation pursuant to KRS Chapter 620.

(d) If the department denies or terminates an agreement with an unregulated provider, the department shall notify the provider in writing stating the reason [reasons] for the adverse action and the provider's right of appeal.

(e) If the provider feels an action of the Department for Community Based Services shall be [is] unfair, without reason, or unwarranted, the provider may appeal the action, in writing, to the Quality Assurance Section of the Office of Performance Enhancement, 275 East Main Street, Frankfort, Kentucky 40621, within thirty (30) days after receiving the notice of the action from the department.

(f) Upon receipt of the request for hearing, a hearing officer shall be appointed to review the record, conduct the hearing, and make a recommendation [recommendations] upon the matter appealed. Within fifteen (15) days of the assignment, the hearing officer shall notify the provider in writing of the date, time and place of the hearing. The notice shall comply with KRS 13B.050(2),(3).

(g) The hearing shall be conducted pursuant to [as governed by] KRS 13B.080 and 13B.090.

(h) The hearing officer shall advise the party [parties] that a recommended order shall be distributed within ten (10) days after the close of the hearing, the party [parties] shall have fifteen (15) days from the date of the recommended order to file an exception [exceptions], and a final decision shall be rendered within thirty (30) days from the close of the hearing.

(i) The recommended order shall be filed with the commissioner, or designee, and shall comply with KRS 13B.110.

(j) Within twenty (20) days after receipt of the recommended order, the commissioner or designee, shall render a final order, either affirming or overturning the initial decision of negative action. The final order shall comply with KRS 13B.120.

(k) If denial or termination of enrollment is upheld, the commissioner's or designee's notification shall specify the date that [by which] the child care payment [payments] shall cease.

(2) The cabinet has established the maximum child day care payment [payments] as follows:

(a) These charts represent the local maximum payment rate on a per-day basis. Chart abbreviations are as follows: FD - full day, five (5) or more hours; PD - part day, less than five (5) hours.

## KENTUCKY CHILD CARE MAXIMUM PAYMENT RATES

### East Region

Counties: Bath, Bell, Boyd, Bracken, Breathitt, Carter, Clay, Elliott, Fleming, Floyd, Greenup, Harlan, Jackson, Johnson, Knott, Knox, Lawrence, Laurel, Lee, Leslie, Letcher, Lewis, Magoffin, Martin, Mason, Meade, Menifee, Montgomery, Morgan, Owsley, Perry, Pike, Robertson, Rockcastle, Rowan, Whitley, and Wolfe.

Maximum Payment Rates						
East Region	Licensed		Certified		Enrolled Relative	
	FD	PD	FD	PD	FD	PD
Infant/Toddler	17	12	15	12	9	5
Preschool	14	10	14	10	9	5
School Age	14	10	14	8	9	5

### West Region

Counties: Allen, Ballard, Barren, Breckinridge, Butler, Caldwell, Calloway, Carlisle, Christian, Crittenden, Daviess, Edmonson, Fulton, Grayson, Graves, Hancock, Hardin, Hart, Henderson, Hickman, Hopkins, Larue, Livingston, Logan, Lyon, Marion, Marshall, McCracken, McLean, Metcalfe, Monroe, Muhlenberg, Nelson, Ohio, Simpson, Todd, Trigg, Union, Warren, Washington and Webster.

Maximum Payment Rates						
West Region	Licensed		Certified		Enrolled Relative	
	FD	PD	FD	PD	FD	PD
Infant/Toddler	17	12	15	12	9	5
Preschool	14	12	13	10	9	5
School Age	13	12	12	10	9	5

### Central Region

Counties: Adair, Anderson, Bourbon, Boyle, Bullitt, Carroll, Casey, Clark, Clinton, Cumberland, Estill, Franklin, Gallatin, Garrard, Grant, Green, Harrison, Henry, Jessamine, Lincoln, Madison, McCreary, Mercer, Nicholas, Oldham, Owen, Pendleton, Powell, Pulaski, Russell, Scott, Spencer, Shelby, Taylor, Trimble, Wayne, and Woodford.

Maximum Payment Rates						
Central Region	Licensed		Certified		Enrolled Relative	
	FD	PD	FD	PD	FD	PD
Infant/Toddler	18	13	16	13	12	7
Preschool	15	9	15	9	11	6
School Age	14	8	15	9	10	5

### Metro Region

Counties: Boone, Campbell, Fayette, Jefferson, and Kenton.

Maximum Payment Rates						
Metro Region	Licensed		Certified		Enrolled Relative	
	FD	PD	FD	PD	FD	PD
Infant/Toddler	20	15	18	15	12	7
Preschool	17	12	15	12	11	6
School Age	16	10	15	11	10	5

### [West/East Region

Counties: Allen, Ballard, Barren, Bath, Bell, Boyd, Bracken, Breckinridge, Breathitt, Butler, Caldwell, Calloway, Carlisle, Carter, Christian, Clay, Crittenden, Daviess, Edmonson, Elliott, Fleming, Floyd, Fulton, Grayson, Graves, Greenup, Hancock, Hardin, Harlan, Hart, Henderson, Hickman, Hopkins, Jackson, Johnson, Knott, Knox, Lawrence, Larue, Laurel, Lee, Leslie, Letcher, Lewis, Livingston, Logan, Lyon, Magoffin, Marion, Marshall, Martin, Mason, McCracken, McLean, Meade, Menifee, Metcalfe, Monroe, Montgomery, Morgan, Muhlenberg, Nelson, Ohio, Owsley, Perry, Pike, Robertson, Rockcastle, Rowan, Simpson, Todd, Trigg, Union, Warren, Washington, Webster, Whitley, and Wolfe.

	Licensed		Certified		Enrolled/Relative	
	FD	PD	FD	PD	FD	PD
Infant/Toddler	\$13	8	12	7	9	5
Preschool	\$13	8	13	8	9	5
School Age	\$13	8	12	7	9	5

### Central Region

Counties: Adair, Anderson, Boone, Bourbon, Boyle, Bullitt, Campbell, Carroll, Casey, Clark, Clinton, Cumberland, Estill, Fayette,

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Franklin, Gallatin, Garrard, Grant, Green, Harrison, Henry, Jefferson, Jessamine, Kenton, Lincoln, Madison, McCreary, Mercer, Nicholas, Oldham, Owen, Pendleton, Powell, Pulaski, Russell, Scott, Spencer, Shelby, Taylor, Trimble, Wayne, and Woodford

	Licensed		Certified		Enrolled/ Relative	
	FD	PD	FD	PD	FD	PD
Infant/Toddler	\$16	10	15	9	12	7
Preschool	\$15	9	15	9	11	6
School Age	\$14	8	15	9	10	5

(b) A licensed or certified provider [providers], if the same amount is charged to the general public[;] may receive:

1. Two (2) dollars [one (1) dollar] per day beyond the maximum

rate if the provider shall be [;]

1. Is] accredited by the National Association for the Education for Young Children or National Association for Family Child Care or National School Aged Child Care Alliance;

2. An additional one (1) dollar per day beyond maximum rate if the provider provides child care to a child with a special need; and

3. An additional one (1) dollar per day beyond the maximum rate if the provider [needs; or

3.] provides nontraditional hour care to a child during the period 6 p.m. to 6:30 a.m. or Friday 6 p.m. through Monday 6 a.m.

(c) If a provider meets all of the above criteria, he shall not exceed the maximum rate by more than four (4) dollars a day.

(3) The cabinet or designee shall determine a copayment that [which] the family shall pay to the provider for the cost of child day care based on the following sliding scale:

Family Fee Scale (Family Copay Per Day) Effective October 1, 1999									
\$900 TO 160% OF POVERTY and 85% of median (99-2000)									
Income Range Monthly		Family Size 2 Family Copay With One Child	Family Size 3 Family Copay		Family Size 4 Family Copay		Family Size 5 or More Family Copay		
			with One Child	with 2 or More	with One Child	with 2 or More	with One Child	with 2 or More	
0	399	\$0.00	\$-	\$-	\$-	\$-	\$-	\$-	
400	499	\$0.00	\$-	\$-	\$-	\$-	\$-	\$-	
500	599	\$0.00	\$-	\$-	\$-	\$-	\$-	\$-	
600	699	\$0.00	\$-	\$-	\$-	\$-	\$-	\$-	
700	799	\$0.00	\$-	\$-	\$-	\$-	\$-	\$-	
800	899	\$0.00	\$-	\$-	\$-	\$-	\$-	\$-	
900	999	\$2.50	\$2.50	\$3.00	\$2.50	\$2.75	\$2.25	\$2.75	
1,000	1,099	\$3.25	\$3.25	\$3.75	\$2.75	\$3.25	\$2.50	\$3.00	
1,100	1,199	\$4.00	\$4.00	\$4.50	\$3.25	\$3.75	\$2.75	\$3.25	
1,200	1,299	\$4.50	\$4.50	\$5.00	\$4.00	\$4.50	\$3.00	\$3.50	
1,300	1,399	\$5.00	\$5.00	\$5.50	\$5.00	\$5.50	\$3.50	\$4.25	
1,400	1,499	\$5.50	\$5.50	\$6.25	\$5.50	\$6.25	\$4.25	\$4.75	
1,500	1,599	\$6.00	\$6.00	\$6.75	\$6.00	\$6.75	\$5.00	\$5.75	
1,600	1,699	\$6.50	\$6.50	\$7.50	\$6.50	\$7.50	\$6.00	\$6.75	
1,700	1,799	\$7.00	\$7.00	\$8.00	\$7.00	\$8.00	\$7.00	\$8.00	
1,800	1,899	\$7.50	\$7.50	\$8.50	\$7.00	\$8.00	\$7.50	\$8.50	
1,900	1,999	\$8.00	\$8.00	\$9.00	\$7.00	\$8.00	\$8.00	\$9.00	
2,000	2,099	\$8.50	\$8.50	\$9.50	\$7.00	\$8.00	\$8.50	\$9.50	
2,100	2,199	\$9.00	\$9.00	\$10.00	\$9.00	\$10.00	\$9.00	\$10.00	
2,200	2,299	\$9.50	\$9.50	\$10.50	\$9.50	\$10.50	\$9.50	\$10.50	
2,300	2,399		\$9.75	\$10.75	\$9.75	\$10.75	\$9.75	\$10.75	
2,400	2,499		\$10.25	\$11.25	\$10.25	\$11.25	\$10.25	\$11.25	
2,500	2,599		\$10.75	\$11.75	\$10.75	\$11.75	\$10.75	\$11.75	
2,600	2,699		\$11.25	\$12.25	\$11.25	\$12.25	\$11.25	\$12.25	
2,700	2,799		\$11.50	\$12.75	\$11.50	\$12.75	\$11.50	\$12.75	
2,800	2,899				\$12.00	\$13.25	\$12.00	\$13.25	
2,900	2,999				\$12.50	\$13.75	\$12.50	\$13.75	
3,000	3,099				\$12.75	\$14.25	\$12.75	\$14.25	
3,100	3,199				\$13.25	\$14.75	\$13.25	\$14.75	
3,200	3,299				\$13.75	\$15.25	\$13.75	\$15.25	
3,300	3,399						\$14.00	\$15.50	
3,400	3,499						\$14.50	\$16.00	
3,500	3,599						\$15.00	\$16.50	
3,600	3,699						\$15.00	\$16.50	
3,700 and above							\$15.00	\$16.50	

There is no copay below \$900

Horizontal line indicates bracket in which income reaches 160 percent of poverty.

Families transitioning from TANF/K-TAP have one (1) year of eligibility if income shall be below eighty-five percent of State Median Income and may then remain as low income working parent if income is less than 160 percent of poverty.

The maximum copay for eligible families with more than five (5) members shall be fifteen (15) dollars with one (1) child in care and sixteen dollars and fifty cents (16.50) with two (2) or more children in care.

CHILD CARE DAILY PARENT COPAYMENT SCHEDULE				
Income Range Monthly	Family Size 2 Family Copay	Family Size 3 Family Copay	Family Size 4 Family Copay	Family Size 5 or More Family Copay

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	With 1 Child	With 1 Child	With 2 or More	With 1 Child	With 2 or More	With 1 Child	With 2 or More
0-399	\$ 0.00	\$-	\$-	\$-	\$-	\$-	\$-
400-499	\$ 0.00	\$-	\$-	\$-	\$-	\$-	\$-
500-599	\$ 0.00	\$-	\$-	\$-	\$-	\$-	\$-
600-699	\$ 0.00	\$-	\$-	\$-	\$-	\$-	\$-
700-799	\$ 1.75	\$1.75	\$2.25	\$1.75	\$2.25	\$1.75	\$2.25
800-899	\$ 2.00	\$2.00	\$2.50	\$2.00	\$2.50	\$2.00	\$2.50
900-999	\$ 2.50	\$2.50	\$3.00	\$2.50	\$2.75	\$2.25	\$2.75
1,000-1,099	\$ 3.25	\$3.25	\$3.75	\$2.75	\$3.25	\$2.50	\$3.00
1,100-1,199	\$ 4.25	\$4.00	\$4.50	\$3.25	\$3.75	\$2.75	\$3.25
1,200-1,299	\$ 5.25	\$5.00	\$5.50	\$4.00	\$4.50	\$3.00	\$3.50
1,300-1,399	\$ 5.25	\$6.00	\$6.50	\$5.00	\$5.50	\$3.50	\$4.25
1,400-1,499	\$ 6.00	\$7.00	\$7.50	\$6.00	\$6.75	\$4.25	\$4.75
1,500-1,599	\$ 6.75	\$7.75	\$8.50	\$7.00	\$7.75	\$5.00	\$5.75
1,600-1,699	\$ 7.50	\$7.75	\$8.50	\$8.00	\$8.75	\$6.00	\$6.75
1,700-1,799	\$ 8.00	\$7.75	\$8.50	\$8.50	\$9.25	\$7.00	\$8.00
1,800-1,899	\$ 8.25	\$8.25	\$9.00	\$9.25	\$10.25	\$8.00	\$8.75
1,900-1,999	\$ 8.75	\$8.75	\$9.75	\$9.25	\$10.25	\$9.00	\$10.00
2,000-2,099	\$ 9.25	\$9.25	\$10.25	\$9.25	\$10.25	\$9.75	\$10.75
2,100-2,199	\$ 9.75	\$9.75	\$10.75	\$9.75	\$10.75	\$10.75	\$11.75
2,200-2,299		\$10.25	\$11.25	\$10.25	\$11.25	\$10.75	\$11.75
2,300-2,399		\$10.75	\$11.75	\$10.75	\$11.75	\$10.75	\$11.75
2,400-2,499		\$11.00	\$12.25	\$11.00	\$12.25	\$10.75	\$11.75
2,500-2,599		\$11.50	\$12.75	\$11.50	\$12.75	\$11.50	\$12.75
2,600-2,699		\$12.00	\$13.25	\$12.00	\$13.25	\$12.00	\$13.25
2,700-2,799		\$-	\$-	\$12.50	\$13.75	\$12.50	\$13.75
2,800-2,899				\$13.00	\$14.25	\$13.00	\$14.25
2,900-2,999				\$13.25	\$14.75	\$13.25	\$14.75
3,000-3,099				\$13.75	\$15.25	\$13.75	\$15.25
3,100-3,199				\$14.00	\$15.50	\$14.00	\$15.50
3,200-3,299				\$-	\$-	\$14.00	\$16.00
3,300-3,399						\$14.00	\$16.00
3,400-3,499						\$14.00	\$16.00
3,500-3,599						\$14.00	\$16.00
3,600 and Above						\$14.00	\$16.00
						\$-	\$-

There is no copay below \$700.

Low income working parent family is no longer eligible above 150 percent of poverty.

Families transitioning from TANF/K-TAP have one (1) year of eligibility if income is below eighty five (85) percent of state median income; may remain as low income working parent if income is less than 150 percent of poverty.

The maximum copay for eligible families with more than five (5) members is fourteen (14) dollars with one (1) child in care and sixteen (16) dollars with two (2) or more children in care:]

(a) Copayments shall not be assessed in:

1. A K-TAP, medical assistance case where a client shall be [clients are] receiving dependent care disregard; or
2. A food stamp or FSETP case.

(b) A copayment [Copayments] in a child protective service case [cases]:

1. A copayment [Copayments] may be waived in a child protective service case under SSBG or CCDF.

2. If the copayment is not waived, it shall be calculated at the maximum amount indicated, taking into consideration the family income, size, and number of children in care or as specified in the referral.

3. The family shall be [is] eligible for a service [services] without regard to income.

(c) The cabinet or designee shall determine the maximum daily reimbursement rate and parent copayment, not to exceed rates as specified in subsection (2) of this section. If the parent fails to pay the copayment, the cabinet or designee shall develop a plan with the parent to pay the copayment.

(d) The cabinet or designee shall advise the client to report family and financial changes that may affect authorization of a payment. A reauthorization [payments. Reauthorizations] shall be determined:

1. Every twelve (12) months; and
2. Upon receipt of a reported change [changes].

(4) The Cabinet for Families and Children may, except for a protective service case [cases] and a FSETP case [cases], establish a priority [priorities] for a child care service [services] as follows:

(a) A child [Children] with a special need [needs];

(b) A teen parent [parents];

(c) A K-TAP participant [participants] to meet the need of a family [needs of families who are] attempting to transition off assistance;

(d) A parent [Parents] or K-TAP specified relative whose K-TAP case has been discontinued and needs child care assistance to accept or retain employment; and

(e) A [Other] low income working parent or a parent in education or training [parents].

(5) Recoupment.

(a) The following provisions apply to overpayment in SSBG, CCDF, FSETP and any other local, state, or federal funds available through the child day care assistance program. Recoup an overpayment in each of the following cases:

1. Of fraud;
2. Involving a current recipient; and
3. In that [which] the overpayment would equal or exceed the cost of recovery.

(b) An overpayment shall be recovered from the child care provider if due to provider error or fraud.

(c) An overpayment shall be recovered through a reduction in the amount payable to the provider.

(d) An underpayment and an overpayment may be offset against each other in adjusting an incorrect payment.

(6) If a client's child care service shall be [services are] reduced or terminated due to need, income criteria, priority status, or change in law, administrative regulation or policy of the cabinet, the cabinet

or designee shall:

(a) Reassess the family so a client may be given a minimum ten (10) days notice of their eligibility if they do not meet the new criteria after their authorization period expires; and

(b) Send written notice explaining new eligibility criteria with a notice of intended action.

(7) The cabinet or designee shall notify the client of his right ~~(their rights)~~ to notice of an adverse action, hearing and an appeal pursuant to [actions, hearings and appeals as governed by] 922 KAR 1:320, Fair hearing. If notice of intended action is appealed by the client, the child care worker shall notify the client that the child care service [services] shall not be continued through the appeal process.

Section 7. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) DSS-76 "Child Day Care Service Agreement and Child Care Certificate", edition 10-97;

(b) DSS-77 "Child Care Billing Statement, Enrollment/Attendance Verification", edition 10-98;

(c) DSS-1295 "Application for Child Care Provider Enrollment: In Provider's Home", edition 3-99;

(d) DSS-1296 "Child Care Provider Enrollment Self-Assessment", edition 3/99;

(e) DSS-1297 "Application for Child Care Provider Enrollment: In Child's Home", edition 3-99; and

(f) "Application for Subsidized Child Day Care Assistance", 10/97, ["Child Day Care Services Agreement and Child Care Certificate", DSS-76, "October, 1997", Cabinet for Families and Children;

(b) "Child Care Billing Statement, Enrollment/Attendance Verification", DSS-77, "February, 1998", Cabinet for Families and Children;

(c) "Application for Child Care Provider Enrollment: In Child's Home", DSS-1297, "October, 1998", Cabinet for Families and Children;

(d) "Application for Child Care Provider Enrollment: In Provider's Home", DSS-1295, "October, 1998", Cabinet for Families and Children;

(e) "Child Care Provider Enrollment Self-Assessment", DSS-1296, "February, 1998", Cabinet for Families and Children; and

(f) "Application for Subsidized Child Day Care Assistance", "October, 1997", Cabinet for Families and Children.]

(2) This material may be inspected, copied, or obtained at the Department for Community Based Services, CHR Building, 3rd Floor, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: August 2, 1999

FILED WITH LRC: August 3, 1999 at 4 p.m.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Director

(1) Type and number of entities affected: The type and number of entities affected are approximately 45,000 children who may receive subsidized child care assistance governed by this administrative regulation and provided by approximately 700 certified, 2000 licensed and 12,000 enrolled or relative child care providers. The cabinet or designee will be responsible for the delivery of direct child care services as specified in the Child Care and Development Fund State Plan which with Temporary Assistance for Needy Families (TANF) and Welfare To Work Grant (WTWG) has available approximately \$127 million dollars for SFY'00. This plan allows for the delivery of subsidized child care assistance by a contractor which may improve the delivery of services for both clients and child care providers, expand community resources and increase the number of eligible children served.

(2) Direct and indirect costs or savings to those affected: Family gross income eligibility is increased to 160% of poverty. The child care maximum rates have been increased. The sliding copayment

scale is revised so no family pays more than 10% of their income, and no family with income below \$900 has a copayment. This improved service delivery system may encourage the development of needed child day care providers as it may equate to an increase in revenue for these providers, though an exact amount of increase is not able to be calculated at this time. The improved service delivery system may also assist local K-Tap recipients and other low income families in obtaining child day care assistance in order to work or attend education or training programs.

(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. The amended regulation implements a simplified child care maximum rate structure and a revised sliding copayment scale based on client eligibility at below 160% of poverty at the time of application. It also increases the number of children served by 7,700. A public hearing was not held on the Notice of Intent but written comments were received. These comments resulted in an amended after hearing 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. The maximum reimbursement rates increase will provide an additional \$16,000,000 for the charges of child care providers reimbursable by the Cabinet for Families and Children. An additional 7,700 children will be receive child care assistance reimbursed by the Cabinet for Families and Children.

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

1. First year following implementation: Compliance reporting and paperwork requirements to serve an additional 7,700 children will be necessary.

2. Second and subsequent years: Compliance, reporting and paperwork requirements for the second and subsequent years include continued operation of the revised child day care assistance program with appropriate monitoring of funds, potential use of other community resources and the reporting of required data for the completion of federal reports mandated pursuant to the CCDF State Plan.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The first year direct and indirect costs to the agency is projected to be \$26,339,000.

2. Continuing costs or savings: Continuing costs to the agency is \$32,200,000. The impact of possible changes is estimated to range from \$32.2 million to \$65.7 million annually. This analysis assumes nine (9) months of impact in FY 99 and 12 months in FY 2000. The actual cost will depend on the availability of federal, state and local funds. An additional \$10 million in federal funds is currently projected to be available for FY 2000.

3. Additional factors increasing or decreasing costs: Additional factors increasing or decreasing costs include how effective the local contractor is in integrating the fiscal and human resources of the local communities with state revenue, increases or decreases in the need for child day care assistance for child protection cases, to meet K-TAP participation rates or increases or decreases in the need of low income parents who are working or in education or training programs for subsidized child day care assistance. The cabinet has the flexibility with this regulation to expand the eligibility threshold to remain within the allocated funds for child day care assistance. Another factor that may increase or decrease the costs is the impact of recent minimum wage increases on the cost of the provision of child day care.

(b) Reporting and paperwork requirements: Reporting and paperwork requirements include the development of contracts, monitoring of child day care expenditures, provision of technical assistance to the local contractors, and establish the policies, regulations and state plan for the child day care assistance programs.

(4) Assessment of anticipated effect on state and local revenues: The anticipated effect on state and local revenues is that local contractors may be more effective in integrating the fiscal and human resources of the local communities with the state resources thereby expanding the number of families receiving assistance with meeting their child care needs.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation is the Child Care and Development Fund, amended with the new welfare reform legislation, Temporary Assistance to Needy Families (TANF), Welfare to Work Grant (WTWG) and such other federal, state or local resources as may be available.

(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 not requested as a result of the Notice of Intent being published but written comments were received. To be determined after the public hearing on this ordinary regulation.

(b) Kentucky: A public hearing was not requested as a result of the Notice of Intent being published but written comments were received. To be determined after the public hearing on this ordinary regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet in its effort to meet the increasing demand for child day care services considered numerous alternative methods for the provision of child day care services including retaining the current operating structure all of which were restricting to the cabinet's goal. The goal for all families in Kentucky to have access to quality and developmentally appropriate child care that is safe and affordable. This system consists of a broad array of resources, including public and private programs and funding streams and assist all parents. Subsidies from the cabinet are available to low income families and to protection cases while the contractor develops strategies to expand community participation and increase private investments in child day care.

(8) Assessment of expected benefits: Anticipated benefits of this administrative regulation are the increase in 7,700 children served, higher maximum payment rates, increase income eligibility and no families paying more than 10% of income for child care copayment if also under \$900, spouse abuse, domestic violence, education and training.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: One effect on the public health is that the unregulated providers through the enrollment process will comply with 45 CFR 98.41 which requires at a minimum that providers protect the health and safety of children through the prevention and control of infectious diseases including immunizations, building and physical premises safety and minimum health and safety training

(b) State whether a detrimental effect on environment and public health would result if not implemented: There is no detrimental effect as unregulated providers would be ineligible for subsidies under the CCDF as amended by the new welfare reform legislation.

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: There are no additional information or comments of which we are aware.

(11) TIERING: Is tiering applied? No. Tiering is not required as these policies will become effective statewide as the cabinet implements the child day care assistance program pursuant to these administrative regulations.

42 USC 601 et seq. and 45 CFR 98.41.

2. State compliance standards. In order to comply with the requirements of the above referenced mandate, family gross income eligibility is increased to 160% of poverty. The child care maximum rates have been increased. The sliding copayment scale is revised so no family pays more than 10% of their income, and no family with income below \$900 has a copayment.

3. Minimum or uniform standards contained in the federal mandate. Pursuant to 45 CFR 98.41 providers are required to protect the health and safety of children through the prevention and control of infectious diseases including immunization, building and physical premises safety and minimum health and safety training. Additionally the statute required that 70% of the CCDF be expended for K-TAP participants, those families attempting to transition from assistance and those at-risk of becoming dependent on assistance programs.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, prior to the amendment to the Child Care and Development Block Grant with PL 104-193, all unregulated providers requesting payment were required to become certified. With the expansion of the Child Care and Development Block Grant to include Title IV-A child care providers the cabinet developed the enrollment process that will provide minimum health and safety requirements for providers of child care that are not required by statute to be licensed or certified.

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, AUGUST 13, 1999

EDUCATION, ARTS, AND HUMANITIES CABINET  
Kentucky Board of Education  
Department of Education  
Office of Management Support Services  
(Amendment)

702 KAR 3:075. Substitute teachers' salary scheduling.

RELATES TO: KRS ~~[156.034]~~ 156.160(1)(i)

STATUTORY AUTHORITY: KRS 156.160(1)(i)

NECESSITY, FUNCTION, AND CONFORMITY: ~~[KRS 156.034 requires that administrative regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resubmitted to the Legislative Research Commission prior to December 30, 1999; and]~~ KRS 156.160(1)(i) requires the Kentucky [State] Board for [Elementary and Secondary] Education to adopt administrative regulations relating to the preparation of salary schedules for local school districts. This administrative regulation es- ~~tablishes criteria for [is necessary to insure the establishment of]~~ a pay schedule for substitute teaching.

Section 1. (1) A local board [boards] of education shall adopt [submit] annually [to the Division of School District Finance] a per diem pay schedule for substitute teaching. ~~[Such pay schedule shall take into consideration the following:]~~

(2) A [(4)] substitute teacher [teachers] shall be paid on a single salary schedule based on training and experience.

(3) A [(2)] substitute teacher [teachers] shall be ranked in accordance with requirements outlined in KRS 157.390.

(4) A [(3)] local board [boards] of education shall adopt a pay schedule for substitute teaching which may be the same, higher, or lower than the rate of pay for a regular full-time teacher.

WILMER S. CODY, Commissioner of Education

HELEN W. MOUNTJOY, Chairperson

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: August 11, 1999

FILED WITH LRC: August 11, 1999 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 24, 1999, at 10 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 17, 1999, five work 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 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, Department of Education, Office of Legal Services, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin M. Noland

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or saving to those affected: None

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

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

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

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

1. First year following implementation: Decreased reporting requirement as local school districts will no longer be required to be submitted to the Department of Education.

2. Second and subsequent years: Decreased reporting requirement as local school districts will no longer be required to be submitted to the Department of Education.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs of savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Reduced

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

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

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: This can only be accomplished by administrative regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

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

(c) If detrimental effect could occur, explain detrimental effect: This regulation does not relate to the environment or public health.

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

(a) Necessity of proposed regulation, if in conflict:

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

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET  
Kentucky Board of Education  
Department of Education  
Office of District Support Services  
(Amendment)

702 KAR 3:120. Uniform school financial accounting system.

RELATES TO: KRS 156.070, 156.160, 156.200

STATUTORY AUTHORITY: KRS 156.070, 156.160, 156.200

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 gives the Kentucky Board of [State Board for Elementary and Secondary] Education the management and control of the common schools; KRS 156.160 gives the state board authority over local school district budgets; and KRS 156.200 gives the state board authority over the accounting procedures and reports of local boards of education. This administrative regulation is necessary to provide a uniform system of financial accounting and budgets for boards of education.

Section 1. Local boards of education shall follow the uniform financial accounting system detailed in ["Official Manual of Instruction for the Kentucky Uniform School Financial Accounting System," July 1990, approved by the chief state school officer, a copy of



which is incorporated by reference, and which may be obtained from the Division of Finance, 15th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m.; until the Kentucky Education Technology System (KETS) district administrative system chart of accounts is installed in the district. Local boards of education shall then follow the chart of accounts inherent to the system.] "KETS District Administrative System Chart of Accounts," June, 1999. [February, 1995, a copy of which is incorporated by reference. A copy may be obtained from the Division of Finance, 15th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m.]

Section 2. [A close estimate or working budget shall be required annually of each board of education. The form of this document shall conform to the uniform financial accounting system provided.]

Section 3. As occasions shall demand, certain local boards of education may be permitted, upon approval of the chief state school officer, to deviate from the "Official Manual of Instruction for the Kentucky Uniform School Financial Accounting System," July 1990, or the "KETS District Administrative System Chart of Accounts," February, 1995, in general use in order to experiment or to serve as pilot systems, for good and detailed cause shown and for a time certain.

Section 4. All the financial records of the local board of education shall be [prepared and] filed in either the office of the superintendent or in a location designated by the superintendent.

Section 3. (1) "KETS District Administrative System Chart of Accounts" and the "Chart of Accounts Descriptions," dated June, 1999, are hereby incorporated by reference.

(2) These documents may be inspected and copied at the Division of Finance, Department of Education, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. through 4:30 p.m.

WILMER S. CODY, Commissioner  
HELEN W. MOUNTJOY, Chairperson  
KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: August 11, 1999

FILED WITH LRC: August 12, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on September 24, 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 September 17, 1999, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky, 40601, phone (502) 564-4474, fax (502) 564-9321.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin M. Noland

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or saving to those affected: None

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

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

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: This can only be accomplished by amendment of the regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

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

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

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

(a) Necessity of proposed regulation, if in conflict:

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

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

#### LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety  
and Health Education and Training  
(Amendment)

#### 803 KAR 2:300. General.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910

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

Section 1. Definitions Applicable to This Part. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupa-

tional safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) "U.S. Department of Labor" shall mean the U.S. Department of Labor or the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601. [An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.]

Section 2. Purpose and Scope. The provisions of this administrative regulation adopt and extend the applicability of established federal standards contained in 29 CFR 1910 to all employers, employees, and places of employment throughout the Commonwealth except those excluded in KRS 338.021.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 9 CFR 1910.3-7 of the Code of Federal Regulations revised as of July 1, 1998 [1995], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration is hereby incorporated by reference;

(b) The revisions to 29 CFR 1910.6, "Incorporation by Reference", as published in the Federal Register, Volume 64, Number 55, March 23, 1999 [61, Number 46, March 7, 1996], are incorporated by reference.

(2) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

KEMBRA TAYLOR, Attorney

APPROVED BY AGENCY: August 2, 1999

FILED WITH LRC: August 10, 1999 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 29, 1999, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 22, 1999, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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: Timothy P. Chancellor, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, Phone: (502) 564-3070, Fax: (502) 564-1682.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra S. Taylor or T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There will be no effect on the cost of living and employment by implementation of these changes.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of these proposed amendments, as these changes incorporate, by reference, a Federal Register publication, Volume 64, Number 55, dated March 23, 1999, pp. 13908-13912, which updates references to national consensus standards incorporated into the standards, update the reference date to the Code of Federal Regulations to 1998, and reformat a definition and amend the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations.

(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 factors regarding these revisions will increase or decrease costs. There will be no effect on competition. These amendments will not entail any reporting or additional paperwork requirements.

2. Second and subsequent years: See above.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the promulgation of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these changes incorporate, by reference, a Federal Register publication, Volume 64 Number 55, dated March 23, 1999, pp. 13908-13912, which updates references to national consensus standards incorporated into the standards, update the reference to the Code of Federal Regulations to 1998, and reformat a definition and amend the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. If no, explain why tiering was not applied. Kentucky's Occupational Safety and Health Program regulations affect all employers with 1 or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of 3 or more employees) has occurred.

## VOLUME 26, NUMBER 3 – SEPTEMBER 1, 1999

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These changes incorporate, by reference, a Federal Register publication, Volume 64 Number 55, dated March 23, 1999, pp. 13908-13912, which updates references to national consensus standards incorporated into the standards, update the reference to the Code of Federal Regulations to 1998, and reformat a definition and amend the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. These changes incorporate, by reference, a Federal Register publication, Volume 64 Number 55, dated March 23, 1999, pp. 13908-13912, which updates references to national consensus standards incorporated into the standards and update the reference to the Code of Federal Regulations to 1998.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

### FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect all local government entities with employees.

3. State the aspect or service of local government to which this administrative regulation relates. This proposed change does not affect an aspect or service of local government, as the change updates reference information contained in the Federal Register and reformats a definition and amends the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

### LABOR CABINET

Department of Workplace Standards  
Division of Occupational Safety and Health Compliance  
Division of Occupational Safety  
and Health Education and Training  
(Amendment)

**803 KAR 2:301. Adoption and extension of established federal standards.**

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910

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

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally-recognized standards-producing organization.

(7) "Standard" means the same as regulation or federal rule which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment.

(8) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR 1910.11-.19 of the Code of Federal Regulations revised as of July 1, 1998 [1997], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration are incorporated by reference.

(b) The revision to 29 CFR 1910.16, "Longshoring and marine terminals", as published in the Federal Register, Volume 63, Number 230, December 1, 1998 [62, Number 143, July 25, 1997].

(2) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

MR. JOE NORSWORTHY, Chairman  
KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: August 2, 1999

FILED WITH LRC: August 10, 1999 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 29, 1999, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 22, 1999, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, Phone: (502) 564-3070, Fax: (502) 564-1682.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor or W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers in the Commonwealth engaged in public sector maritime operations.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: The cost of living and employment in the state will not be affected by implementation of the amendments to this administrative regulation.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: The changes updating the reference to the Code of Federal Regulations will entail no additional costs or savings. The change in Section 2 incorporates the

Federal Register notice of December 1, 1998, (pp. 66270-66274), which directs those affected that the requirements for powered industrial truck operator training for public sector maritime operations is now covered by 29 CFR 1910.178 (incorporated into Kentucky regulations by 803 KAR 2:313). The Occupational Safety and Health Administration (OSHA) estimates the average annualized cost to each employer affected by the change clarifying the acceptable training operators of powered industrial trucks, to be 0.0001 percent of sales which will likely be offset by the savings to the average employer due to reduced worker compensation costs and reduced property damage.

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

1. First year following implementation: There are no additional factors regarding these revisions which will increase or decrease costs. There will be no effect on competition. Reporting and paperwork requirements: The employer will be required to certify that each operator of a powered industrial truck has been properly trained to safely operate the vehicle and keep the certification record on file.

2. Second and subsequent years: See (a) above.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements for the promulgating body.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations incorporate, by reference, federal regulations published in the Federal Register.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. If no, explain why tiering was not applied. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments incorporate federal regulations which clarify training requirements for operators of powered industrial trucks in public sector maritime operations.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions, as published in the Federal Register, Volume 63, Number 230, December 1, 1998, pp. 66270-66274, which revise the standards dealing with powered industrial truck operator training in public sector maritime operations, referring the user to 29 CFR 1910.178 (incorporated into Kentucky regulations by 803 KAR 2:313).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation and updates the reference date of the Code of Federal Regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

## FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities engaged in public sector maritime operations.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government engaged in public sector maritime operations.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

## LABOR CABINET

Department of Workplace Standards  
Division of Occupational Safety and Health Compliance  
Division of Occupational Safety  
and Health Education and Training  
(Amendment)

**803 KAR 2:306. Occupational health and environmental control.**

RELATES TO: KRS 338.051(3), 338.061, 29 CFR 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910

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

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those em-

ployees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor.

Section 2. Occupational Noise Exposure. (1) The language relating to audiometric test requirements for occupational noise exposure in subsection (2) of this section shall apply in lieu of 29 CFR 1910.95(h)(1).

(2) 29 CFR 1910.95(h)(1) is amended to read: Audiometric tests shall be pure tone, air conduction, hearing threshold examinations with test frequencies including as a minimum 500, 1,000, 2,000, 3,000, 4,000, and 6,000 Hz. Testing at 8,000 Hz must be included in the audiometric tests for employers using audiometers with that capacity and all audiometric tests must include 8,000 Hz after January 15, 1985.

(3) The language relating to audiometric test requirements for occupational noise exposure in subsection (4) of this section shall apply in lieu of 29 CFR 1910.95(h)(4).

(4) 29 CFR 1910.95(h)(4) is amended to read: Audiometric examinations shall be administered in a room meeting the requirements listed in Appendix D: Audiometric Test Rooms. When an audiometric test room is located in a mobile test van, background sound pressure level measurements shall be taken at each testing location.

(5) The language relating to audiometric test requirements for occupational noise exposure in subsection (6) of this section shall apply in lieu of 29 CFR 1910.95(h)(5)(i).

(6) 29 CFR 1910.95(h)(5)(ii) shall read: Audiometer calibration shall be checked acoustically at least annually in accordance with Appendix E: Acoustic Calibration of Audiometers. Test frequencies below 500 Hz and above 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) may be omitted from this check. Deviations of fifteen (15) decibels or greater require an exhaustive calibration.

(7) The language relating to audiometric test requirements for occupational noise exposure in subsection (8) of this section shall apply in lieu of 29 CFR 1910.95(h)(5)(iii).

(8) 29 CFR 1910.95(h)(5)(iii) is amended to read: An exhaustive calibration shall be performed at least every two (2) years in accordance with sections 4.1.2; 4.1.3; 4.1.4.3; 4.2; 4.4.1; 4.4.2; 4.4.3; and 4.5 of the American National Standard Specification for Audiometers, S3.6-1969. Test frequencies below 500 Hz and above 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) may be omitted from this calibration.

(9) The language relating to access to information and training materials requirements for occupational noise exposure in subsection (10) of this section shall apply in lieu of 29 CFR 1910.95(l)(1).

(10) 29 CFR 1910.95(l)(1) is amended to read: The employer shall make available to affected employees or their representatives copies of this standard and shall also post a notice of the availability of this standard in the workplace.

(11) The language relating to exemptions to the regulation for occupational noise exposure requirements in subsection (12) of this section shall apply in lieu of 29 CFR 1910.95(o).

(12) 29 CFR 1910.95(o) is amended to read: Paragraphs (c) through (n) of this section shall not apply to employers engaged in oil and gas well drilling and servicing operations, agriculture, or construction.

(13) The language relating to acoustical calibration of audiometers

for occupational noise exposure in subsection (14) of this section shall apply in lieu of 29 CFR 1910.95 Appendix E.

(14) 29 CFR 1910.95 Appendix E shall read: Acoustic Calibration of Audiometers.

This Appendix is Mandatory.

Audiometer calibration shall be checked acoustically, at least annually, according to the procedures described in this Appendix. The equipment necessary to perform these measurements is a sound level meter, octave-band filter set, and a National Bureau of Standards 9A coupler. In making these measurements, the accuracy of the calibrating equipment shall be sufficient to determine that the audiometer is within the tolerances permitted by American Standard Specification for Audiometers, S3.6-1969.

(a) Sound pressure output check.

1. Place the earphone coupler over the microphone of the sound level meter and place the earphone on the coupler.

2. Set the audiometer's hearing threshold level (HTL) dial to seventy (70) dB.

3. Measure the sound pressure level of the tones that each test frequency from 500 Hz through 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) for each earphone.

4. At each frequency the readout on the sound level meter should correspond to the levels in Table E-1 or Table E-2, as appropriate, for the type of earphone, in the column entitled "sound level meter reading".

(b) Linearity check.

1. With the earphone in place, set the frequency to 1,000 Hz and the HTL dial on the audiometer to seventy (70) dB.

2. Measure the sound levels in the coupler at each ten (10) dB decrement from seventy (70) dB to ten (10) dB, noting the sound level meter reading at each setting.

3. For each ten (10) dB decrement on the audiometer the sound level meter should indicate a corresponding ten (10) dB decrease.

4. This measurement may be made electrically with a voltmeter connected to the earphone terminals.

(c) Tolerances. When any of the measured sound levels deviate from the levels in Table E-1 or Table E-2 plus or minus three (3) dB at any test frequency between 500 and 3,000 Hz, four (4) dB at 4,000 Hz, or five (5) dB at 6,000 Hz and 8,000 Hz, an exhaustive calibration is advised. An exhaustive calibration is required if the deviations are greater than ten (10) dB at any test frequency.

TABLE E-1 - REFERENCE THRESHOLD LEVELS FOR TELEPHONICS-TDH-39 EARPHONES

Frequency, Hz	Reference threshold level for TDH-39 earphones, dB	Sound level meter level meter reading dB
500	11.5	81.5
1000	7.07	7.0
2000	9.07	9.0
3000	10.0	80.0
4000	9.57	9.5
6000	15.5	85.5
8000	13.0	83.0

TABLE E-2 - REFERENCE THRESHOLD LEVELS FOR TELEPHONICS-TDH-49 EARPHONES

Frequency, Hz	Reference threshold level for TDH-49 earphones, dB	Sound level meter level meter reading dB
500	13.5	83.5
1000	7.5	77.5
2000	11.0	81.0
3000	9.5	79.5
4000	10.5	80.5
6000	13.5	83.5
8000	13.0	83.0

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The material in paragraphs 1 through 7 of this subsection, published by the Office of the Federal Register, National Archives and

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Records Services, General Services Administration, revised as of July 1, 1998 [1997], is incorporated by reference:

1. 29 CFR 1910.94 through 1910.95(g)(10)(ii);
2. 29 CFR 1910.95(h)(2) through 29 CFR 1910.95(h)(3);
3. 29 CFR 1910.95(h)(5)(i) through 29 CFR 1910.95(h)(5)(ii);
4. 29 CFR 1910.95(i)(1) through 29 CFR 1910.95(k)(2)(iii);
5. 29 CFR 1910.95(l)(2) through 29 CFR 1910.95(n)(2);
6. 29 CFR 1910.95(q) through 29 CFR 1910.95 Appendix D;
7. 29 CFR 1910.95 Appendix F through 29 CFR 1910.100.

(b) The revisions to 29 CFR 1910.94, "Ventilation", as published in the Federal Register, Volume 64, Number 55, March 23, 1999 [63, Number 5, January 8, 1998], are incorporated by reference.

(2) The language relating to audiometric testing in Section 2(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.95(h)(1).

(3) The language relating to audiometric testing in Section 2(4) of this administrative regulation shall apply in lieu of 29 CFR 1910.95(h)(4).

(4) The language relating to audiometric testing in Section 2(6) of this administrative regulation shall apply in lieu of 29 CFR 1910.95(h)(5)(ii).

(5) The language relating to audiometric testing in Section 2(8) of this administrative regulation shall apply in lieu of 29 CFR 1910.95(h)(5)(iii);

(6) The language relating to access to information and training materials requirements for occupational noise exposure in subsection (10) of this section shall apply in lieu of 29 CFR 1910.95(l)(1);

(7) 29 CFR 1910.95(o) is amended to read: Paragraphs (c) through (n) of this section shall not apply to employers engaged in oil and gas well drilling and servicing operations, agriculture, or construction.

(8) The language relating to acoustical calibration of audiometers for occupational noise exposure in subsection (14) of this section shall apply in lieu of 29 CFR 1910.95 Appendix E;

(9) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman  
KEMBRA TAYLOR, Attorney

APPROVED BY AGENCY: August 2, 1999

FILED WITH LRC: August 10, 1999 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 29, 1999, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 22, 1999, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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: Timothy P. Chancellor, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, Phone: (502) 564-3070, Fax: (502) 564-1682.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra S. Taylor or T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There will be no effect on the cost of living and employment by implementation of these changes.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of these proposed amendments, as these changes update the reference to the Code of Federal Regulations, amend the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations, and incorporate by reference a publication in the Federal Register, dated March 23, 1999, which removes paragraph (d) of 29 CFR 1910.94, dealing with open surface tanks.

(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 factors regarding these revisions will increase or decrease costs. There will be no effect on competition. These amendments will not entail any reporting or additional paperwork requirements.

2. Second and subsequent years: See above.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the promulgation of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these changes update, in Section 3(1)(a), the reference to the Code of Federal Regulations, and in Section 3(1)(b) incorporate, by reference, a publication in the Federal Register, dated March 23, 1999, which removes paragraph (d) of 29 CFR 1910.94, dealing with open surface tanks.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. If no, explain why tiering was not applied. Kentucky's Occupational Safety and Health Program regulations affect all employers with 1 or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of 3 or more employees) has occurred.



FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These changes update, in Section 3(1)(a), the reference to the Code of Federal Regulations, and in Section 3(1)(b) incorporate, by reference, a publication in the Federal Register, dated March 23, 1999, which removes paragraph (d) of 29 CFR 1910.94, dealing with open surface tanks.

3. Minimum or uniform standards contained in the federal mandate. These changes incorporate, by reference, a Federal Register publication, Volume 64 Number 55, dated March 23, 1999, pp. 13908-13912, which updates removes paragraph (d) of 29 CFR 1910.94, dealing with open surface tanks.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. The amendment affect all local government entities with employees who are exposed to the hazards of open surface tanks.

3. State the aspect or service of local government to which this administrative regulation relates. This change affects only those aspects or services of local government where the employees are exposed to the hazards of open surface tanks.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety

and Health Education and Training

(Amendment)

803 KAR 2:307. Hazardous materials.

RELATES TO: KRS 338.051(3), 338.061, 29 CFR 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910

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

Section 1. Definitions Applicable to this Part. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those em-

ployees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor.

Section 2. Automotive Service Station (Service Station). (1) The language relating to automotive service stations (service stations) in subsection (2) of this section shall apply in lieu of 29 CFR 1910.106(a)(3).

(2) 29 CFR 1910.106(a)(3) is amended to read: The term automotive service station, or service stations, shall mean that portion of property where flammable or combustible liquids used as motor fuel are stored and dispensed from fixed equipment and into the fuel tanks of motor vehicles and shall include any facilities available for the sale and servicing of tires, batteries, accessories and for minor automotive maintenance work and shall also include private stations not accessible or open to the public such as those used by commercial, industrial or governmental establishments. This section shall not apply to agriculture.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The material in subparagraphs 1 through 2 of this paragraph, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1998 [1997], is incorporated by reference:

1. 29 CFR 1910.101 through 1910.106(a)(2);

2. 29 CFR 1910.106(a)(4) through 29 CFR 1910.120.

(b) The revisions to the removal of 29 CFR 1910.108, "Dip Tanks containing Flammable or Combustible Liquids", as published in the Federal Register, Volume 64, Number 55, March 23, 1999, is incorporated by reference. [29 CFR 1910.109, "Explosives and Blasting Agents", as published in the Federal Register, Volume 63, Number 117, June 18, 1998, are incorporated by reference.]

(c) The additions of 29 CFR 1910.121-126, dealing with dipping and coating operations, as published in the Federal Register, Volume 64, Number 55, March 23, 1999, are incorporated by reference. [The revisions to 29 CFR 1910.110, "Storage and Handling of Liquefied Petroleum Gases", as published in the Federal Register, Volume 63, Number 117, June 18, 1998, are incorporated by reference.]

(d) The revisions to 29 CFR 1910.111, "Storage and Handling of Anhydrous Ammonia", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(e) The revisions to 29 CFR 1910.111, "Storage and Handling of Anhydrous Ammonia", as published in the Federal Register, Volume 63, Number 117, June 18, 1998, are incorporated by reference.]

(2) The language relating to automotive service stations (service stations) in Section 2(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.106(a)(3).

(3) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

KEMBRA TAYLOR, Attorney

APPROVED BY AGENCY: August 2, 1999

FILED WITH LRC: August 10, 1999 at 4 p.m.

## VOLUME 26, NUMBER 3 – SEPTEMBER 1, 1999

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on September 29, 1999, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 22, 1999, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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: Timothy P. Chancellor, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, Phone: (502) 564-3070, Fax: (502) 564-1682.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra S. Taylor or T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There will be no effect on the cost of living and employment by implementation of these changes.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of these proposed amendments, as these changes update the reference to the Code of Federal Regulations, amend the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations, and incorporate, by reference, a publication in the Federal Register, dated March 23, 1999, which adds 29 CFR 1910.121-126, dealing with dipping and coating operations. These requirements rewrite the former standards in plain language, consolidate the former requirements in sequential sections, and update the former standards to increase the compliance options available to employers. The regulatory burden of employers has not been increased nor has employee protection been reduced.

(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 factors regarding these revisions will increase or decrease costs. There will be no effect on competition. These amendments will not entail any reporting or additional paperwork requirements.

2. Second and subsequent years: See above.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the promulgation of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

ceived.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these changes update, in Section 3(1)(a), the reference to the Code of Federal Regulations, and in Section 3(1)(b) incorporate, by reference, a publication in the Federal Register, dated March 23, 1999, which removes paragraph (d) of 29 CFR 1910.94, dealing with open surface tanks.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. If no, explain why tiering was not applied. Kentucky's Occupational Safety and Health Program regulations affect all employers with 1 or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of 3 or more employees) has occurred.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These changes update the reference date of the Code of Federal Regulations to 1998, amend the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations, and incorporate, by reference, a publication in the Federal Register, dated March 23, 1999, which adds 29 CFR 1910.121-126, dealing with dipping and coating operations. These requirements rewrite the former standards in plain language, consolidate the former requirements in sequential sections, and update the former standards to increase the compliance options available to employers. The regulatory burden of employers has not been increased nor has employee protection been reduced.

3. Minimum or uniform standards contained in the federal mandate. These changes incorporate, by reference, a Federal Register publication, Volume 64, Number 55, dated March 23, 1999, pp. 13908-13912.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

### FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. The amendment affect all local government entities with employees who are exposed to the hazards of dipping and coating operations.

3. State the aspect or service of local government to which this administrative regulation relates. This change affects only those

aspects or services of local government where the employees are exposed to the hazards of dipping and coating operations.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

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

**803 KAR 2:309. General environmental controls.**

RELATES TO: KRS 338.051(3), 338.061, 29 CFR 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910

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

Section 1. Definitions Applicable to this Part. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) "U.S. Department of Labor" means the Kentucky Labor Cabinet or U.S. Department of Labor.

Section 2. Construction of Water Closets. (1) The language relating to construction of water closets in subsection (2) of this section shall apply in lieu of 29 CFR 1910.141(c)(2)(i).

(2) 29 CFR 1910.141(c)(2)(i) is amended to read: Each water closet shall occupy a separate compartment with walls or partitions between fixtures sufficiently high to assure privacy.

Section 3. Lockout. (1) The language relating to utilization of lockout procedures in subsection (2) of this section shall apply in lieu of 29 CFR 1910.147(c)(2)(ii).

(2) 29 CFR 1910.147(c)(2)(ii) is amended to read: If an energy isolating device is capable of being locked out, the employer's energy control program under paragraph (c)1 of this subsection shall utilize lockout.

(3) The language relating to tag location in subsection (4) of this section shall apply in lieu of 29 CFR 1910.147(c)(3).

(4) 29 CFR 1910.147(c)(3)(i) is amended to read: Full employee

protection. When a tagout device is used on an energy isolating device which is incapable of being locked out, the tagout device shall be attached at the same location that the lockout device would have been attached, and the employer shall demonstrate that the tagout program will provide a level of safety equivalent to that obtained by using a lockout program. Where tagout devices are used with energy isolating devices designed with the incapability of being locked, the tag attachment will be fastened at the same point at which the lock would have been attached.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The material in subparagraphs 1 through 4 of this paragraph, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1998 [1997], is incorporated by reference:

1. 29 CFR 1910.141 through 1910.141(c)(1)(iii);
2. 29 CFR 1910.141(d)(1) through 29 CFR 1910.147(c)(2)(i);
3. 29 CFR 1910.147(c)(2)(iii);
4. 29 CFR 1910.147(c)(3)(ii) through 29 CFR 1910.150.

(b) The revisions to 29 CFR 1910.146, "Permit-Required Confined Spaces," as published in the Federal Register, Volume 63, Number 230, December 1, 1998, are incorporated by reference.

(2) The language relating to the construction of water closets in Section 2(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.141(c)(2)(i);

(3) [29 CFR 1910.41, "Sanitation", as published in the Federal Register, Volume 63, Number 117, June 18, 1998, are incorporated by reference.

(c) The revisions to 29 CFR 1910.142, "Temporary Labor Camps", as published in the Federal Register, Volume 63, Number 117, June 18, 1998, are incorporated by reference.

(d) The language relating to utilization of lockout procedures in Section 3(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.147(c)(2)(ii).

(4) [(e)] The language relating to tag location in Section 3(4) of this administrative regulation shall apply in lieu of 29 CFR 1910.147(c)(3)(i).

(5) [(2)] This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

KEMBRA TAYLOR, Attorney

APPROVED BY AGENCY: August 2, 1999

FILED WITH LRC: August 10, 1999 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 29, 1999, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 22, 1999, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, Phone: (502) 564-3070, Fax: (502) 564-1682.

**REGULATORY IMPACT ANALYSIS**

Agency Contact: Kembra S. Taylor or William L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

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

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(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: The cost of living and employment in the state should not be affected by the implementation of the amendments to this administrative regulation.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: The Occupational Safety and Health Administration (OSHA) estimates the annual costs of the average employer for increased employee involvement in the confined space program to be \$24, or a total of \$5,838,807 nationwide.

(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 factors regarding these revisions will increase or decrease costs. There will be no effect on competition. These amendments will not entail any reporting or additional paperwork requirements.

2. Second and subsequent years: See above.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes for the promulgating body.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations incorporate, by reference, federal regulations published in the Federal Register, and update the reference to the current Code of Federal Regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of 3 or more employees) has occurred.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments update the reference to the current Code of Federal Regulations to the 1998 Code, amend the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations, and incorporate revisions, as published in the Federal Register, December 1, 1998, which revise the confined space entry standard to provide that the affected employees, or their authorized representatives, have more participation in the confined space entry program, allowing them to observe any testing or monitoring of the permit space, and also strengthens and clarifies the criteria employers must satisfy when preparing for the timely rescue of space entrants.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions to the previously adopted regulations, 29 CFR 1910.146, "Permit-required Confined Spaces," as published in the Federal Register, Volume 63, Number 230, December 1, 1998.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

### FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities with employees that enter confined spaces.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed changes relate to local governments that have employees who enter confined spaces.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

### LABOR CABINET

Department of Workplace Standards  
Division of Occupational Safety and Health Compliance  
Division of Occupational Safety  
and Health Education and Training  
(Amendment)

### 803 KAR 2:313. Materials handling and storage.

RELATES TO: KRS 338.051(3), 338.061, 29 CFR 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910

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

Section 1. Definitions Applicable to this Part. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) "U.S. Department of Labor" means the Kentucky Labor Cabinet or the U.S. Department of Labor.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR 1910.176-.190, Subpart N, "Materials Handling and Storage", revised as of July 1, 1998 [1997], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(b) The revision to the revision to 29 CFR 1910.178, "Powered Industrial Trucks", as published in the Federal Register, Volume 63, Number 230, December 1, 1998, is incorporated by reference.

(c) The revision to 29 CFR 1910.178, "Powered Industrial Trucks", as published in the Federal Register, Volume 64, Number 80, April 27, 1999 [29 CFR 1910.183, "Helicopters", as published in the Federal Register, Volume 63, Number 117, June 18, 1998], is incorporated by reference.

(2) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman  
KEMBRA TAYLOR, Attorney

APPROVED BY AGENCY: August 2, 1999

FILED WITH LRC: August 10, 1999 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 29, 1999, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 22, 1999, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, Phone: (502) 564-3070, Fax: (502) 564-1682.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra S. Taylor or William L. Ralston

(1) Type and number of entities affected: The amendment to this regulation affects all employers in general industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: The cost of living and employment in the state will not be affected by implementation of the amendments to this administrative regulation.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: The changes updating

the reference to the Code of Federal Regulations and amending the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations will entail no additional costs or savings. The Occupational Safety and Health Administration (OSHA) estimates the average annualized cost to each employer affected by the change clarifying the acceptable training operators of powered industrial trucks, incorporated in the Federal Register notice of December 1, 1998, (pp. 66270-66274), to be 0.0001 percent of sales which will likely be offset by the savings to the average employer due to reduced worker compensation costs and reduced property damage. A correction to the publication published in the Federal Register, April 27, 1999 is also incorporated.

(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 factors regarding these revisions will increase or decrease costs. There will be no effect on competition.

2. Reporting and paperwork requirements: The employer will be required to certify that each operator of a powered industrial truck has been properly trained to safely operate the vehicle and keep the certification records on file.

3. Second and subsequent years: See (a) above.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered. This regulation incorporates, by reference, a Federal Register publication, Volume 63, Number 230, dated December 1, 1998, pp. 66270-66274 which details and clarifies the requirements dealing with powered industrial truck operator training, updates the reference to the Code of Federal Regulations to the 1998 publication, and amends the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations. A correction to the publication published in the Federal Register, April 27, 1999 is also incorporated.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: This proposed amendment will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of this proposed amendment.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers

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with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. This regulation incorporates, by reference, a Federal Register publication, Volume 63, Number 230, dated December 1, 1998, pp. 66270-66274, which details and clarifies the requirements dealing with powered industrial truck operator training, updates the reference to the Code of Federal Regulations to the 1998 publication, and amends the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations. A correction to the publication published in the Federal Register, April 27, 1999 is also incorporated.

3. Minimum or uniform standards contained in the federal mandate. The amendment adopts a revision to the previously adopted regulation, 29 CFR 1910.178 "Powered Industrial Trucks," as published in the Federal Register, Volume 63, Number 230, December 1, 1998.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This revision imposes no stricter, additional or different responsibilities than federal standards.

### FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This amendment affects local government entities that use powered industrial trucks.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation affects the safety and health of employees of local government who use powered industrial trucks.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of this amendment is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. This proposed amendment will not affect the number of local government employees.

### LABOR CABINET Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training (Amendment)

**803 KAR 2:414. Motor Vehicles, Mechanized Equipment, and Marine Operations [Adoption of 29 CFR Part 1926.600-.606].**

RELATES TO: KRS 338.051, 338.061, 29 CFR 1926 [Chapter 338]

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1926 [Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) authorizes [and 338.061 authorize] the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational

safety and health [rules;] administrative regulations. KRS 338.061(2) provides that the board may [and standards. Express authority to] incorporate by reference established federal standards and national consensus standards [is also given to the board]. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. [The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.]

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

(a) Chapter 29, Part 1926.600-.606 of the Code of Federal Regulations, revised as of July 1, 1998, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration;

(b) The revision to 29 CFR 1926.602 "Material Handling Equipment", as published in the Federal Register, Volume 63, Number 230, December 1, 1998, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at Kentucky Labor Cabinet, Division of Education and Training, 1047 U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. to 4:30 p.m. (ET), Monday through Friday. [The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926.600-.606 of the Code of Federal Regulations, revised as of July 1, 1998, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1) The revision to 29 CFR 1926.600, "Equipment", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(2) Revoke paragraph "514 - Warning Device" of ANSI B56.1-1969 - Safety Standards for Powered Industrial Trucks and adopt paragraph "512 - Warning Device" of ANSI B56.1-1975 - Low Lift and High Lift Trucks for standard reference as specified in 29 CFR 1926.602(c)(1)(vi), effective July 1, 1979.

(3) The revision to 29 CFR 1926.602, "Material Handling Equipment", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

**Section 2. Public Notice.** (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.]

JOE NORSWORTHY, Chairman  
KEMBRA TAYLOR, Attorney

APPROVED BY AGENCY: August 2, 1999

FILED WITH LRC: August 10, 1999 at 4 p.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on September 29, 1999, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 22, 1999, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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: Timothy P. Chancellor, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, Phone: (502) 564-3070, Fax: (502) 564-1682.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra S. Taylor or W. L. Ralston

(1) Type and number of entities affected: The amendments to



this regulation affect all employers in the Commonwealth engaged in construction work.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: The cost of living and employment in the state will not be affected by implementation of the amendments to this administrative regulation.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: The changes updating the reference date of the Code of Federal Regulations and the changes made to the regulation to meet KRS Chapter 13A considerations will entail no additional costs or savings. The Occupational Safety and Health Administration (OSHA) estimates the average annualized cost to each employer affected by the change clarifying the acceptable training operators of powered industrial trucks, incorporated in the Federal Register notice of December 1, 1998, (pp. 66270-66274) to be 0.0001 percent of sales which will likely be offset by the savings to the average employer due to reduced worker compensation costs and reduced property damage.

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

1. First year following implementation: There are no additional factors regarding these revisions which will increase or decrease costs. There will be no effect on competition. Reporting and paperwork requirements: The employer will be required to certify that each operator of a powered industrial truck has been properly trained to safely operate the vehicle and keep the certification record on file.

2. Second and subsequent years: See (a) above.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements for the promulgating body.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations incorporate, by reference, federal regulations published in the Federal Register.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers

with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments incorporate federal regulations which clarify training requirements for operators of powered industrial trucks in the construction industry.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions, as published in the Federal Register, Volume 63, Number 230, December 1, 1998, pp. 66270-66274, which revise the standards dealing with powered industrial truck operator training in the construction industry, referring the user to 29 CFR 1910.178 (incorporated into Kentucky regulations by 803 KAR 2:313).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation, updates the reference date of the Code of Federal Regulations, and revises the regulation to meet KRS Chapter 13A considerations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

#### FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities engaged in construction activities.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government engaged in construction activities.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

#### LABOR CABINET

Department of Workplace Standards  
Division of Occupational Safety and Health Compliance  
Division of Occupational Safety  
and Health Education and Training  
(Amendment)

803 KAR 2:500. Maritime employment.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1915, 1917, 1918, 1919

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1915, 1917, 1918, 1919

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) authorizes the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may incorporate by reference established federal standards and national

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consensus standards. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of Maritime employment.

Section 1. Definitions. As used in the material incorporated by reference in Section 2 of this administrative regulation:

- (1) "Administration" means the Kentucky Occupational Safety and Health Program, Frankfort, Kentucky;
- (2) "Area director" means Director, Division of Occupational Safety and Health, Kentucky Labor Cabinet;
- (3) "Assistant secretary" means Secretary of Labor, Kentucky Labor Cabinet;
- (4) "U.S. Department of Labor" means Kentucky Labor Cabinet or U.S. Department of Labor.

Section 2. Incorporation by Reference. (1) The following is incorporated by reference:

(a) Chapter 29, Part 1915 of the Code of Federal Regulations, revised as of July 1, 1998 [1997], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(b) The revision to 29 CFR 1915.120, "Powered Industrial Truck Operator Training", as published in the Federal Register, Volume 63, Number 230, December 1, 1998, is incorporated by reference. [revisions to 29 CFR 1915.1001, "Asbestos", as published in the Federal Register, Volume 63, Number 124, June 29, 1998.]

(c) Chapter 29 Part 1917 of the Code of Federal Regulations, revised as of July 1, 1998 [1997], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(d) The revision to 29 CFR Part 1917.1, "Scope and Application", as published in the Federal Register, Volume 63, Number 230, December 1, 1998, is incorporated by reference.

(e) Chapter 29 Part 1918 of the Code of Federal Regulations, revised as of July 1, 1998, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(f) The revision to 29 CFR Part 1918.1, "Scope and Application", as published in the Federal Register, Volume 63, Number 230, December 1, 1998 is incorporated by reference.

(g) Chapter 29 Part 1919 of the Code of Federal Regulations, revised as of July 1, 1998, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

[1. The revisions to 29 CFR 1917.1, "Scope and Applicability", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

2. The revisions to 29 CFR 1917.2, "Definitions", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

3. The revisions to 29 CFR 1917.3, "Incorporation by Reference", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

4. The revisions to 29 CFR 1917.11, "Housekeeping", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

5. The revisions to 29 CFR 1917.13, "Slings", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

6. The revisions to 29 CFR 1917.17, "Railroad Facilities", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

7. The revisions to 29 CFR 1917.20, "Interference with Communications", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

8. The revisions to 29 CFR 1917.23, "Hazardous Atmospheres and Substances (See also 1917.2(r))", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

9. The revisions to 29 CFR 1917.24, "Carbon Monoxide", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

10. The revisions to 29 CFR 1917.25, "Fumigants, Pesticides, Insecticides, and Hazardous Preservatives (See also 1917.2(p))", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

11. The revisions to 29 CFR 1917.26, "First Aid and Lifesaving Facilities", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

12. The revisions to 29 CFR 1917.27, "Personnel", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

13. The revisions to 29 CFR 1917.28, "Hazard Communication (See also 1917.1(a)(2)(vi))", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

14. The revisions to 29 CFR 1917.30 "Emergency Action Plans", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

15. The revisions to 29 CFR 1917.42, "Miscellaneous Auxiliary Gear", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

16. The revisions to 29 CFR 1917.43, "Powered Industrial Trucks", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

17. The revisions to 29 CFR 1917.44, "General Rules Applicable to Vehicles", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

18. The revisions to 29 CFR 1917.45, "Cranes and Derricks (See also 1917.50)", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

19. The revisions to 29 CFR 1917.46, "Load Indicating Devices", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

20. The revisions to 29 CFR 1917.48, "Conveyors", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

21. The revisions to 29 CFR 1917.50, "Certification of Marine Terminal Material Handling Devices (See also mandatory Appendix IV, Part 1918 of this Chapter)", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

22. The revisions to 29 CFR 1917.71, "Terminals Handling Intermodal Containers or Roll-On/Roll-Off Operations", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

23. The revisions to 29 CFR 1917.73, "Terminal Facilities Handling Menhaden and Similar Species of Fish (See also 1917.2, Definition of Hazardous Cargo, Materials, Substance, or Atmosphere)", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

24. The revisions to 29 CFR 1917.91, "Eye and Face Protection", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

25. The revisions to 29 CFR 1917.93, "Head Protection", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

26. The revisions to 29 CFR 1917.94, "Foot Protection", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

27. The revisions to 29 CFR 1917.95, "Other Protective Measures", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

28. The revisions to 29 CFR 1917.112, "Guarding of Edges", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

29. The revisions to 29 CFR 1917.118, "Fixed Ladders", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

30. The revisions to 29 CFR 1917.119, "Portable Ladders", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

31. The revisions to 29 CFR 1917.121, "Spiral Stairways", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

32. The revisions to 29 CFR 1917.124, "Dockboards (Car and Bridge Plates)", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

33. The revisions to 29 CFR 1917.126, "River Banks", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

34. The revisions to 29 CFR 1917.152, "Welding, Cutting and Heating (Hot Work) (See also 1917.2, Definition of Hazardous Cargo, Materials, Substance, or Atmosphere)", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

35. The revisions to 29 CFR 1917.153, "Spray Painting (See also 1917.2, Definitions of Hazardous Cargo, Materials, Substance, or Atmosphere)", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

36. The revisions to 29 CFR 1917.156, "Fuel Handling and Storage", as published in the Federal Register, Volume 62, Number 143,

July 25, 1997.

37. The revisions to 29 CFR 1917.157, "Battery Charging and Changing", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

(d) The revisions to 29 CFR Part 1918, "Safety and Health Regulations for Longshoring", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

(e) Chapter 29 Part 1919 of the Code of Federal Regulations, revised as of July 1, 1997, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.]

(2) This material may be inspected, copied, or obtained at Kentucky Labor Cabinet, Division of Education and Training, 1047 U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

KEMBRA TAYLOR, Attorney

APPROVED BY AGENCY: August 2, 1999

FILED WITH LRC: August 10, 1999 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 29, 1999, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 22, 1999, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, Phone: (502) 564-3070, Fax: (502) 564-1682.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra S. Taylor or W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all public sector employers in the Commonwealth engaged in shipyard employment.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: The cost of living and employment in the state will not be affected by implementation of the amendments to this administrative regulation.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: The changes updating the reference to the Code of Federal Regulations will entail no additional costs or savings. Nationally, the Occupational Safety and Health Administration (OSHA) estimates the average annualized cost to each employer affected by this change incorporating the Federal Register notice (pp. 66270-66274) to be 0.0001 percent of sales which will likely be offset by the savings to the average employer due to reduced worker compensation costs and reduced property damage.

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

1. First year following implementation: There are no additional factors regarding these revisions which will increase or decrease costs. There will be no affect on competition. Reporting and paperwork requirements: The employer will be required to certify that each operator of a powered industrial truck has been properly trained to safely operate the vehicle and keep the certification records on file.

2. Second and subsequent years: See (a) above.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations incorporate, by reference, federal regulations published in the Federal Register.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments incorporate federal regulations which clarify training requirements for operators of powered industrial trucks in public sector maritime operations.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions, as published in the Federal Register, Volume 63, Number 230, December 1, 1998, pp. 66270-66274, which revises the standards dealing with powered industrial truck operator training in public sector shipyard employment, referring the user to 29 CFR 1910.178 (incorporated into Kentucky regulations by 803 KAR 2:313).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation and updates the reference date of the Code of Federal Regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities engaged in shipyard industry work.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government engaged in shipyard industry work.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

**CABINET FOR HEALTH SERVICES  
Department for Medicaid Services  
Division of Member and Provider Services  
(Amendment)**

**907 KAR 1:060. Medical transportation.**

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.030, 194A.050 [194-050], Chapter 205, 42 CFR 440.170, 42 USC 1396(d), 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, reorganizes the Cabinet for Human Resources and places 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 the service of transportation for access to medical services for which payment shall be made by the Medicaid Program in behalf of both the categorically needy and the medically needy.

Section 1. Definitions. (1) "Household" means a single housing unit which is legally considered the residence of one (1) or more persons who may or may not be related. An apartment building, duplex, four-plex, etc. shall not be considered a single housing unit.

(2) "Medical necessity" means a condition requiring medical attention.

(3) "Medical service area" means a county of residence and contiguous counties.

Section 2. Transportation under the Medicaid Program shall be provided only to a Medicaid eligible recipient [recipients] and if necessary, an attendant or parent who accompanies [to accompany] the recipient.

Section 3. Ambulance Services. (1) Ambulance services shall be provided only if:

(a) Service is of medical necessity; and

(b) [medically necessary and if] The criteria shown in this section are met.

(2) [(1)] Emergency ambulance services shall be provided without preauthorization to and from the nearest hospital emergency room or appropriate medical facility or provider in accordance with [as defined in] 907 KAR 1:061 and specified in the [incorporated] Medical Transportation Services Manual. A statement that the Medicaid recipient received emergency services shall be provided by [obtained from] the medical personnel of the facility which treated the recipient.

(3) [(2)] Nonemergency ambulance services to a hospital, clinic, physician's office or other health facility shall be provided if preauthorized.

(4) If the Department for Community-Based Services (DCBS) [Social Insurance] local office is closed, the nonemergency ambulance service shall be postauthorized. Preauthorization and postauthorization shall be performed by the Department for Medicaid Services or its authorized representative in accordance with Section 4 of [utilizing criteria shown in] this administrative regulation.

(5) If a recipient has both Medicare and Medicaid, and if the transportation may be covered by Medicare, the provider shall bill Medicare first, and preauthorization by the local DCBS office shall not be required. If Medicare subsequently denies the payment for the transportation, the provider shall obtain postauthorization. In order to have the transportation postauthorized, the provider shall give a copy of the Medicare denial to the local DCBS office and a voucher shall be issued by DCBS. The voucher shall require only the signature of the transportation provider.

Section 4. Locally Authorized Medical Transportation. (1) A system of preauthorization shall be [transportation preauthorization system] administered at each local Department for Community-Based Services office and [Social Insurance office] shall provide for preauthorized nonemergency transportation approvals, including nonemergency ambulance services. A Medicaid-eligible recipient may receive these services if he meets, (limited to the provision of the services under) the following conditions:

(a) The recipient shall be traveling to or from a Medicaid covered service, exclusive of pharmaceutical services;

(b) The service shall be determined to be of medical necessity [medically necessary];

(c) [Payment for transportation shall be necessary to ensure that the medical service is secured; and

(d) Failure by the Medicaid Program to pay for transportation results in a hardship to the Medicaid recipient. A hardship shall not be considered to exist if Free transportation which is appropriate for the recipient's medical needs is not available or [if] use of an appropriate operational household vehicle is not available [appropriate, and is not used for commercial purposes].

(2) Locally authorized medical transportation shall be provided [as necessary] on a [an exceptional] postauthorization basis if:

(a) [with the additional limitation that postauthorization shall be justified by] The recipient justifies [indicating] the need for medical transportation;

(b) The need for transportation services was [arose and was provided] outside normal working hours; and

(c) [that] Payment for the transportation has not been made.

Section 5. Determination of Necessity. (1) [All] Approvals for nonemergency transportation services and the provision of preauthorization and postauthorization, shall be made by the Department for Medicaid Services or by the department's authorized representative.

(2) If criteria established in Section 4 are met, [Only] transportation within the medical service area shall be approved. Transportation services provided outside the medical service area shall be approved by the Department for Medicaid Services or the department's authorized representative if:

(a) The medical service required by the recipient is not available in the medical service [that] area; and

(b) The recipient is [has been appropriately] referred by a [the] medical provider within his medical service area.

(3) [Only] The least expensive available transportation suitable for the recipient's needs shall be approved.

Section 6. Incorporation [Material Incorporated] by Reference. (1) The following material is incorporated by reference:

(a) MAP-720 Authorization for emergency ambulance services to facility other than a hospital emergency room, July 1997 edition, Department for Medicaid Services; and

(b) MAP-13 Medical Transportation Voucher, July 1997 edition, Department for Medicaid Services.

(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. ["Medicaid Transportation Services Manual", dated January 1996 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, Cabinet for Health 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 standard time), excluding state holidays.

(4) Each participating in-state provider shall be provided one (1) copy of the manual and appropriate manual updates following their incorporation by reference. Additional copies may be obtained from the Department for Medicaid Services upon payment of an appropriate fee which approximates cost in accordance with KRS 61.872.

Section 7. The provisions of this administrative regulation as amended shall be effective for services provided on or after January 18, 1996.]

JOHN H. MORSE, Secretary  
DENNIS BOYD, Commissioner  
JOHN H. WALKER, Attorney

APPROVED BY AGENCY: July 29, 1999

FILED WITH LRC: August 9, 1999 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 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 September 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: Kevin Devlin, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, Phone: (502) 564-7905, (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard (564-6204) or Karen Doyle (564-4321)

(1) Type and number of entities affected: All emergency and non-emergency providers participating in the Medicaid Program.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Budget neutral.

2. Continuing costs or savings: Budget neutral.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching

funds.

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

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

(b) Kentucky: No public comments received.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Improve access to medical appointments.

(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: Recipients would not have appropriate transportation to medical appointments.

(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? (Explain why tiering was or was not used) 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.

#### CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Member and Provider Services (Amendment)

#### 907 KAR 1:061. Payments for medical transportation.

RELATES TO: KRS 205.520, 42 USC 1396, 440.170, 447.200 through 447.205

STATUTORY AUTHORITY: KRS 194A.030, 194A.050 [194.050; Chapter 205, 42 CFR 440.170, 447.200 through 447.205, 42 USC 1396(d), 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, reorganizes the Cabinet for Human Resources and places 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 for determining amounts payable by the Department for Medicaid Services for medical transportation services.

Section 1. Definitions. [For purposes of this administrative regulation, the following definitions apply:]

(1) "Advanced life support[]" (ALS) ambulance services" means ambulance services meeting the standards for advanced life support services established in accordance with 902 KAR 14:070, 907 KAR 14:080, 907 KAR 14:082, and 907 KAR 14:084.

(2) "Advanced Life Support (ALS) Medical First Response Providers" means the utilization of certified and licensed emergency medical professionals in accordance with 902 KAR 14:100 to provide advanced prehospital medical care.

(3) "Affiliate ambulance service" means a Class I ground ambulance provider who has entered into a formal written agreement with an ALS medical first response provider to jointly respond to prehos-

pital medical emergencies for coordinated medical care and transportation ~~as set by the Department for Health Services, if provided by a Medicaid provider appropriately licensed by the Cabinet for Health Services for the provision of ALS services.~~

(2) "Appropriate medical facility or provider" means a local medical provider other than an emergency room of a hospital who can provide necessary emergency care when a hospital emergency room is not located within the medical service area.

(3) "Air ambulance provider" means an air ambulance service meeting the standards for provision of air ambulance services ~~as set by the Department for Health Services~~, if provided by a Medicaid provider ~~appropriately licensed by the Cabinet for Health Services~~ for the provision of air ambulance services in accordance with 902 KAR 14:090.

(5) [(4)] "Ambulatory recipient who is disoriented" means an individual who is confused, especially with respect to time, place, and identity of persons or objects. The extent of disorientation shall be sufficient to preclude the recipient from safely utilizing, unaccompanied, alternate methods of transportation.

(6) Appropriate medical facility or provider" means a local medical provider other than an emergency room of a hospital who can provide necessary emergency care when a hospital emergency room is not located within the medical service area.

(7) [(5)] "Attendant" means an individual who accompanies the recipient, if necessary, to, from, and while receiving medical services. A parent who accompanies ~~must accompany~~ a minor child shall be ~~is~~ considered to be an attendant.

(8) [(6)] "Basic life support[]" (BLS) ambulance services" means ambulance services meeting the standards for basic life support services established ~~as set by the Department for Health Services~~; if provided by a Medicaid provider appropriately licensed ~~by the Cabinet for Health Services~~ for the provision of BLS services in accordance with 902 KAR 14:080, 907 KAR 14:082 and 907 KAR 14:084.

(9) [(7)] "Commercial transportation carrier [carriers]" means a commercial carrier which:

(a) Is ~~those commercial carriers~~ licensed in accordance with KRS 281A.010(8) ~~the laws of Kentucky~~, other states, or of the United States to transport members of the general public; and

(b) Has the authority provided by the Transportation Cabinet to operate in the county in which the transportation services is initiated,

(10) [such as a taxi cab.

(8) "Department" means the Department for Medicaid Services.

(11) [(9)] "Loaded miles" means the miles in which ~~when~~ the transportation carrier is transporting at least one (1) recipient to or from a Medicaid covered service. Reimbursement shall be made to a provider for loaded miles only [patient].

(12) [(10)] "Medical condition" means a ~~is defined as any~~ condition of the recipient which does not allow him to travel alone or without physical assistance.

(13) "Membership or subscription fee" means a charge from the provider to the recipient which entitles the recipient to free or discounted ambulance transportation services.

(14) [(11)] "Noncommercial group carrier [carriers]" means a vendor licensed in accordance with KRS 281.619, ~~those vendors~~ who provides provide bus or bus-type medical transportation to an identifiable segment of the eligible recipient group, but not including a vendor ~~vendors~~ whose transportation costs are allowable costs under their reimbursement system (except community mental health centers). The segment may be identifiable by geographical boundary, type of medical service required, common medical destination (i.e., clinic, primary care center, etc.), or other similar grouping method. Included within this definition are:

(a) Community action agencies (or successor agencies) providing bus or bus-type service for a poverty or near-poverty area target population; and

(b) Other similar providers as identified by the department.

(15) [(12)] "Nonemergency health transportation services (NEHT)" means transportation services provided by a Medicaid provider meeting the standards for nonemergency health transportation services and licensed in accordance with 902 KAR 14:060 and 902 KAR 14:070. (16) ~~as set by the Department for Health Services, if provided by a Medicaid provider appropriately licensed by the Cabinet for Health Services for the provision of NEHT services.~~

(13) "Private automobile carrier" means a person owning or having access to a private vehicle not used for commercial transportation purposes and who uses that vehicle for the occasional medical transportation of eligible recipients.

(17) [(14)] "Recipient" means an individual who is eligible for Medicaid benefits and meets the criteria for transportation services as defined in 907 KAR 1:060.

(18) [(15)] "Specialty carrier" means a vendor who:

(a) Provides, through specially equipped vehicles, medical transportation for nonambulatory recipients ~~[(those who are required to travel by wheelchair)]~~ or for ambulatory but disoriented recipients;

(b) ~~[(those who are sufficiently disoriented as to time, place, person or objects so as to be unable to travel to or from medical services unaccompanied or unsupervised), and who]~~ Provides services not ~~normally~~ available from other transportation vendors; and

(c) Has a disabled persons certificate in accordance with KRS 281.014(5) ~~[-The equipment required shall be a van or similar type vehicle with a ramp or lift for wheelchairs; and the service shall be the accompaniment of the recipient from point of origin to point of destination where the recipient is placed in the charge of the receiving individual, including physical assistance or guidance to the recipient. To be considered a specialty carrier for purposes of reimbursement from the department, the carrier shall be recognized by the department as a specialty carrier] with approval [given] by the department for reimbursement at specialty carrier rates and is licensed appropriately in accordance with KRS Chapter 281.~~

(19) ~~[-The department may require the submission of documentation designed to show that the vendor is capable of providing specialty carrier service in an adequate and safe manner.~~

(16) "Upper limit" means the maximum reimbursement rate that the department shall pay the transportation provider for the services provided.

[(17)] "Waiting time" means that period of time following provision of transportation to a medical vendor during which the private automobile vendor is waiting for the recipient to receive medical treatment, in order to provide the return trip required by the recipient. In the instance of an eligible recipient being admitted to a medical institution for inpatient care, waiting time is considered to have occurred if the private automobile vendor waits a sufficient period of time to ensure the recipient's admittance to the facility.]

Section 2. Licensed Ambulance Services Reimbursement. (1) The department shall reimburse licensed participating ambulance services at the lesser of their usual and customary charges or the maximum rate established by the department.

(2) The maximum rate shall be the amount arrived at by combining the base rate, mileage allowance, oxygen rate, and cost of other supplies, as applicable:

(a) The base rate for ALS emergency transportation to the emergency room of a hospital shall be set at eighty-five (85) dollars per one (1) way trip; the mileage allowance for trips shall be three (3) dollars and fifty (50) cents per mile for mileage from mile one (1); a flat rate of twenty-five (25) dollars shall be set for an ~~each~~ additional recipient with no additional allowance for mileage.

(b) The rate for air ambulance transportation shall be an all-inclusive rate. Reimbursement shall be the provider's usual and customary charge not to exceed the upper limit of \$3,500. A claim ~~All claims~~ for air ambulance transportation services shall be submitted to the department and shall be reviewed for determination that air transport was medically necessary and appropriate.

(c) The base rate for BLS emergency transportation to the emergency room of a hospital shall be set at sixty-five (65) dollars per one (1) way trip; the mileage allowance for trips shall be two (2) dollars and fifty (50) cents per mile for mileage from mile one (1); a flat rate of twenty (20) dollars shall be set for an ~~each~~ additional recipient with no additional allowance for mileage.

(d) The base rate for an ~~any~~ ALS or BLS providing emergency ambulance transportation to an appropriate medical facility or provider which is not the emergency room of a hospital shall be set at fifty-five (55) dollars per one (1) way trip; the mileage allowance for trips shall be two (2) dollars per mile from mile one (1); a flat rate of fifteen (15) dollars shall be set for an ~~each~~ additional recipient with no additional rate for mileage. Payment shall be contingent upon review of required



documentation. Claims shall be reviewed by the department. Required documentation shall be a statement of a medical emergency by the attending medical provider.

(e) The base rate for NEHT services if [when] transporting a recipient who is on a stretcher to a medical provider, other than a pharmacy, shall be set at forty (40) dollars per one (1) way trip; the mileage allowance for trips shall be one (1) dollar and fifty (50) cents per mile. The reimbursement for NEHT services if [when] transporting a recipient who is in a wheelchair shall be in accordance with Section 6 of this administrative regulation.

(f) The base rate for nonemergency transportation for a [all] licensed ambulance service if [services-when] no medical care or treatment of a recipient is required or indicated during transport shall be the rate specified in paragraph (e) of this subsection.

(g) An oxygen rate, which is set at ten (10) dollars per one (1) way trip; for a [all] licensed ambulance service [services], excluding air ambulances.

(h) The cost of other itemized supplies for ALS or BLS emergency transportation services shall be the actual cost as reflected on the transportation provider's invoice which shall be maintained in the provider's files and shall be produced upon request by the department.

(i) The base rate for BLS emergency transportation with an ALS medical first response provider to stabilize the patient before the BLS run is completed to the emergency room of a hospital, shall be:

1. Eighty-five (85) dollars per one (1) way trip;
2. Two (2) dollars and fifty (50) cents per mile for mileage from mile one (1); and
3. Flat rate of twenty-five (25) dollars for an additional recipient with no additional allowance for mileage.

(j) The base rate for BLS providing emergency transportation with ALS medical response provider assistance to medical facility or provider which is not the emergency room of a hospital shall be:

1. Fifty-five (55) dollars per one (1) way trip;
2. Two (2) dollars per mile from mile one (1); and
3. Flat rate of fifteen (15) dollars for an additional recipient with no additional rate for mileage.

(k) Payment for services identified in paragraphs (i) or (j) of this subsection shall be contingent upon review of required documentation by the department. Required documentation shall be a statement of medical emergency by the attending medical provider and ALS medical first response provider.

(3) The department shall not reimburse a licensed participating ambulance service provider who charges a membership or subscription fee that entitles the recipient to free or discounted ambulance transportation if a recipient has paid that membership or subscription fee.

Section 3. Commercial Transportation Carrier [Carriers] Reimbursement. The department shall reimburse a participating commercial transportation carrier [carriers] at usual commercial rates with limitations as follows:

(1) For taxi services provided in regulated areas in accordance with KRS 281.635(4), the provider shall be reimbursed the normal passenger rate charged to the general public for a one (1) way trip regardless of the number of Medicaid eligible recipients transported when the trip is within the medical service area [(as defined in 907 KAR 1:060); i.e., the taxi shall be paid the single passenger rate regardless of the number of additional passengers].

(2) For a taxi service in an area [taxi services in those areas] of the state where taxi rates are not regulated by the appropriate local rate setting authority, and for taxi services in regulated areas when they go outside the medical service area [(as defined in 907 KAR 1:060)], the provider shall be reimbursed the normal passenger rate charged the general public for a single passenger [(without payment for additional passengers, if any)], up to the upper limit [reimbursement for transport of a parent or attendant shall be considered included within the upper limit allowed for the trip]. The upper limit for a taxi transporting a recipient shall be:

- (a) The usual and customary charge up to a maximum of six (6) dollars for trips of five (5) miles or less, one (1) way, loaded miles;
- (b) The usual and customary charge up to a maximum of twelve (12) dollars for trips of six (6) to ten (10) miles, one (1) way, loaded miles;

(c) The usual and customary charge up to a maximum of twenty (20) dollars for trips of eleven (11) to twenty-five (25) miles, one (1) way, loaded miles;

(d) The usual and customary charge up to a maximum of thirty (30) dollars for trips of twenty-six (26) miles to fifty (50) miles, one (1) way, loaded miles; or

(e) For trips of fifty-one (51) miles or above, the lesser of the usual and customary charge or an amount derived by multiplying one (1) dollar by the actual number of miles, not to exceed a maximum of seventy-five (75) dollars per trip, one (1) way, loaded miles; and

(f) Inclusive of the cost for transporting a parent or attendant

Section 4. Private Automobile Carrier [Carriers] Reimbursement.

(1) The department shall reimburse private automobile carriers the minimum rate per mile paid to state employees in accordance with 200 KAR 2:006 [at the basic rate of twenty-two (22) cents per mile plus a flat fee of four (4) dollars per recipient if waiting time is required. For round trips of less than five (5) miles the rate shall be computed on the basis of a maximum allowable fee of six (6) dollars for the first recipient plus four (4) dollars each for waiting time for additional recipients].

(2) A private automobile carrier [carriers] shall have a signed participation agreement with the department prior to furnishing a reimbursable medical transportation service and provide proof of a current driver's license and minimum state-required insurance coverage.

(3) [services:

(2) For round trips of five (5) to twenty-five (25) miles the rate for private automobile carriers shall be computed on the basis of a maximum allowable fee of ten (10) dollars for the first recipient plus four (4) dollars each for waiting time for additional recipients. The maximum allowable fee rates shall not be utilized in situations where mileage is paid:

(3) Even though the maximum allowable fee rate when computed on the basis of twenty-two (22) cents per mile plus four (4) dollars for waiting time would not equal the six (6) dollars or ten (10) dollars allowable amounts, the higher amount may be paid to encourage private automobile carriers to provide necessary medical transportation. Additionally, nothing in this section requires the department to pay the amounts specified if the private automobile carrier expresses a preference for reimbursement in a lesser amount; then the lesser amount shall be paid.] Toll charges shall be reimbursable if [when] presented with a receipt.

(4) [Waiting time shall be a reimbursable component of the private automobile carrier transportation fee only if waiting time occurs. If waiting time occurs due to admittance of the recipient into the medical institution, the private automobile carrier may be reimbursed for the return trip to the point of recipient pickup as though the recipient were in the vehicle; that is, the total reimbursable amount shall be computed on the basis of the maximum allowable fee or mileage rate plus waiting time as shown in this section. Waiting time shall not be paid for the attendant or caretaker relative (e.g., mother, father) who is accompanying the recipient and not personally being transported for Medicaid covered service.

(5) If a private automobile carrier is transporting more than one (1) recipient, only one (1) mileage payment shall be allowed. Mileage shall be computed on the basis of the distance between the most remote recipient and the most remote medical service utilized; to include any necessary additional mileage to pick up and discharge the additional recipients].

Section 5. Noncommercial Group Carriers. The department shall reimburse a participating noncommercial group carrier for [carriers based on] actual reasonable, allowable costs [cost] to the provider based on cost data submitted to the department by the provider; however, the minimum rate shall be twenty (20) cents per recipient per mile transported and the rate upper limit shall be fifty (50) cents per recipient per mile transported. Payment for a parent or other attendant shall be at the recipient rate.

Section 6. Specialty Carriers. (1) Participating specialty carriers shall be reimbursed at the lesser of the following rates:

- (a) The actual charge for the service; or
- (b) The usual and customary charge for that service by the carrier,

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as shown in the schedule of usual and customary charges submitted by the carrier to the department; or

(c) The program maximum established for the service.

(2) Program maximums shall be:

(a) For nonambulatory recipients who require the use of a wheelchair, the upper limit shall be twenty-five (25) dollars for the first recipient plus four (4) dollars for each additional [nonambulatory] recipient transported on the same trip, for each time a recipient is transported to or transported from the medical service site. To this base rate shall be added one (1) dollar and fifty (50) cents per loaded mile for the first recipient for miles the recipient is transported, and toll charges actually incurred and verified; mileage charges shall not be allowed for additional recipients.

(b) For ambulatory recipients who are disoriented, the upper limit shall be twelve (12) dollars and fifty (50) cents for the first recipient plus four (4) dollars for each additional [ambulatory-disoriented] recipient transported on the same trip, for each time a recipient is transported to or transported from the medical service site. To this base rate shall be added one (1) dollar and fifty (50) cents per loaded mile for the first recipient for miles the recipient is transported, and toll charges actually incurred and verified; mileage charges shall not be allowed for additional recipients.

(c) For [both] paragraphs (a) and (b) of this subsection, empty vehicle miles shall not be included when computing allowable reimbursement for mileage.

(3) Reimbursement shall be made at specialty carrier rates for the following types of recipients only:

(a) Nonambulatory recipients who need to be transported by wheelchair, but shall not include recipients who need to be transported as stretcher patients; and

(b) Ambulatory recipients who are disoriented and require an attendant as authorized by a physician.

(4) The recipient or guardian [specialty-carrier] shall obtain a statement from the recipient's physician (or, if the recipient is in a nursing facility, from the director of nursing, charge nurse, or medical director in lieu of a physician) to verify that transportation by the specialty carrier is medically necessary due to the recipient's nonambulatory or disoriented condition. Claims for payment which are submitted without the required statement of verification shall not be paid.

Section 7. Specially authorized transportation services authorized in unforeseen circumstances may be paid for at a rate adequate to secure the necessary service. The amount allowed shall not exceed the usual and customary charge of the provider. The department shall review and approve or disapprove requests for specially authorized transportation services based on medical necessity.

Section 8. Use of Flat Rates. Transportation payment shall not exceed the lesser of:

(1) Six (6) dollars per trip, one (1) way (or twelve (12) dollars for a round trip); or

(2) The usual fee for the participating transportation provider computed in the usual manner, if:

(a) [(1)] The recipient chooses to use a medical provider outside the medical service area as (defined in 907 KAR 1:060); and

(b) [(2)] The medical service is available in the recipient's medical service area; and

(c) [(3)] The recipient has not been appropriately referred by the medical provider within his medical service area.

Section 9. Posting of Rates. A [All] transportation provider [providers], except a private auto provider [providers], shall be allowed to post his [their] rates with the Department for Community-Based Services [Social Insurance] offices in the counties they serve. These rates shall apply for all Medicaid recipients and shall be effective for a twelve (12) month period and may be revised once per quarter. The rate charged to the Medicaid Program shall not exceed the rate charged to the general public.

Section 10. Meals and Lodging. The flat rate for meals and lodgings for a recipient or attendant if [recipients and attendants when] preauthorized (or postauthorized, if appropriate) by the department shall be reimbursed at the actual charge up to the upper limits as paid

to state employees in accordance with 200 KAR 2:006, [as follows:

(1) Standard area:

(a) Meals: breakfast ~~four (4) dollars per day;~~ lunch ~~five (5) dollars per day;~~ dinner ~~eleven (11) dollars per day;~~ and

(b) Lodgings: ~~forty (40) dollars per day.~~

(2) High-rate area:

(a) Meals: breakfast ~~five (5) dollars per day;~~ lunch ~~six (6) dollars per day;~~ dinner ~~fifteen (15) dollars per day;~~ and

(b) Lodgings: ~~fifty-five (55) dollars per day.]~~

Section 11. Limitations. (1) [Any] Reimbursement for medical transportation shall be contingent upon the recipient receiving the appropriate pre- or postauthorization, for medical transportation as required by the department.

(2)[(a)] Authorization shall not be granted for a recipient [recipients] transported for purposes other than to take the recipient to or from a covered Medicaid service [services] being provided to that recipient, except in the instance of one (1) parent accompanying a child to or from a covered medical service [services] being provided to the child or if one (1) attendant is authorized for a recipient traveling to or from a covered medical service [services] based on the medical condition of the recipient.

(3) [(b)] Reimbursement shall be limited to a transportation service [services] and shall not include the service [services], salary or time of the attendant or parent.

[(3) ~~An individual who owns a taxi company and who uses the taxi as his personal vehicle shall be reimbursed at the private auto rate when transporting household family members.]~~

(4) Mileage for reimbursement purposes shall be computed by the most direct accessible route from point of pick up to point of delivery.

(5) Provisions of this administrative regulation do not apply to recipients in counties served by a human service transportation delivery system in accordance with 603 KAR 7:080 and 907 KAR 3:065.

~~[Section 12. The provisions of this administrative regulation as amended shall be effective for services provided on or after January 18, 1996.]~~

JOHN H. MORSE, Secretary

DENNIS BOYD, Commissioner

JOHN H. WALKER, Attorney

APPROVED BY AGENCY; July 29, 1999

FILED WITH LRC: August 9, 1999 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held September 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 September 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: Kevin Devlin, 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 (564-6204) or Karen Doyle (564-4321)

(1) Type and number of entities affected: All emergency and non-emergency providers participating in the Medicaid Program.

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

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

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

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

1. First year following implementation: None
2. Second and subsequent years: None
- (3) Effects on the promulgating administrative body:
  - (a) Direct and indirect costs or savings:
    1. First year: Budget neutral.
    2. Continuing costs or savings: Budget neutral.
  3. Additional factors increasing or decreasing costs: None
- (b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

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

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

(b) Kentucky: No public comments received.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Improve access to medical appointments.

(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: Recipients would not have appropriate transportation to medical appointments.

(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: It is anticipated that amending the rates included in this administrative regulation would result in a negligible increase in reimbursement for medical transportation.

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) 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.

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

**921 KAR 1:390. Child Support Program paternity establishment.**

RELATES TO: KRS 186.570(2), 194B.050(1), 205.710-205.800, 213.046(4), (5), (9), (10), 237.110(4), 405.430, 405.520, 406.011, 406.021, 406.025, 406.180, 45 CFR 302.31, 302.33, 303.5, 42 USC 651 et seq., EO 98-731

STATUTORY AUTHORITY: KRS 186.570(2), 194B.050(1), 205.710-205.800, 213.046(4), (5), (9), (10), 405.430, 405.520, 406.021, 406.025, 42 USC 651 et seq., EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children shall administer the Child Support Program in

accordance with KRS 205.710 to 205.800. This administrative regulation specifies the requirements of the agency in the establishment of paternity.

Section 1. Requirement for Paternity Establishment. The cabinet shall bring action, as specified in KRS 406.21(1) and (3) if:

(1) The child is born out of wedlock; and

(2) An assignment of rights to the cabinet is in effect or an individual not receiving public assistance applies for child support services including paternity establishment.

Section 2. Cabinet Action. (1) A case requiring paternity action shall be opened upon receipt of:

(a) A public assistance case referral; or

(b) A nonpublic assistance application, in accordance with KRS 205.721.

(2) The cabinet shall open a case pending determination of good cause.

(a) If "good cause" for failure to cooperate is determined, the child support case shall be closed;

(b) Good cause may be found to exist if criteria contained in 921 [994] KAR 2:006, Section 16(4) are met;

(c) Evidence for determination of good cause shall be as specified in 921 [994] KAR 2:006, Section 16(5).

(3) ~~In a case~~ [For all cases] referred to the cabinet in which paternity has not yet been established, the cabinet shall, within ninety (90) days of locating the alleged father or custodial parent ~~(or successful service of process, whichever occurs later)~~:

(a) Obtain a voluntary acknowledgment of paternity as specified by KRS 213.036(5) and 213.046(3), (9);

(b) File for establishment of paternity;

(c) Complete service of process to establish paternity; or

(d) Document unsuccessful attempts to serve process, whichever occurs later.

(4) Paternity shall be established or the putative father excluded as a result of genetic tests or legal process within one (1) year of:

(a) Successful service of process; or

(b) The child reaching the age of six (6) months.

(5) The voluntary acknowledgment of paternity may be rescinded in accordance with 901 KAR 5:070, Form VS-8E [VS-8, Form VS-8B, and Form VS-8G].

(6) The cabinet shall recover a reasonable fee for genetic tests from the administratively or judicially determined father (from an alleged noncustodial parent, or obligor, a reasonable fee for performing genetic tests) pursuant to KRS 205.712(2)(h).

(7) The cabinet shall request denial, suspension or revocation of a license or certification for failure to comply with a subpoena or warrant relating to paternity pursuant to KRS 186.570(2) and 237.110(4).

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form CS-99.1, -99.2, -99.3 "Affidavit in Support of Establishing Paternity [Affidavit]", edition 5/98 [(5/98 Edition), Cabinet for Families and Children]; and

(b) Form CS-77 "Administrative Order for Genetic Testing", edition 10/98 [(10/98 Edition), Cabinet for Families and Children].

(2) This material may be inspected, copied or obtained at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

VIOLA P. MILLER, Secretary  
 DIETRA PARIS, Commissioner  
 CHARLES P. LAWRENCE, Attorney  
 APPROVED BY AGENCY: July 29, 1999  
 FILED WITH LRC: August 11, 1999 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 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 September 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. 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 Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, phone: (502) 564-7900, FAX: (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Director

(1) Type and number of entities affected: This administrative regulation is amended to reference a new Vital Statistics form (VS-8E) used to rescind the voluntary acknowledgement of paternity. There is no way to determine the number of cases which will be affected by this new form.

(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 public comments received. No public hearing was held and no public comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented to the extent available from public comments received. No public hearing was held and no public comments were received.

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: 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, 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 held and no public comments were received.

(b) Kentucky: No public hearing was held and no public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative adjustments were not considered as this change to the administrative regulations was precipitated by the Cabinet for Health 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: None

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

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

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

(a) Necessity of proposed regulation if in conflict: 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 (Explain why tiering was or was not used) Tiering was not applied because the Child Support Program requires uniformity in the application of policy as specified in 45 CFR 302.33 (c).

#### FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation revision will not affect local government.

3. State the aspect or service of local government to which this administrative regulation relates. None

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation revision will not affect local government.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 651 et seq.

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. Minimum standards stated in the mandate have been met.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No. State standards are not more restrictive than federal language.

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

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, AUGUST 13, 1999

KENTUCKY REVENUE CABINET  
Department of Law  
Division of Tax Policy  
(New Administrative Regulation)

103 KAR 20:020. Items of capital for corporation license tax.

RELATES TO: KRS 136.070

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 136.070(2)(a) defines the term capital. This administrative regulation establishes a definition for each item of capital and provides guidance regarding the computation of capital.

Section 1. Definitions. (1) "Advance" means a loan of money;

(2) "Affiliated companies" means two (2) or more corporations in an affiliated group as defined in Section 1504(a) of the Internal Revenue Code except that in determining the voting power and value test prescribed by Section 1504(a)(2), "more than fifty (50) percent" shall be substituted for "eighty (80) percent";

(3) "Bank overdraft" means the liability account reflecting the amount of checks issued or drawn against the corporation's bank account in excess of credit and does not include a credit balance in the cash account;

(4) "Book value" means the value reflected on financial statements prepared for book purposes of an item of capital which may be composed of a single general ledger account or multiple accounts;

(5) "Borrowed money" means a loan of money including a loan from a stockholder and a bank overdraft;

(6) "Capital stock" means:

(a) The sum of:

1. The par value of all issued and outstanding shares of stock having a par value; and

2. The amount of consideration received by the corporations for shares of stock issued and outstanding without a par value;

(b) Less treasury stock;

(7) "Contingent liability" means a liability not yet fixed or certain but dependent on events to occur in the future. Contingent liability includes a deferred tax liability;

(8) "Debt" means an unconditional and legally enforceable obligation for the payment of money. Debt shall include trade payables and accrued operating expense accounts. Debt shall not include a contingent liability or an estimated liability;

(9) "Estimated liability" means a liability the existence of which is certain but for which the amount, due date, or payee is indeterminable;

(10) "Financial statement prepared for book purposes" means:

(a) The balance sheet prepared on a consistent basis from the corporation's books and records as of the last day of the taxable year; and

(b) If the balance sheet presentation of any account is questioned, the presentation required by generally accepted accounting principles shall control for purposes of determining capital;

(11) "Intercompany accounts" means the corporation's receivable and payable accounts, other than advances, reflecting the result of transactions between affiliated companies;

(12) "Loan" means delivery by one (1) party to and receipt by another party of a sum of money upon agreement, expressed or implied, to repay it with or without interest;

(13) "Loans from stockholders" means the liability account reflecting the amount of loans from stockholders without any reduction for the asset account reflecting the amount of loans to stockholders;

(14) "Net assets" means the amount by which total assets of a corporation exceed the total debt of the corporation;

(15) "Stockholder" means an individual or a corporation, which is not an affiliated company, owning stock in a corporation;

(16) "Surplus" means the excess of the net assets of a corporation over its capital stock; and

(17) "Total assets" means the original cost of the entire property

of a corporation:

(a) Including real property, personal property, tangible property, and intangible property;

(b) Less applicable contra-asset accounts and deferred tax benefits.

Section 2. Computation of Capital. (1) A corporation shall determine the book value of each of the following items of capital:

(a) Capital stock;

(b) Surplus;

(c) Advances by affiliated companies;

(d) Intercompany accounts; and

(e) Borrowed moneys.

(2) The corporation shall combine the book value of each item of capital.

Section 3. Surplus. Equity in affiliated companies shall be included in surplus if the parent corporation records the equity on its financial statements prepared for book purposes.

Section 4. Advances by Affiliated Companies. (1) The amount of advances by affiliated companies included in capital shall be the excess, if any, of the total advances by or from affiliated companies over the total advances to affiliated companies.

(2) Advances by affiliated companies shall include a liability account representing a transfer of cash resulting from a cash management plan.

(3) Advances to affiliated companies shall include an asset account representing a transfer of cash resulting from a cash management plan.

Section 5. Intercompany Accounts. (1) The amount of intercompany accounts included in capital shall be the net of the receivable and payable accounts, other than advances, reflecting the result of transactions between affiliated companies.

(2) Intercompany accounts shall not include:

(a) A loan of money;

(b) An asset or liability account representing a transfer of cash resulting from a cash management plan; or

(c) An advance by or to an affiliated company.

Section 6. Borrowed Moneys. (1) Borrowed moneys shall include loans and bank overdrafts.

(2) Borrowed moneys shall not include trade accounts or notes payable arising through trade transactions such as salaries payable, taxes payable, and accounts representing various types of liabilities incurred for supplies, repairs, and other accounts where the seller allows the purchaser to pay within thirty (30) to ninety (90) days.

Section 7. Loans From Stockholders. (1) Loans from stockholders shall be included in capital as borrowed moneys.

(2) The amount of loans from stockholders included in capital shall be only the balance of the liability account titled loans from stockholders.

(3) The asset account titled loans to stockholders shall not be:

(a) Included in capital; or

(b) Netted against the liability account titled loans from stockholders.

Section 8. This administrative regulation shall apply to the computation of capital as reported on the return filed for taxable years beginning after December 31, 1999.

SARAH JANE SCHAAF, Secretary

DANA B. MAYTON, Commissioner

APPROVED BY AGENCY: July 28, 1999

FILED WITH LRC: August 11, 1999 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 30, 1999, at 10 a.m. at 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in

## VOLUME 26, NUMBER 3 – SEPTEMBER 1, 1999

being heard at this hearing shall notify this agency in writing by September 23, 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. Jennifer C. Hays, Director, Division of Compliance and Taxpayer Assistance, Kentucky Revenue Cabinet, 200 Fair Oaks Lane, Station 50, Frankfort, Kentucky 40601, phone: (502) 564-5495, Fax: (502) 564-2906.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Jennifer C. Hays

(1) Type and number of entities affected: Approximately 70,000 corporations that are required to file and pay license tax will be affected.

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

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

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The costs of doing business for all corporations will be less because of the guidance provided by this administrative regulation for filing corporation license tax returns.

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

1. First year following implementation: No effects upon competition during the first year.

2. Second and subsequent years: No effects upon competition during the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Direct and indirect savings will be realized during the first year by the administrative body in the form of reduced compliance efforts.

2. Continuing costs or savings: The savings realized from the reduced compliance efforts will continue after the first year.

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

(b) Reporting and paperwork requirements: This administrative regulation produces no additional reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation produces no impact on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current Revenue Cabinet appropriations will be used to implement and enforce this administrative regulation.

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

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

(b) Kentucky: No impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative interpretations of KRS 136.070 are available.

(8) Assessment of expected benefits:

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

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

effect on environment and public health if this administrative regulation were not implemented.

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicts, overlapping, or duplication of any statute, administrative regulation, or government policy.

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied. All corporations are required to compute the items of capital in the same manner.

### EDUCATION, ARTS, AND HUMANITIES CABINET Kentucky Board of Education Department of Education Office of District Support Services (Proposed Administrative Regulation)

**702 KAR 3:244. Repeal of 702 KAR 3:245, School council allocation formula: Kentucky Uniform School Financial Accounting System.**

RELATES TO: KRS 160.345

STATUTORY AUTHORITY: KRS 156.070, 160.345

NECESSITY, FUNCTION, AND CONFORMITY: 702 KAR 3:245 specifies a formula, which guides the way in which school district funds shall be allocated to each school council, for use by school districts utilizing the Kentucky Uniform Financial Accounting System pursuant to 702 KAR 3:120. 702 KAR 3:120, as amended, no longer provides for the use of the Kentucky Uniform Financial Accounting System. Currently, all school districts allocate funds to school councils pursuant to 702 KAR 3:246. 702 KAR 3:245 is no longer needed.

Section 1. 702 KAR 3:245, School council allocation formula for the Kentucky Uniform School Financial Accounting System, is hereby repealed.

WILMER S. CODY, Commissioner

HELEN MOUNTJOY, Chairperson

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: August 11, 1999

FILED WITH LRC: August 12, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on September 24, 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 September 17, 1999, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin M. Noland

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or saving to those affected: None



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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

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

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: This can only be accomplished by amendment of the regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

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

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

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

(a) Necessity of proposed regulation, if in conflict:

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

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

## EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

(New Administrative Regulation)

**703 KAR 5:080. Administration Code for Kentucky's Educational Assessment Program.**

RELATES TO: KRS 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 156.070, 158.6453, 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 an Administration Code for Kentucky's Educational Assessment Program for appropriate testing practices for state required tests.

Section 1. (1) The "Administration Code for Kentucky's Educational Assessment Program," dated June, 1999, is hereby adopted and incorporated by reference.

(2) This document may be inspected and copied at the Department of Education, Office of Assessment and Accountability, 18th Floor, Capital 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: August 11, 1999

FILED WITH LRC: August 12, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on September 24, 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 September 17, 1999, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

## REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin M. Noland

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or savings to those affected: None

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: This can only be accomplished 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:

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

(10) Any additional information or comments: None

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

**EDUCATION, ARTS, AND HUMANITIES CABINET**  
**Kentucky Board of Education**  
**Department of Education**  
**(New Administrative Regulation)**

**703 KAR 5:112. Repeal of 703 KAR 4:110.**

RELATES TO: KRS 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 156.070, 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455

requires that the Kentucky Board of Education promulgate administrative regulations to establish a system of determining successful schools and a system of rewards and sanctions. Unlike other Kentucky Board of Education (KBE) administrative regulations that are reviewed by the Administrative Regulation Review Subcommittee (ARRS), KRS 158.647 and 158.6471 provide that assessment and accountability administrative regulations shall be reviewed by the Education, Assessment, and Accountability Review Subcommittee (EAARS). Legislative Research Commission staff requested that the KBE follow the procedure of repealing the existing administrative regulations, and then promulgating the revisions as new administrative regulations under 703 KAR Chapter 5 to assist in routing those administrative regulations to EAARS instead of ARRS. As a result, 703 KAR 4:110, regarding the code of ethics for state-required testing, needs to be repealed, as the KBE is promulgating a new administrative regulation in 703 KAR Chapter 5 on a code of ethics for appropriate practices for state-required tests.

Section 1. 703 KAR 4:110, Code of ethics for state-required testing, is hereby repealed.

WILMER S. CODY, Commissioner  
HELEN MOUNTJOY, Chairperson  
KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: August 11, 1999

FILED WITH LRC: August 11, 1999 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on September 24, 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 September 17, 1999, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

**REGULATORY IMPACT ANALYSIS**

Agency Contact: Kevin M. Noland

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or saving to those affected: 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: This can only be accomplished by administrative regulation

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

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

(c) If detrimental effect would occur, explain detrimental effect: 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.

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Department of Financial Institutions**  
**(New Administrative Regulation)**

**808 KAR 10:400 Examination fees and criteria.**

RELATES TO: KRS Chapter 292

STATUTORY AUTHORITY: KRS 292.330(12)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

292.330(12)(d) provides that the commissioner may make periodic exams of broker-dealers and investment advisers and may charge a reasonable fee for the exams. This administrative regulation establishes the schedule of fees.

Section 1. Investment Adviser. The fee for a routine examination of an investment adviser shall be:

(1) Seventy-five (75) dollars for an investment adviser with assets under management of one (1) million dollars or less;

(2) \$150 for an investment adviser with assets under management of more than one (1) million dollars but not more than five (5) million dollars;

(3) \$250 for an investment adviser with assets under management of more than five (5) million dollars but not more than ten (10) millions dollars million;

(4) \$300 for an investment adviser with assets under management of more than ten (10) million dollars but not more than twenty (20) million dollars; and

(5) \$350 for an investment adviser with assets under management of more than twenty (20) million dollars.

Section 2. Broker-Dealer and Issuer Agent. The fee for a routine

examination of a broker-dealer shall be thirty-five (35) dollars per working hour per examiner with the total fee not to exceed \$1000; provided, however, that no fee is charged for examination work by an examiner-trainee.

Section 3. Application of Industry Standards to Examination Criteria. When not in conflict with Kentucky law, Department of Financial Institution examiners shall apply the recordkeeping, supervisory, and conduct rules promulgated by the Securities and Exchange Commission or the self-regulatory organization(s) to whom the Securities and Exchange Commission has granted authority to promulgate such rules under the Securities Exchange Act of 1934.

REDMON LAIR, Deputy Secretary  
ELLA D. ROBINSON, Deputy Commissioner  
COLLEEN KEEFE, Counsel

APPROVED BY AGENCY: July 21, 1999

FILED WITH LRC: July 26, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation is scheduled for September 22, 1999 at 10 a.m., local prevailing time, at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify the contact person indicated below in writing by September 15, 1999 of their intent to attend the hearing. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the hearing will not be made unless a written request for a transcript is made prior to September 15, 1999. If you do not wish to be heard at the hearing, you may submit written comments on the proposed regulation to the contact person indicated below.

CONTACT PERSON: Colleen Keefe, Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, (502) 573-3390 Telephone, (502) 573-8787 Fax.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe, Counsel

(1) Type and number of entities affected: Investment advisers and broker-dealers doing business in Kentucky who are required to be registered with the department. The number is indeterminable.

(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: Indeterminable, no comments received.

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

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

1. First year following implementation: Not applicable because this regulation does not impose any new 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: None

2. Continuing costs or savings: 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: Fees from regulated entities.

(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 the administrative regulation will be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

(7) Assessment of alternative methods; reasons why alterna-

tives were rejected: Currently, the department imposes same flat hourly fee that it imposes on all other industries examined by the department. This may result in a fee that is burdensome on smaller firms whose predominant business is other than securities.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

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

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

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

(a) Necessity of proposed regulation, if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. A sliding scale fee for investment advisers is appropriate because less time is required to conduct an examination of smaller investment advisers (those with smaller amount of assets under management). An hourly rate for broker-dealers is appropriate in lieu of the sliding scale because the time necessary to conduct a broker-dealer exam is less predictable than the time to conduct an investment adviser exam.

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE**  
**Minutes of August 10, 1999**

The August meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, August 10, 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 July 13, 1999 meeting were approved.

Present were:

**Members:** John Arnold, Chairman; Senators Marshall Long and Joe Pendleton; Representatives James Bruce, Jimmy Lee, and Woody Allen.

**LRC Staff:** Donna Little, Stephen Lynn, Susan Wunderlich, Angela Phillips, Donna Valencia, Edna Lowery, Ellen Benzing, Biff Baker.

**Guests:** Carol Jordan, Office of the Governor; Janice Ernst, Jo Carole Ellis, Diana Barber, Robin B. Thomerson, Linda Renschler, Londa L. Wolanin, KHEAA; Chris Thompson, Wilbur Frye, University of Kentucky; Dale Shelton, Daniel F. Egbers, Burr Lawson, Jackie Shrout, Personnel Cabinet; Nancy L. Black, Division of Occupations and Professions; Angela C. Robinson, Finance Cabinet; Mark Brenngelman, Robert S. Jones, Office of Attorney General; Geraldine (Jean) B. Craddock, Board of Fee-Based Pastoral Counselors; Roy A. Grimes, Pete Pfeiffer, Scott Porter, Department of Fish and Wildlife Resources; Mark Mangeot, Katie Ashcraft, Lea W. MacSwords, Natural Resources and Environmental Protection Cabinet; Steven Kull, Hugh N. Archer, Greg Dale, Mark Matuszewski, Forestry Better Management Practices Board; Joe Dietz, William H. Martin, Heritage Land Conservation Fund; Barbara W. Jones, Tim Bailey, Nancy Fox, Justice Cabinet; Carol T. Williams, Stephen P. Durham, Brenda Priestley, Tamela Biggs, Department of Corrections; Jean Ann Gabbard, Carol Camp, Kentucky State Police; Stephanie C. Bingham, Department of Criminal Justice Training; Keith Horn, Department of Juvenile Justice; Charlie Harman, Transportation Cabinet; Kevin Noland, Board of Education; Laura Pemkonen, Department of Education; George Parsons, Workforce Development Cabinet; Mary Robert, Bob Layton, Kentucky Board of Tax Appeals; Judith G. Walden, Department of Housing, Buildings and Construction; Bob Burch, Don Smith, Kentucky Fire Commission; Rashmi Adi, Mike Littlefield, Trish Howard, Stuart Owen, Cindy Stoops, Kay Kirkland, Teresa Goodrich, Eric Friedlander, Cabinet for Health Services; Cliff Jennings, Janice Kline, Sandra Rolland, Libby Trager, Shirley Eldridge, Thelma Cornett, Bob Blackburn, Cabinet for Families and Children; Jay Huber, Malcolm and Barbara Winsper, KMA; John Cooper, KBA/KMA; Carol Ormay, Kentucky Hospital Association; Norman W. Powell, KESAC; Dr. Terry L. Singer, Social Work Education; Michael W. Wooden, Eli Lilly; Carl Breeding, Westvaco; Ruby Jo Cummins, KAHCF; Ted Bradshaw, IIAK; Dandridge F. Walton, KADA; Gay Dwyer, Kentucky Retail Federation; Ronny Pryor, Kentucky Farm Bureau; Bart Baldwin, Children's Alliance; Ann Hester, GOPM; Jim Carlross, Realtors Association.

**The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:**

**Kentucky Higher Education Assistance Authority: Kentucky Educational Savings Plan Trust**

11 KAR 12:010. Definitions for 11 KAR Chapter 12. Londa Wolanin, Chief Operating Officer, Robin Tomerson, Assistant General Counsel, and Jo Carole Ellis, Assistant Program Administrator, represented the Authority.

This administrative regulation was amended as follows: Section 1 was amended to alphabetize the definitions, as required by KRS 13A.222(4)(e).

11 KAR 12:070. Benefits payable from the Kentucky Educational Savings Plan Trust Program fund. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (2) Section 3 was amended to clearly establish when a program administrator shall refund the bal-

ance and earnings for a trust agreement.

**Personnel Cabinet: Classified**

101 KAR 2:020. Classification plan. Howard Lawson, Director, Office of Administrative and Legal Services; Daniel Egbers, General Counsel; Dale Shelton, Classification and Compensation Division; Singer Buchanan, Deputy Secretary; and Jackie Shrout, Director, Employee Records Division, represented the Cabinet.

In response to a question by Representative Bruce, Mr. Lawson stated that these administrative regulations (101 KAR 2:020 through 101 KAR 3:045) were amended mainly to: (1) comply with House Bill 727 and Senate Bill 139, enacted during the 1998 Regular Session of the General Assembly; and (2) change references from the Department of Personnel to the Personnel Cabinet.

Subcommittee staff stated that 101 KAR 2:102 and 101 KAR 3:015 were amended by the agency to: (1) provide an increase: (a) of ten (10) sick days for employees after twenty (20) years of service; and (b) in annual leave based on seniority; and (2) authorize an appointing authority to require that employees with over 100 hours of compensatory leave use those hours in excess of 100 hours before using their annual leave.

In response to a question by Representative Bruce, Mr. Egbers stated that prior to the promulgation of these administrative regulations, the Cabinet posted detailed information about these proposed administrative regulations: (1) on its Website; and (2) in the Cabinet newsletter sent to all state employees.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1, 2, and 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

101 KAR 2:034. Classified compensation regulations. This administrative regulation was amended as follows: (1) the RELATES TO 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) Sections 1 through 11 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (4) Sections 10 and 11 were amended to clearly establish the requirements for an employee recognition award and adjustment for continuing education award.

101 KAR 2:037. Repeal of 101 KAR 2:036 and 101 KAR 2:100. This administrative regulation was amended as follows: Sections 1 and 2 were amended to comply with the format requirements for repealing an administrative regulation.

101 KAR 2:046. Applications, qualifications and examinations. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1 through 12 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (4) Section 5(2) was amended to delete language that repeated KRS 18A.110(7)(c); (5) Section 3(1) was amended to clarify that an applicant shall submit an Application for Employment or Application Update, whichever is appropriate; and (6) a new Section 13 was created to incorporate by reference the required forms.

101 KAR 2:056. Registers. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function

served by this administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1 through 8 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (4) Sections 1 and 5(2)(a) were amended to specify the names of the required forms; and (5) a new Section 9 was created to incorporate by reference the required forms.

101 KAR 2:066. Certification and selection of eligibles for appointment. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1 through 5 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (4) Section 1 was amended to require an appointing authority to submit a request for a register on the Request for Certification form; and (5) a new Section 6 was created to incorporate by reference the required form.

101 KAR 2:076. Vacancies, detail to special duty and temporary overlap. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1, 2, and 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

101 KAR 2:095. Classified service administrative regulations. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1 through 9 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (4) Section 7 was amended to: (a) place the definitions alphabetically in the first section of this administrative regulation, as required by KRS 13A.222(4)(e); and (b) clearly establish requirements relating to the Kentucky Employees Charitable Campaign; (5) Section 5(1) was amended to specify that an appointing authority shall use the P-1 form to report a personnel action or status change; and (6) a new Section 11 was created to incorporate by reference the required form.

101 KAR 2:102. Classified leave regulations. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (2) Sections 1 through 11 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (3) Section 5 was amended to specify the name of the required form; (4) Section 6 was amended to: (a) delete language that limited the statutory provisions; and (b) comply with KRS 61.394; and (5) a new Section 12 was created to incorporate by reference the required form.

101 KAR 2:105. Sick leave sharing procedures. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1 and 2 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (4) Section 1(1) was amended to delete language that repeated a statutory definition; (5) a new Section 2 was created to: (a) clearly establish the requirements for donating or receiving sick leave under the sick leave sharing program; and (b) specify the required forms; and (6) a new Section 4 was created to incorporate by reference the required forms.

101 KAR 2:120. Incentive programs. This administrative regula-

tion was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1 and 2 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (4) Section 1 was amended to specify the names of the required forms; and (5) a new Section 3 was created to incorporate by reference the required forms.

101 KAR 2:140. Workers' Compensation Fund and Program. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1 through 6 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (4) Sections 1 and 2 were amended to delete language that repeated or summarized statutory provisions, as required by KRS 13A.120(2)(e) and (f); and (5) a new Section 7 was created to incorporate by reference the required forms.

101 KAR 2:150. State Safety Program. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1, 2, and 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (4) Section 1(3) was amended to require compliance with KRS Chapter 338 and the administrative regulations promulgated by the Kentucky Occupational Health and Safety Program in 803 KAR Chapter 2.

#### Unclassified

101 KAR 3:011. Repeal of 101 KAR 3:010. This administrative regulation was amended as follows: Sections 1 and 2 were amended to comply with the format requirements for repealing an administrative regulation.

101 KAR 3:015. Leave regulations for the unclassified service. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (2) Sections 1 through 11 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (3) Section 5 was amended to specify the name of the required form; (4) Section 6 was amended to: (a) delete language that limited the statutory provisions; and (b) comply with KRS 61.394; and (5) a new Section 12 was created to incorporate by reference the required form.

101 KAR 3:045. Compensation plan and pay incentives. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraph were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1 through 8 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (4) Sections 6 and 7 were amended to clearly establish the requirements for an employee recognition award and adjustment for continuing education award; and (5) a new Section 9 was created to incorporate by reference the required form.

#### Finance and Administration Cabinet: Division of Occupations and Professions: Directory of Registered Athlete Agents

200 KAR 30:010 & E. Definitions. Nancy Black, Director, Division of Occupations and Professions; Rob Jones, Assistant Attorney General; and Angela Robinson, Attorney, Finance and Administration Cabinet, represented the Division.

This administrative regulation was amended as follows: (1) the TITLE was amended to comply with the requirements for titling a definitions administrative regulation, pursuant to KRS 13A.222(4)(e); (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); and (3) Section 1 was amended to: (a) cross-reference the applicable administrative regulations; (b) alphabetize the definitions; (c) delete the definition of "informal proceedings"; (d) delete references to secondary schools, to comply with KRS 164.680 to 164.689; and (e) comply with the: 1. format requirements of KRS 13A.220(4); and 2. drafting requirements of KRS 13A.222(4).

200 KAR 30:020 & E. Complaint review. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (2) Sections 1 through 3 were amended to: (a) delete references to secondary schools, to comply with KRS 164.680 to 164.689; and (b) comply with the: 1. format requirements of KRS 13A.220(4); and 2. drafting requirements of KRS 13A.222(4); and (3) Section 3 was amended to delete language that repeated KRS 164.687(1), as required by KRS 13A.120(2)(e) and (f).

200 KAR 30:030 & E. Procedure for registration. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY 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 clearly establish the application requirements, as required by KRS 13A.100, 13A.120, and 13A.130; and (4) Sections 1 and 2 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

200 KAR 30:040 & E. Fees. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); and (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).

200 KAR 30:050 & E. Reinstatement. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

200 KAR 30:060 & E. Annual contact report. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were 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); and (3) Section 1 was amended to comply with the drafting requirements of KRS 13A.222(4).

200 KAR 30:070 & E. Records retention. 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); and (3) Sections 1 and 2 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

#### **Board of Certification of Fee-Based Pastoral Counselors**

201 KAR 38:010 & E. Definitions. Nancy Black, Director, Division of Occupations and Professions; Dr. Jean Craddock, Chair; and Mark Brengelman, Assistant Attorney General, represented the Board.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; and (2) Section 1(1) was amended to move the definition of "Approved Supervisor" to 201 KAR 38:020, Application, as required by KRS 13A.222(4)(e).

201 KAR 38:020 & E. Application. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (3) Section 1(5)(m) was amended to: (a) clarify the application requirement of clinical supervision and verification; and (b) define an approved supervisor; and (4) Section 2 was amended to meet the incorporation by reference requirements of KRS 13A.2251.

201 KAR 38:030 & E. Equivalent course of study. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) Sections 1 and 2 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

201 KAR 38:040 & E. Fees. In response to a question by Representative Bruce, Dr. Craddock stated that: (1) the International Board of Fee-Based Pastoral Counselors: (a) administered the certification exam; and (b) charged a \$150 examination fee; and (2) the international examination was taken by any person in the United States who wanted to be a certified pastoral counselor.

In response to a question by Senator Pendleton, Ms. Black stated that: (1) the International Board of Fee-Based Pastoral Counselors charged a \$150 examination fee; and (2) the Board charged a \$400 fee for certification.

In response to questions by Representative Bruce, Ms. Black stated that: (1) the \$150 examination fee was charged by the international board and (2) the certification fee covered a three year period for certification in Kentucky.

In response to questions by Representative Bruce, Dr. Craddock stated that: (1) the fee charged to a client depended on a number of factors including whether the counselor was employed in private practice or by an agency; and (b) received a salary or compensation based on a sliding scale; (2) the renewal fee would not exceed \$300; and (3) a fee-based pastoral counselor paid his own certification fees unless his employer paid the fee.

In response to questions by Representative Allen, Dr. Craddock stated that: (1) a fee-based pastoral counselor: (a) was a person who: 1. had completed a. a Master of Divinity degree, or its equivalent; and b. an additional degree such as a Doctoral degree; 2. had considerable clinical training to counsel and treat people emotionally, psychologically, and spiritually; and 3. was endorsed by his respective religious denomination; (b) integrated his clinical training with the religious and spiritual discipline; and (c) offered therapy to deal with the whole person holistically; (2) she was: (a) a Southern Baptist minister; and (b) married to a pastor; (3) some fee-based pastoral counselors worked in pastoral counseling centers that were financed through: (a) local churches; (b) money raised by the centers; (c) fees; and (d) other various sources; (4) often pastors had limited time and skills needed to perform long term and in-depth therapy; (5) fee-based pastoral counselors: (a) assisted pastors by providing specialized counseling based on extensive clinical training; (b) received more hours of clinical training and supervision than licensed clinical social workers; (c) were certified, rather than licensed, by the state; and (d) were not paid by the state; (6) the fee charged to the client by a fee-based pastoral counselor would go to: (a) the center or agency that employed the fee-based pastoral counselor; or (b) the fee-based counselor's private practice; (7) she did not believe that there was an entanglement of church and state; (8) people with spiritual or religious values often wanted a mental health practitioner who: (a) knew how to be sensitive to the spiritual values; and (b) would treat them emotionally, psychologically and spiritually; and (9) the mental health service offered by fee-based pastoral counselors was very specialized.

In response to questions by Representative Lee, Dr. Craddock stated that: (1) a pastoral counselor: (a) was not required to be certi-



fied by the Board in order to practice; (2) if a pastoral counselor chose to be certified by the Board, that person: (a) would be required to comply with the administrative regulations promulgated by the Board; and (b) could identify himself as a certified fee-based pastoral counselor; (3) the Board did not interfere with church activities or counseling; (4) she did not believe many pastors would choose to be certified by the Board because the pastors: (a) did not earn their living from long-term counseling or therapy; and (b) engaged in limited counseling based on their parish responsibilities; and (5) it took at least ten (10) years of specialized training to meet the certification requirements.

Mr. Brengelman stated that: (1) the Board certified, rather than licensed, applicants; (2) people voluntarily applied for certification as a certified fee-based pastoral counselor; (3) KRS 335.600 provided that it was not the intent of KRS 335.600 through KRS 335.699 to in any way affect the performance of the ordinary duties or functions of the clergy; and (4) a minister was able to continue to minister to the needs of his flock.

In response to a question by Chairman Arnold, Dr. Craddock stated that: (1) many people sought out their services; (2) pastors referred potential clients to fee-based pastoral counselors: (a) because of their expertise; and (b) in both large and small communities; and (3) fee-based pastoral counselors: (a) charged fees for their services; (b) did not work through the area development districts; and (c) might start a counseling center to meet the counseling needs of a community.

Mr. Brengelman stated that the referral by a pastor of a parishioner to a fee-based pastoral counselor was similar to a referral to a doctor, psychiatrist, psychologist, or other specialist.

In response to questions by Representative Allen, Dr. Craddock stated that: (1) she practiced out of Lexington; and (2) the Board wanted people to know that a person identified as a fee-based pastoral counselor: (a) had extensive training and education; (b) met high standards established for that profession; and (c) was certified to engage in that practice.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); and (2) Section 2 was deleted because the Pastoral Counselor Examination Board collects and establishes the fee.

201 KAR 38:060 & E. Code of ethics. Subcommittee staff stated that: (1) this new administrative regulation established a code of ethics for fee-based pastoral counselors; (2) the agency had agreed with the suggested amendment prepared by Subcommittee staff to amend Sections 1 and 2(2)(c) to comply with the drafting requirements of KRS 13A.222(4)(e) and (j); (3) the Board did not agree with the suggested amendment prepared by Subcommittee staff to delete Section 2(2)(a) of this administrative regulation, which provided that a fee-based counselor shall not discriminate against or refuse professional service to anyone on the basis of race, gender, religion, national origin, or sexual orientation; (4) Subcommittee staff had determined that Section 2(2)(a) in part: (a) exceeded the statutory authority granted to the Board; and (b) repeated or summarized existing civil rights laws in Kentucky; and (5) the Board had requested the opportunity to discuss this issue with the Subcommittee.

In response to questions by Representative Lee, Dr. Craddock stated that: (1) a fee-based pastoral counselor could be sued; and (2) the Board wanted to hold its counselors to a higher standard.

Representative Lee stated that: (1) Kentucky did not have a statute in existence that addressed discrimination based on sexual orientation; (2) the Board had asked the seven Subcommittee members to make a determination that should be made by the 138 members of the General Assembly; (3) the Subcommittee would exceed its statutory mandate and authority if the Subcommittee approved a code of ethics that expanded existing statutes regarding discrimination; (4) he was not aware of other administrative regulations that had been approved with similar language regarding discrimination based on sexual orientation; (5) if a similar administrative regulation had been approved, the Subcommittee members were not aware that the language had been included; (6) if the Board wanted to provide that discrimination based on sexual orientation was illegal, the Board needed to propose a bill accomplishing that change dur-

ing the 2000 Regular Session of the General Assembly; (7) the Civil Rights Act protected people from most any form of discrimination; and (8) because the Subcommittee was being asked to approve something not acted upon by the General Assembly, the Subcommittee was asked to exceed its authority.

Mr. Brengelman stated that: (1) the Board would not have proposed this administrative regulation if the Board did not have indication that there were legal grounds to support the proposal; and (2) this administrative regulation did not allow a person to be sued based on sexual orientation.

Representative Lee stated that: (1) legal grounds and the intent of the General Assembly might be two different things; (2) he did not know if the 138 members of the General Assembly would intend that a person be authorized to sue for discrimination based on sexual orientation; (3) if a person's certification was removed by the board because of a bias on sexual orientation, that action would lead to a lawsuit; (4) the Board should: (a) withdraw this administrative regulation; and (b) ask the General Assembly to amend the civil rights law to include this provision.

Mr. Brengelman stated that he had been informed that there were two other administrative regulations that contained this language, including: (1) a Medicaid administrative regulation (907 KAR 1:671); and (2) a Board of Certification of Marriage and Family Therapists administrative regulation (201 KAR 32:050).

Representative Lee stated that: (1) 201 KAR 32:050: (a) contained this language; and (b) was scheduled for consideration by the Subcommittee at its September 14, 1999, meeting; (2) if additional administrative regulations contained this language, the Subcommittee needed to re-consider those administrative regulations because: (a) the General Assembly had not decided this issue; and (b) Kentucky law did not prohibit discrimination based on sexual orientation; and (3) this administrative regulation exceeded the authority of the Board.

Dr. Craddock stated that the Code of Ethics of the American Association of Pastoral Counselors: (1) had been distributed to Subcommittee members; (2) was promulgated by the international organization; and (3) contained language under B. that would be a compromise.

Representative Lee stated that: (1) the General Assembly had not enacted legislation that agreed with the provisions contained in the national code of ethics; and (2) if the majority of the General Assembly approved legislation to prohibit discrimination based on sexual orientation, the Board would be authorized to prohibit that discrimination.

Ms. Black stated that while the Board would agree to withdraw this administrative regulation, the Board preferred that this administrative regulation be amended to delete the questioned language.

Subcommittee staff stated that: (1) this administrative regulation could be amended to delete Section 2(2)(a) and renumber the remaining paragraphs accordingly if: (a) a Subcommittee member made a motion for the amendment; and (b) the Subcommittee approved the motion; and (2) the entire paragraph regarding discrimination should be deleted because: (a) KRS 13A.120(2)(e) and (f) prohibited the promulgation of an administrative regulation that repeated or summarized a statute; and (b) other provisions of Kentucky law prohibited discrimination.

This administrative regulation was amended as follows: (1) Sections 1 and 2(2)(c) were amended to comply with the drafting requirements of KRS 13A.222(4)(e) and (j); and (2) Section 2(2)(a) was deleted because it: (a) repeated or summarized existing statutory provisions, in violation of KRS 13A.120(2)(e) and (f); and (b) exceeded the authority granted the Board, in violation of KRS 13A.120(2)(h) and (i).

The Subcommittee approved a motion by Representative Lee, seconded by Representative Bruce, for the Subcommittee to reconsider existing administrative regulations that included language that prohibited discrimination based on sexual orientation.

The Subcommittee approved a motion by Representative Lee, seconded by Representative Bruce, to delete the language in Section 2(2)(a) and renumber the remaining paragraphs accordingly.

**Kentucky Heritage Land Conservation Fund Board: General Administrative Procedures**

418 KAR 1:020. Administrative procedures of the board. Bill Martin, Chairman, and Barbara Pauley, General Counsel, represented the Board.

In response to a question by Representative Bruce, Mr. Martin stated that: (1) the Board: (a) did not have the right to condemn property; and (b) was an acquisition program; and (2) by statute, the Board bought land only from willing sellers.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) Section 1(1) and part of Section 1(2) were deleted due to repetition of KRS 61.810 and 61.820; (3) Section 3(1) was amended to exclude the minutes of closed sessions from those being made available to interested parties; (4) Section 8(5) was amended to provide that a member served: (a) one year; (b) until removed; or (c) until a successor was appointed; (5) Sections 2 and 8 were amended to comply with the formatting requirements of KRS 13A.220(4) and (6) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, 7, and 8 were amended to comply with the drafting requirements of KRS 13A.222(4).

418 KAR 1:030. State agency projects. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to comply with the drafting requirements of KRS 13A.222(4).

418 KAR 1:040. Competitive grants. 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 comply with the drafting requirements of KRS 13A.222(4); (3) Section 1(1) was amended to list items that must be submitted by a grant applicant; (4) Sections 2 and 3 was amended to comply with the formatting requirements of KRS 13A.220(4); and (5) Sections 1, 2, and 3 were amended to comply with the drafting requirements of KRS 13A.222(4).

418 KAR 1:050. Procedures for acquisition of land. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) Section 4 was amended to require submission of a certified copy of a deed to verify land acquisition; (3) Section 1 was amended to comply with the formatting requirements of KRS 13A.220(4); and (4) Sections 1 and 2 were amended to comply with the drafting requirements of KRS 13A.222(4).

418 KAR 1:060. Management. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 3 were amended to comply with the drafting requirements of KRS 13A.222(4).

418 KAR 1:070. Remedies. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 and 3 were amended to comply with the drafting requirements of KRS 13A.222(4).

**Justice Cabinet: Abuse Investigation**

500 KAR 13:020 & E. Internal Investigations Unit. Barbara Jones, General Counsel, and Nancy Fox, Supervisor, Internal Investigations Unit, represented the Cabinet.

This administrative regulation was amended as follows: (1) Section 1 was amended to comply with the drafting requirements of KRS 13A.222(4); and (2) a new Section 7 was created to incorporate by reference the Special Incident Reporting Form.

**Department of Corrections: Division of Adult Institutions: Office of the Secretary**

501 KAR 6:020 & E. Corrections policies and procedures. Tamela Biggs, Staff Attorney, represented the Division.

This administrative regulation was amended as follows: (1) CPP 8.6 and 8.7 were amended to cross-reference statutory definitions;

(2) a revised version of CPP 27-12-03 was submitted to the Regulations Compiler; and (3) CPP 27-31-01 was amended to comply with the drafting requirements of KRS 13A.222(4).

501 KAR 6:110. Roederer Correctional Complex. This administrative regulation was amended as follows: (1) the REFERENCES of RCC 08-01-01 were amended to cross-reference CPP 17.1 which established the number of electrical appliances an inmate could possess; and (2) RCC 13-06-03 was amended to change "Stat Flight" helicopter service to "Stat Care".

501 KAR 6:999 & E. Corrections secured policies and procedures. Pursuant to KRS 61.815(2) and KRS 61.810(1)(i) and (k), and KRS 197.025(5), the Subcommittee went into closed session to review 501 KAR 6:999, Secured policies and procedures.

**Department of Criminal Justice Training: General Training Provision**

503 KAR 3:020. Law enforcement training course trainee requirements; misconduct; penalties; discipline procedures. Stephanie Bingham, Staff Attorney, represented the Department.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) Section 1 was amended to establish factors considered in determining that a trainee was unqualified; (3) Section 2 was amended to cross-reference KRS 11A.040; (4) Section 5(2) was amended to prohibit violent, threatening or offensive confrontation by a trainee; (5) Section 5(6) was amended to prohibit negligent or intentional damage of department property; (6) Section 5(7) was amended to provide that in appropriate cases, a prosecutor would be notified of illegal activity; (7) Section 5(11) was amended to: (a) prohibit negligent or intentional conduct that could injure another trainee; and (b) include a penalty provision; (8) Section 6(1)(b) was amended to permit summary punishment of verbal warning or written reprimand; and (9) Section 7 was amended to comply with the drafting requirements of KRS 13A.222(4).

**Department of Juvenile Justice: Child Welfare**

505 KAR 1:080. Kentucky educational collaborative for state agency children. Keith Horn, Attorney, and Norman Powell, Director, KECSAC, represented the Department.

Subcommittee staff stated that: (1) when House Bill 447, enacted during the 1998 Regular Session of the General Assembly, was enacted, its provisions referred to the Cabinet for Human Resources; (2) House Bill 132, enacted during the 1998 Regular Session of the General Assembly: (a) reorganized the Cabinet for Human Resources into: 1. the Cabinet for Health Services; and 2. the Cabinet for Families and Children; and (b) changed the references in KRS 158.135 and 605.110 from the Cabinet for Human Resources to the Cabinet for Families and Children; (3) because the Cabinet for Health Services is also involved with the Kentucky educational collaborative for state agency children, KRS 158.135 and 605.110 should be amended to include the Cabinet for Health Services in addition to the other named governmental bodies; and (4) the Subcommittee might want to request that LRC refer the issue of inclusion of the Cabinet for Health Services in KRS 158.135 and 605.110 to the appropriate interim joint committee for recommendations to the General Assembly at its next Regular Session.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph and Sections 1, 2, and 4 were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (3) Section 1 was amended to amend the definition of therapeutic foster care state agency child to cross-reference the definition established in KRS 158.135(1)(c); (4) Section 1(4) and 3(6) relating to professional development were amended to remove the mandate that specific training be attended; (5) Section 3(4)(a) was amended to clarify that the withholding of funds shall be temporary until the school district becomes compliant; (6) Section 3(12) was amended to establish the procedure for dispute resolution; (7) Section 4 was amended to delete language that repeated statutory provisions governing the educational passport and the assessments and portfolios of state agency children; and (8) Sections 1 through 4 were amended to comply with the: (a) format

requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

The Subcommittee approved a motion by Representative Lee, seconded by Senator Pendleton, to recommend that LRC refer the issue of inclusion of the Cabinet for Health Services in KRS 158.135 and 605.110 to the appropriate interim joint committee for recommendations to the General Assembly at its next Regular Session.

**Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers: Office of General Counsel: Motorcycle and Bicycle Safety**

601 KAR 14:010. Headgear and eye-protective devices. Charles Harman, General Counsel, represented the Cabinet. James Huber, Barbara Winsper, and Malcolm Winsper, Kentucky Motorcycle Association, appeared before the Subcommittee.

In response to questions by Chairman Arnold, Mr. Harman stated that: (1) this administrative regulation was promulgated to comply with House Bill 106, enacted during the 1998 Regular Session of the General Assembly; (2) House Bill 106 allowed motorcyclists to request a no-helmet decal from their county clerk when they registered their motorcycle; (3) the Kentucky motorcyclist had: (a) to be 21 years old; and (b) provide proof of health insurance; (4) out-of-state motorcyclists were not addressed by House Bill 106; (5) the Cabinet believed that the law, with respect to out-of-state riders, had not been changed by House Bill 106; (6) out-of-state riders were required to wear headgear before and after passage of House Bill 106; and (7) Kentucky would not reciprocate with states that did not require headgear.

In response to questions by Chairman Arnold, Mr. Huber stated that: (1) a lawsuit was pending in the Franklin Circuit Court on the issue of headgear for out-of-state riders; (2) plaintiffs in the lawsuit included: (a) Ms. Winsper; (b) the Kentucky Motorcycle Association; and (c) himself; (3) there had been no action in the case for some time; and (4) the Kentucky Motorcycle Association believed that: (a) the administrative regulation referred back to the statute; (b) the statute had been interpreted in various counties as the General Assembly intended; and (c) headgear was not required for an out-of-state rider.

Chairman Arnold stated that: (1) a helmet would not help if a rider had a head-on accident at 60 miles per hour; (2) the General Assembly intended that a rider be able to ride without a helmet if the rider complied with the law; (3) he did not understand the Cabinet's interpretation of the law; (4) out-of-state riders coming into Kentucky: (a) were tourists; and (b) would spend money in this state; (5) Indiana and Illinois did not require headgear; (6) if a rider from Indiana or Illinois came into Kentucky, they had to bring headgear to wear while passing through Kentucky; (6) this was: (a) discrimination in its worst form; and (b) wrong; (7) he wanted clarification from the Cabinet on this issue; and (8) it was wrong to require out-of-state riders to comply with the helmet law.

Ms. Winsper stated that: (1) the law was silent regarding out-of-state riders; (2) regardless of what the Cabinet thought, Kentucky could not legislate for out-of-state riders; (3) the Cabinet's position was: (a) incorrect; and (b) not being upheld in the courts; and (4) the motorcyclists would be fine as long as this administrative regulation was silent on the issue.

In response to questions by Representative Allen, Mr. Harman stated that the fee for a "no-helmet" decal was: (1) three dollars; and established by statute.

In response to a question by Chairman Arnold, Mr. Harman stated that an out-of-state rider could not purchase a decal at a county courthouse.

Mr. Winsper stated that: (1) the law did not restrict out-of-state riders; (2) some law enforcement agencies had not: (a) interpreted the law; or (b) read this administrative regulation; (3) until law enforcement read these administrative regulations, some were confused about the requirements; (4) in counties that had ticketed out-of-state riders, the county attorney and district judge agreed with the Kentucky Motorcycle Association's position that out-of-state riders did not have to wear headgear to comply with the law; and (5) hopefully, this new administrative regulation would send the message to enforcement officers that out-of-state riders did not have to wear headgear.

In response to questions by Representative Lee, Mr. Huber stated that: (1) in Jefferson county, there were 66 citations issued to riders and passengers; (2) all of the Jefferson county citations were dismissed; (3) similar cases in Boone, Harlan, Meade, Scott, Fayette, Rockcastle, and Pulaski counties had been dismissed; (4) riders that contacted the Association and fought the citation had won in court; (5) he was unaware of any citations that had been upheld based upon the Cabinet's or State Police's interpretation of the law; (6) he was not sure how widespread the problem of targeting out-of-state riders was; (7) there was a lot of misinformation among the public; and (8) different police agencies told the public different things in regard to the law.

Representative Lee stated that: (1) if the General Assembly permitted Kentuckians to ride without a helmet, people from out-of-state should be given the same consideration; and (2) if out-of-state riders were ticketed, law enforcement was not following the intent of the law which was to repeal the helmet law.

Mr. Huber stated that: (1) floor amendment 8, which was attached to House Bill 106, was vaguely worded; and (2) it caused the confusion in interpreting the law.

Mr. Winsper stated that: (1) a way to resolve the problem would be for the Cabinet to: (a) communicate with the various law enforcement agencies; (b) clarify that out-of-state riders should not be discriminated against; and (c) distribute copies of this administrative regulation; and (2) there was some confusion being created by internal memorandums from various cabinets being sent to law enforcement.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) Section 2 and 4 were amended to clarify that the prohibition of riding without a helmet or eyewear was inapplicable to off-road riding of motorcycles; (3) Section 5 was amended to comply with the formatting requirements of KRS 13A.220(4); and (4) the NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 and 4 were amended to comply with the drafting requirements of KRS 13A.222(4).

The Subcommittee approved a motion by Representative Bruce, seconded by Senator Long, for the Subcommittee to send a resolution to Secretary Codell and the Transportation Cabinet asking it to: (1) permit out-of-state riders to ride without helmets; and (2) help settle the confusion among the law enforcement agencies.

**Education, Arts, and Humanities Cabinet: Board of Education: Department of Education: Office of Learning Programs Development: Office of Instruction**

704 KAR 3:285. Programs for the gifted and talented. Kevin Noland, General Counsel, represented the Department.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (3) Section 6(2) was amended to delete language that summarized the provisions of 704 KAR 3:440; and (4) Sections 1, 3, 4, 5, 6, 8, 9, and 10 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

**Public Protection And Regulation Cabinet: Kentucky Board Of Tax Appeals: Tax Appeals**

802 KAR 1:010. Rules of practice and procedure. Bob Layton, Counsel, and Mary Roberts, Executive Director, represented the Board.

In response to a question by Representative Bruce, Subcommittee staff stated that the amendment prepared by Subcommittee staff did not change the substantive provisions of this administrative regulation.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) Sections 1 through 9 were amended to: (a) delete language that repeats KRS Chapter 13B, as required by KRS 13A.120(2)(e) and (f); (b) comply with the

format requirements of KRS 13A.220(4); (c) comply with the drafting requirements of KRS 13A.222(4); and (d) clearly state the requirements of: 1. the petition; 2. representation in proceedings before the board; 3. discovery; 4. briefs; and 5. motions, responsive pleadings and time computation.

**Department of Housing, Buildings and Construction: Division of Plumbing**

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. Judith Walden, General Counsel, represented the Department.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; and (2) Sections 1, 4, and 5 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

815 KAR 20:110. Traps and clean-outs. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, 7, 8, 9, 11, 12, 13, and 14 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

**Electrical Inspectors**

815 KAR 35:030. Kentucky certification of electrical contractors. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (4) Section 4(1) was amended to specify that a person seeking renewal shall submit the required form; and (5) Sections 1 through 5 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

**Commission on Fire Protection Personnel Standards and Education: Office of the State Fire Marshal: Local Fire Departments**

815 KAR 45:080. Volunteer fire department aid. Bob Burch, Administrator, and Don Smith, State Aid Grant Administrator, represented the Commission.

This administrative regulation was amended as follows: (1) the RELATES TO 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) Sections 1 and 2 were amended to delete language that repeated or summarized applicable statutes, as required by KRS 13A.120(2)(e) and (f); and (4) Sections 1 through 6 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

**Cabinet For Health Services: Department for Medicaid Services: Payment and Services**

907 KAR 3:035. Criteria for certification for out-of-state residential services for Medicaid-eligible children under 21. Trish Howard, Cindy Stoops, and Kay Kirkland represented the Department.

In response to questions by Representative Lee, Ms. Kirkland stated that: (1) this administrative regulation: (a) required, prior to sending a child to an out-of-state facility, that the Department or its agent, determine whether a bed was available in state; and (b) did not require the out-of-state facility to make that determination; (2) currently the peer review organization served as the Department's agent; and (3) in-state residential facilities were required to send in a list of bed vacancies each week to the Department.

Subcommittee staff stated that: (1) the initial staff review stated that the out-of-state providers were required to make that determination based on the original administrative regulation submitted by the Department; and (2) after the public hearing, the Department amended this administrative regulation to require that the Depart-

ment, or its agent, make the determination.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (3) Section 2(1) was amended to delete language that repeated KRS 199.680(1) and 205.634(2), as required by KRS 13A.120(2)(e) and (f); and (4) Sections 1, 2, and 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

**Department for Mental Health and Mental Retardation Services: Division of Mental Health: Mental Health**

908 KAR 2:210. Domestic violence offender treatment certification standards. Mike Littlefield, Administrative Regulations Coordinator; Carol Jordan, Executive Director, Governor's Office of Child Abuse and Domestic Violence Services; and Rosh Miat, Administrator, Sexual and Domestic Violence Program, represented the Department.

Section 1(7) was amended to comply with the statutory definition of "Domestic violence".

**Cabinet For Families And Children: Department for Community Based Services: Division of Policy Development: Protection and Permanency: Child Welfare**

922 KAR 1:130. Kinship Care Program. Cliff Jennings, Department for Community Based Services, and Janice Kline, Assistant Director, Division for Policy Development, represented the Cabinet.

In response to a question by Senator Long, Mr. Jennings stated that this administrative regulation: (1) addressed cases in which the Department was trying to find a placement for a child in a protection situation; and (2) would not affect grandparents who had been awarded custody of their grandchild by a court.

In response to questions by Representative Lee, Mr. Jennings stated that the three counties chosen for the pilot project were chosen on the basis of the counties' having volunteered.

In response to questions by Representative Lee, Ms. Kline stated that: (1) the criteria for counties to host the pilot project were: (a) county volunteering; and (b) 1. a Family court existing in the county; or 2. a local court desirous of working with the department on the project; (2)(a) one additional county had volunteered for the program after the fiscal analysis had already been completed on the basis of the three counties; and (b) the Division decided to exclude the fourth volunteer county and to proceed, in order to make sure that any problems with implementation were worked out before offering the program to additional counties; (3) the funding for the program would come from the TANF block grant, at the same level, for the next five years; (4) subsequent funds to maintain the program at the required level of spending on the state's part would be in the biennial budget request; and (5) unless federal assurances change, there would be sufficient funding to operate the program on a statewide basis.

This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; (2) Section 1 was amended to clarify terms; (3) Section 2 was amended to: (a) divide and renumber for clarity; (b) remove requirements for: 1. character reference from an employer; and 2. unnecessary disclosure to third parties; (c) incorporate an agreement form by reference; and (d) clarify that a review shall be followed by a recommendation; (4) Section 3 was amended to clearly state the date of pilot program initiation; (5) Section 4 was amended to: (a) clarify that the child's income limit was equal to the monthly payment; (b) correct formatting in compliance with KRS Chapter 13A; (c) specify the class of items for which the start-up stipend shall be spent; and (d) clarify terms and phrases; (6) Section 5 was amended to clarify terms; and (7) Section 6 was added to incorporate the Agreement form by reference.

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The Subcommittee determined that the following administrative regulations complied with statutory authority:

**Kentucky Higher Education Assistance Authority: Kentucky Educational Savings Plan Trust**

11 KAR 12:060. Cancellation, partial withdrawal, and payment of refund. Londa Wolanin, Chief Operating Officer, Robin Tomerson, Assistant General Counsel, and Jo Carole Ellis, Assistant Program Administrator, represented the Authority.

**Commonwealth Merit Scholarship Program**

11 KAR 15:040. Kentucky Educational Excellence Scholarship award determination procedure.

**Agricultural Experiment Station: University of Kentucky: Fertilizer**

12 KAR 4:170E. Maximum chlorine guarantee for tobacco fertilizers. Dr. Wilbur Frye, Director, represented the Agricultural Experiment Station.

**Tourism Development Cabinet: Department of Fish and Wildlife Resources: Fish**

301 KAR 1:201. Fishing limits. Roy Grimes, Director, Wildlife Division; Pete Pfeifer, Director of Fisheries; and Scott Grimes, Assistant Attorney General, represented the Department.

301 KAR 1:400. Assessing fish kill damages.

**Game**

301 KAR 2:140. Requirements for wild turkey hunting.

**Justice Cabinet: Department of Corrections: Division of Adult Institutions: Office of the Secretary**

501 KAR 6:030. Kentucky State Reformatory. Tamela Biggs, Staff Attorney, represented the Division.

In response to questions by Chairman Arnold, Ms. Biggs stated that: (1) this administrative regulation established the procedures for inmate use of the library; and (2) there was a particular day and time for each unit of the facility to go to the library.

**Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers**

601 KAR 1:040. Application for operating authority and registration of motor carriers. Charlie Harman, General Counsel, represented the Cabinet.

In response to a question by Chairman Arnold, Mr. Harman stated that this administrative regulation applied to buses that operated within the state.

In response to a question by Representative Bruce, Mr. Harman stated that: (1) the Cabinet was not entering into any compacts with other states; and (2) this administrative regulation was required by federal law.

**Cabinet for Health Services: Department for Mental Health and Mental Retardation Services: Institutional Care**

908 KAR 3:160 & E. Policies and procedures of Kentucky Correctional Psychiatric Center. Mike Littlefield, Administrative Regulations Coordinator, represented the Department.

In response to a question by Chairman Arnold, Mr. Littlefield stated that this administrative regulation would not permit a person to be committed to a mental asylum.

**Cabinet for Families and Children: Department for Community Based Services: Division of Policy Development: Protection and Permanency: Children's Residential Services**

922 KAR 7:251. Repeal of 922 KAR 7:250. Cliff Jennings represented the Department.

The following administrative regulation was withdrawn by the promulgating agency:

**Board of Certification of Fee-Based Pastoral Counselors**

201 KAR 38:050 & E. Travel expenses of board members. Nancy Black, Director, Division of Occupations and Professions; Mark

Brengelman, Assistant Attorney General; and Dr. Jean Craddock, Chair, represented the Board.

Subcommittee staff stated that this administrative regulation: (1) repeated the provisions of KRS 12.070(5) regarding travel expenses of Board members; (2) violated KRS 13A.120(2)(e) and (f); and (3) should be withdrawn.

Ms. Black stated that the Board would withdraw this administrative regulation.

Without objection, this administrative regulation was withdrawn.

The Subcommittee and promulgating administrative bodies agreed to defer consideration of the following administrative regulations to the September 14, 1999 meeting of the Subcommittee:

**Department For Local Government: Training Incentives**

109 KAR 2:020E. Training incentive.

**County Budget**

109 KAR 15:020E. State Local Finance Officer Policy Manual.

**Finance and Administration Cabinet: Office of the Secretary: Purchasing**

200 KAR 5:340. Process for evaluating information for use in determining whether to approve privatization of a government service.

**Board of Pharmacy**

201 KAR 2:010. Schools approved by the board.

201 KAR 2:020E. Examinations.

201 KAR 2:095. Dispensing responsibilities.

**Board of Medical Licensure**

201 KAR 9:175. Physician assistants; certification and supervision. (Deferred from June)

201 KAR 9:310. Continuing medical education. (Deferred from June)

**Board of Registration for Professional Engineers and Land Surveyors**

201 KAR 18:010. Classes of applicants and licensure requirements.

201 KAR 18:050. Branches of professional engineering for testing.

201 KAR 18:071. Repeal of 201 KAR 18:070.

201 KAR 18:080. Licensing certificates and cards.

201 KAR 18:091. Repeal of 201 KAR 18:090.

201 KAR 18:100. Seals.

201 KAR 18:110. License renewals.

201 KAR 18:120. Reissuance of license certificate.

**Kentucky Board of Social Work**

201 KAR 23:075. Continuing education.

**Board of Certification of Marriage and Family Therapists**

201 KAR 32:010. Definitions.

201 KAR 32:045. Examination.

201 KAR 32:050. Code of ethics.

**Board of Certification for Professional Counselors**

201 KAR 36:060. Qualifying experience under supervision.

**Kentucky Lottery Corporation: Corporation**

202 KAR 3:020. Procurement procedures.

**Public Protection And Regulation Cabinet: Office of the Petroleum Storage Tank Environmental Assurance Fund: Petroleum Storage Tank Environmental Assurance Fund**

415 KAR 1:080E. Claims procedures.

415 KAR 1:120. Hearings.

**Justice Cabinet: Department of Corrections: Division of Local Facilities: Jail Standards for Full-Service Facilities**

501 KAR 3:010. Definitions.

501 KAR 3:040. Personnel.

501 KAR 3:060. Security; control.

501 KAR 3:070. Safety; emergency procedures.

501 KAR 3:110. Classification.

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501 KAR 3:120. Admission; release.

501 KAR 3:140. Inmate rights.

### **Restricted Custody Center**

501 KAR 7:010. Definitions.

501 KAR 7:020. Administration; management.

501 KAR 7:040. Personnel.

501 KAR 7:050. Physical plant.

501 KAR 7:060. Security; control.

501 KAR 7:080. Sanitation; hygiene.

501 KAR 7:120. Admission; release.

501 KAR 7:140. Inmate rights.

### **Direct Supervision for Full-Service Jails**

501 KAR 10:010. Definitions.

501 KAR 10:040. Personnel.

501 KAR 10:060. Security; control.

501 KAR 10:070. Safety; emergency procedures.

501 KAR 10:110. Classification.

501 KAR 10:120. Admission; release.

501 KAR 10:140. Inmate rights.

### **Department of State Police: Sex Offender Registration System**

502 KAR 31:020E. Sex Offender Registration System.

### **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 2:300E. General.

803 KAR 2:301E. Adoption and extension of established federal standards.

803 KAR 2:306E. Occupational health and environmental control.

803 KAR 2:307E. Hazardous materials.

803 KAR 2:309E. General environmental controls.

803 KAR 2:313E. Materials handling and storage.

803 KAR 2:414E. Motor vehicles, mechanized equipment, and marine operations.

803 KAR 2:500E. Maritime employment.

### **Public Protection And Regulation Cabinet: Department of Mines and Minerals: Division of Miner Training, Education and Certification:**

805 KAR 7:010. Miner training, education and certification.

805 KAR 7:020. Training and certification of inexperienced miners.

805 KAR 7:030. Annual retraining.

805 KAR 7:040. Training of newly employed miners.

805 KAR 7:050. Training of miners for new work assignments.

805 KAR 7:060. Program approval.

805 KAR 7:070. Record maintenance.

805 KAR 7:090. Hazard training.

### **Department of Insurance: Health Insurance Contracts**

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

### **Department of Charitable Gaming: Charitable Gaming**

820 KAR 1:001. Definitions for 820 KAR Chapter 1.

820 KAR 1:010. Temporary licensure.

820 KAR 1:015. Permanent licensure.

820 KAR 1:025. Quarterly reports of a licensed charitable organization.

820 KAR 1:070. Exempt activities.

820 KAR 1:081. Repeal of 820 KAR 1:080. Charity fundraising event.

### **Cabinet For Health Services: Department for Public Health: Health Services and Facilities**

902 KAR 20:160. Chemical dependency treatment services and facility specifications.

902 KAR 20:240. Comprehensive physical rehabilitation hospital services.

### **Department for Medicaid Services: Medicaid Services**

907 KAR 1:002. Definitions.

907 KAR 1:019. Pharmacy services.

907 KAR 1:021. Amounts payable for drugs.

### **Department for Mental Health and Mental Retardation Services: Division of 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: Family Support: Child Support**

921 KAR 1:410. Child support collection and distribution.

### **Food Stamp Program**

921 KAR 3:050. Claims and additional administrative provisions.

## **OTHER BUSINESS:**

### **1. Natural Resources and Environmental Protection Cabinet: Logging Regulations**

402 KAR 3:020. Master Logger Program.

402 KAR 3:030. Best management practices for timber harvesting operations

Hugh Archer, Commissioner, and Greg Dale, Chair, represented the Cabinet.

Subcommittee staff stated that: (1) 402 KAR 3:020 and 402 KAR 3:030 were found deficient by the Subcommittee on April 13, 1999 because the Best Management Practices Board had not: (a) been appointed; and (b) had not approved these administrative regulations; (2) the Natural Resources and Environmental Protection Cabinet had requested that the Subcommittee remove the finding of deficiency on these two administrative regulations because the Board: (a) had been appointed; and (b) recommended approval of these administrative regulations; (3) Secretary Bickford and the Board Chairman, Greg Dale, had submitted letters requesting the finding of deficiency be removed; and (4) Cabinet and Board representatives were present to discuss this issue with Subcommittee members.

In response to questions by Representative Lee and Chairman Arnold, Mr. Dale stated that: (1) the Board had: (a) met three times since its establishment; (b) thirteen members who: 1. represented a cross-section of people interested in forest products and best management in Kentucky; 2. included: a. a logger; and b. representatives from the Farm Bureau, the Kentucky Woodlands Landowners Association, and the University of Kentucky; and 3. were committed to the Board tasks; (c) studied the issues; and (d) approved these administrative regulations with: 1. a unanimous vote of the nine members and one proxy present at the meeting; and 2. three members not in attendance; (2) the best management practices: (a) established minimum standards for loggers; and (b) were used by the University of Kentucky to train loggers in the master logger program; (3) he had a spreadsheet document that the Board used in its deliberations of the minimum standards for best management practices; (4) after the meeting, he: (a) contacted the members not in attendance; (b) informed them of the business conducted at the meeting; and (c) received confirmation that each member had approved these administrative regulations; (5) he was: (a) a forest manager for Westvaco Corporation, which: 1. owned about 100,000 acres in western Kentucky; 2. was comprised solely of independent contractors; and 3. did not have a company crew; and (b) responsible for all forest management activities that occurred on Westvaco property; (6) the Board discussed several potential scenarios, including a situation in which: (a) it would not be suitable to build a skid trail according to the best management practices because of the property's steepness; and (b) the use of a road bed would be least detrimental to the site; (7) Robert Dunning: (a) practiced logging in Princeton, Kentucky, with his family-run business; (b) was a member



of the Board; and (c) explained during a Board meeting that, based on his personal experience: 1. his father: a. quit the logging business; b. bought a bulldozer; and c. contracted with other loggers to perform the best management practices after the sale has been logged; and 2. when he talked with landowners about the purchase of timber, he: a. told the landowner that: i. another logger may not pay the landowner as much as he would pay for the stumpage; and ii. he would return to the property, after the logging was complete, with a bulldozer to retire the site to prevent erosion or environmental problems; and c. would often get the sale; (8) most loggers were small independent contractors: (a) with four or five member crews; and (b) with the entire family involved in the operation; (9) Westvaco recommended that the contract language specify whether the logger or the landowner paid for the bulldozing; (10) as a landowner, he recommended that the contract specify that the logger was responsible for retiring the site; (11) the Board meetings were well-attended; and (12) the Board: (a) was required by statute to oversee: 1. implementation of the forestry best management practices; and 2. education and enforcement by the Division of Forestry; and (b) saw its role as to advise and oversee the implementation of the best management practices.

Representative Lee stated that he did not have any objections to removing the finding of deficiency because he felt the Cabinet had fulfilled its obligations to: (1) establish the Board; and (2) have the administrative regulations reviewed by the Board.

Chairman Arnold stated that, based upon several conversations with loggers in his area, and including Representative Will Scott, he did not have an objection to removing the finding of deficiency.

Representative Allen stated that: (1) this legislation: (a) was very controversial; and (b) had a difficult time passing the General Assembly; (2) he: (a) still had several objections to these requirements; (b) had been a member of the General Assembly for twenty-seven years; (c) knew the findings of deficiency would be removed; (d) understood the position of Westvaco, which: 1. supported the legislation from its beginning; and 2. would receive a benefit in a few years because the small loggers, who could not afford to meet the requirements, would be out of business; and (e) believed free enterprise and government could have resolved the issues without a statutory mandate; (3) because less than two percent of pollution came from the forest, the government should concentrate on the other ninety-eight percent; (4) since 1940, the forests in eastern and western Kentucky had returned because the government had stayed out of the logging industry; (5) as part of an operations tour last Fall, he: (a) was told that people supported the legislation; (b) asked those people in confidence if they really supported the legislation; and (c) was told that the people: 1. opposed the legislation; and 2. were afraid not to support it publicly; and (6) he: (a) did not support this legislation; (b) was not going to vote to remove the finding of deficiency; and (c) believed a vote in favor of these administrative regulations would: 1. equal more regulation, government, and control; and 2. kill the logging industry.

The Subcommittee approved a motion by Senator Long, seconded by Senator Pendleton, to remove the finding of deficiency on 402 KAR 3:020 and 402 KAR 3:030, with: (1) Senators Long and Pendleton, and Representatives Lee and Arnold voting to remove the finding of deficiency; and (2) Representatives Allen and Bruce voting not to remove the finding of deficiency.

## 2. Justice Cabinet, Department of Corrections

### Smoking in State Correctional Institutions.

Steve Durham, Staff Attorney, and Carol Williams, Director of the Eastern Region, represented the Department.

Subcommittee staff stated that: (1) questions were raised regarding a policy implemented by the Department of Corrections that restricted smoking by inmates; and (2) Department representatives were asked to appear before the Subcommittee to: (a) answer Subcommittee questions; and (b) explain: 1. the requirements of the policy; 2. whether administrative regulation would be promulgated; and 3. when administrative regulations would be promulgated.

Senator Pendleton stated that: (1) it was disturbing that the Department had not told the General Assembly that it was banning smoking; (2) a newspaper reporter called and asked his comment on the policy; and (3) he wanted to know why the Department did

not explain: (a) the smoking restrictions for inmates; and (b) the reasons for this policy.

In response to questions by Senator Pendleton, Ms. Williams stated that: (1) 200 KAR 6:045: (a) was promulgated in 1996 to regulate smoking in state buildings; (b) addressed employees and visitors of state buildings; and (c) did not address smoking by inmates of correctional facilities; (2) the Department: (a) had established a system to address smoking by the inmate population; (b) instituted a partial change in the institutional schedule for smoking when 200 KAR 6:045 was implemented; and (c) had received questions since that time from the inmate population and employees about: 1. smoking; and 2. various health related issues, including questions from staff regarding passive smoke inhalation; (3) in the Green River Correctional Complex, which opened as a smoke-free facility, and other institutions, which had become smoke-free: (a) smoking was banned inside the facilities; and (b) inmates were able to purchase cigarettes or tobacco products for use outdoors in specified areas; (4) this policy had worked very successfully; (5) other institutions were gradually becoming smoke-free; (6) at a warden's meeting three months ago, the Department: (a) discussed the smoking issue; (b) felt the policy should be consistent throughout the institutions; (c) began formulating this plan; and (d) directed the wardens to create outdoor environments in which the inmates could smoke; (7) by July 31, each building was to be smoke and tobacco free; (8) the costs of implementing this policy varied at each institution, as: (a) some institutions had minimal or no expenses; and (b) the secure institutions: 1. created a more elaborate system that implemented a fenced area; and 2. spent less than \$40,000, which came from the: a. general fund; and b. inmate canteen account; and (9) if drugs were discovered on an inmate: (a) a disciplinary report was prepared; and (b) the inmate would be: 1. adjudicated; and 2. placed in segregation.

In response to questions by Senator Pendleton, Mr. Durham stated that: (1) an inmate found in possession of drugs would, depending on the item, be: (a) criminally: 1. charged; and 2. prosecuted in the courts; and (b) administratively charged for a violation of the rules and regulations of the institution; (2) in an administrative procedure: (a) the Department had to prove the violation occurred; and (b) if the violation was proven, the inmate could: 1. lose good time credit, which might require the inmate to serve more of his sentence; and 2. be placed in disciplinary segregation away from: a. the general population; and b. the inmate's programs and work; and (3) the Department: (a) assisted law enforcement in prosecutions for criminal violations; and (b) had both been asked, and volunteered, on occasion to appear in circuit court to testify as to the impact on the Department when contraband and drugs were found in an institution.

Senator Pendleton stated that: (1) he was told by a reporter that if an inmate was caught smoking in his cell at night, time would be added to his sentence; (2) the Department: (a) had not started any stop smoking programs to help inmates who had smoked a lifetime; (b) added time to the sentence of a smoker; and (c) might not punish the person using drugs in prison; (3) he thought the Department's priorities were in the wrong place; (4) it was disturbing when members of the General Assembly: (a) did not know about a policy; and (b) had to learn from the news media about the policy; (5) if the Department wanted to promulgate administrative regulations on this subject, the Department should have come to the Subcommittee first; (6) he: (a) did not object to addressing smoking in the prisons; (b) knew that a lot of time was lost when workers had to go outside to a smoking area; and (c) wondered what problems would arise if corrections staff were: 1. outside smoking; and 2. not watching the inmates; and (7) the Department: (a) might need to hire additional monitors at night to ensure that inmates were not smoking inside; and (b) should work with the General Assembly, because the General Assembly had the ultimate decision regarding policy matters.

In response to questions by Senator Pendleton, Mr. Durham stated that: (1) an inmate would be written up if the inmate failed to adhere to an institutional schedule; (2) disobeying the schedule would not extend a sentence, regardless of the number of times an inmate was caught; (3) tobacco was not considered contraband, unless an inmate was: (a) in segregation; and (b) not allowed to have personal possessions; (4) the Kentucky State Penitentiary was

not on the same schedule as the rest of the state institutions; (5) death row inmates were not affected by the smoking policy change because they lived and ate separately from the general population; and (6) some prisoners in disciplinary segregation could not be permitted near other prisoners.

In response to a question by Senator Pendleton, Ms. Williams stated that: (1) the movement of prisoners at the Kentucky State Penitentiary was very controlled; and (2) the Department decided it would not be an appropriate policy for that institution.

Senator Pendleton stated that: (1) the Department should have come to the Subcommittee earlier; and (2) he hoped that in the future, the Department would keep the General Assembly informed of what was going on in the institutions.

**3. Cabinet for Families and Children: Department for Community-Based Services: Division of Policy Development: Day Care Fees charged for child care facility licensure.**

Subcommittee staff stated that: (1) the Cabinet for Families and Children had promulgated 905 KAR 2:090 but withdrew it after issues were raised by Subcommittee staff and others; (2) one of the problems with this administrative regulation was that it charged fees higher than the statutory cap established by KRS 199.896(4); (3) under the statute, an initial license fee was capped at \$50 and a renewal at \$25; (4) this administrative regulation charged \$80 and \$40, respectively; and (5) the Subcommittee might want to request the Cabinet for Families and Children to appear before its September 14 meeting to discuss this issue.

The Subcommittee approved a motion by Chairman Arnold, seconded by Representative Bruce, to send a letter to the Cabinet for Families and Children requesting them to address this issue at its September 14, 1999, meeting.

**The Subcommittee adjourned at 12:45 p.m. until September 14, 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  
Appropriations and Revenue  
Meeting of July 22, 1999**

The following administrative regulation was available for consideration by the Interim Joint Committee on Appropriations and Revenue during its meeting of July 22, 1999, having been referred to the Committee on July 15, 1999, pursuant to KRS 13A.290(6): 103 KAR 1:050

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 regulation is reflected in the minutes of the July 22, 1999 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON EDUCATION  
Meeting of August 2, 1999**

The following administrative regulations were available for consideration by the Interim Joint Committee on Education during its meeting of July 22, 1999, having been referred to the Committee on July 7, 1999, pursuant to KRS 13A.290(6):

11 KAR 5:001  
11 KAR 5:130  
703 KAR 5:020  
703 KAR 5:070  
704 KAR 20:470

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: 703 KAR 5:070

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 22, 1999 meeting, which are hereby incorporated by reference. Addi-

tional committee findings, recommendations, or comments, if any, are attached hereto.

**EDUCATION ASSESSMENT AND  
ACCOUNTABILITY REVIEW SUBCOMMITTEE  
Meeting of August 2, 1999**

The Education Assessment and Accountability Review Subcommittee met on Monday, August 2, 1999 and determined that the following administrative regulation complies with statutory requirements:

703 KAR 5:111 – Repeal of 703 KAR 4:010, 703 KAR 3:060, 703 KAR 4:080, 703 KAR 4:090, and 703 KAR 4:100.

Mr. Kevin Noland, Counsel, Department of Education explained that 703 KAR 5:111 repeals administrative regulations that have been replaced with new administrative regulations to enact the provisions required by House Bill 53 (1998).

The subcommittee adopted the administrative regulation without objection.

**SPECIAL INTERIM JOINT SUBCOMMITTEE ON ENERGY  
Meeting of August 20, 1999**

The following administrative regulations were available for consideration by the Special Interim Joint Subcommittee on Energy during its meeting of August 20, 1999, having been referred to the Committee on July 21, 1999, pursuant to KRS 13A.290(6): 807 KAR 5:007.

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 August 20, 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 ..... C - 2

The Locator Index lists all administrative regulations published in VOLUME 26 of the Administrative Register from July, 1999 through June, 2000. 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 25 are those administrative regulations that were originally published in Volume 25 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1999 bound Volumes were published.

### KRS Index ..... C - 12

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 26 of the Administrative Register.

### Subject Index ..... C - 17

The Subject Index is a general index of administrative regulations published in VOLUME 26 of the Administrative Register, and is mainly broken down by agency.



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## VOLUME 25

The administrative regulations listed under VOLUME 25 are those administrative regulations that were originally published in Volume 25 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1999 bound Volumes were published.

### EMERGENCY ADMINISTRATIVE REGULATIONS:

12 KAR 4:170E	2813	4-22-99
109 KAR 2:020E	2814	4-19-99
109 KAR 15:020E	2816	4-19-99
200 KAR 21:010E	2116	2-12-99
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200 KAR 30:010E	2311	2-26-99
200 KAR 30:020E	2312	2-26-99
200 KAR 30:030E	2313	2-26-99
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200 KAR 30:060E	2316	2-26-99
200 KAR 30:070E	2316	2-26-99
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201 KAR 9:335E	1339	11-12-98
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201 KAR 20:420E	1829	1-4-99
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201 KAR 20:430E	1830	1-4-99
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201 KAR 38:020E	2318	3-4-99
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201 KAR 38:050E	2321	3-4-99
Expired		8-10-99
201 KAR 38:060E	2322	3-4-99
405 KAR 10:010E	1562	11-24-98
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415 KAR 1:080E	2529	4-12-99
500 KAR 13:010E	1831	12-30-98
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501 KAR 6:020E	2819	5-14-99
501 KAR 6:190E	1564	12-4-98
Replaced	2871	6-16-99
501 KAR 6:200E	1567	12-4-98
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501 KAR 6:210E	1568	12-4-98
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501 KAR 6:999E	2821	5-14-99
503 KAR 1:140E	1570	11-30-98
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601 KAR 1:040E	1573	12-14-98
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725 KAR 1:070E	1832	1-6-99
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803 KAR 2:320E	1835	1-15-99
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803 KAR 2:425E	1840	1-15-99
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803 KAR 2:500E	1841	1-15-99
Replaced	2465	6-16-99

806 KAR 17:066E	2323	3-12-99
900 KAR 6:050E	2536	3-26-99
904 KAR 2:006E	775	9-14-98
Expired		3-20-99
904 KAR 2:370E	786	9-14-98
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907 KAR 1:013E	2822	4-21-99
Withdrawn		7-21-99
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908 KAR 3:160E	2353	3-9-99
921 KAR 2:015E	1862	1-14-99
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### ORDINARY ADMINISTRATIVE REGULATIONS:

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11 KAR 5:001		
Amended	2920	(See Volume 26)
11 KAR 5:130		
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11 KAR 15:040		
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109 KAR 9:010		
Amended	2182	(See Volume 26)
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200 KAR 5:340	2709	
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201 KAR 2:030		
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201 KAR 9:084			Withdrawn		7-8-99
Amended	2422	(See Volume 26)	401 KAR 51:100	2712	
201 KAR 9:175			Withdrawn		7-8-99
Amended	2423		401 KAR 51:110	2713	
201 KAR 9:310			Withdrawn		7-8-99
Amended	2427		401 KAR 51:120	2717	
201 KAR 9:320	687		Withdrawn		7-8-99
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201 KAR 9:330	2229	(See Volume 26)	Withdrawn		7-8-99
201 KAR 9:335	2230	(See Volume 26)	401 KAR 51:140	2721	
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201 KAR 14:090			Amended	2584	7-14-99
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201 KAR 18:071	2983		Amended	1450	
201 KAR 18:080			As Amended	2848	6-9-99
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201 KAR 18:110			Amended	2591	(See Volume 26)
Amended	2931		401 KAR 65:001		
201 KAR 18:120			Amended	1458	
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201 KAR 20:430	2233	(See Volume 26)	Amended	2400	
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301 KAR 2:178			Amended	2408	
Amended	2655	(See Volume 26)	As Amended	2860	
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401 KAR 50:010			Amended	2935	(See Volume 26)
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Amended	1119		Amended	2419	
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415 KAR 1:120			603 KAR 4:055	1767	
Amended	1122		Amended	2420	
415 KAR 1:130			As Amended	2888	6-1-99
Amended	1128		603 KAR 7:080	1492	
As Amended	2868	6-9-99	As Amended	2889	6-10-99
415 KAR 1:135	1274		703 KAR 4:020		
As Amended	2870	6-9-99	Repealed	2891	6-7-99
415 KAR 1:140	2052		703 KAR 4:021	2240	
As Amended	2871	6-9-99	As Amended	2891	6-7-99
418 KAR 1:020			703 KAR 4:050		
Amended	2938	(See Volume 26)	Repealed	2891	6-7-99
418 KAR 1:030			703 KAR 5:020	2728	(See Volume 26)
Amended	2940	(See Volume 26)	703 KAR 5:040	2241	
418 KAR 1:040			Amended	2602	6-7-99
Amended	2942	(See Volume 26)	703 KAR 5:060	2243	
418 KAR 1:050			Amended	2603	6-7-99
Amended	2944	(See Volume 26)	703 KAR 5:070	2731	
418 KAR 1:060			704 KAR 3:410		
Amended	2946	(See Volume 26)	Amended	2200	
418 KAR 1:070			As Amended	2893	6-7-99
Amended	2948	(See Volume 26)	704 KAR 3:420	2244	
501 KAR 6:020			As Amended	2896	6-7-99
Amended	2435	6-16-99	704 KAR 20:470		
501 KAR 6:040			Amended	2953	(See Volume 26)
Amended	2669	7-14-99	707 KAR 1:150		
501 KAR 6:060			Amended	2207	
Amended	2670	7-14-99	As Amended	2897	6-7-99
501 KAR 6:070			725 KAR 1:070		
Amended	2950	8-16-99	Amended	2955	
501 KAR 6:090			Withdrawn		6-22-99
Amended	2437	6-16-99	785 KAR 1:010		
501 KAR 6:110			Amended	2673	(See Volume 26)
Amended	2438	6-16-99	802 KAR 1:010		
501 KAR 6:120			Amended	434	
Amended	2672	7-14-99	Amended	880	(See Volume 26)
501 KAR 6:140			803 KAR 2:307		
Amended	2440	6-16-99	Amended	2441	6-16-99
501 KAR 6:180			803 KAR 2:309		
Repealed	2478	6-16-99	Amended	2443	6-16-99
501 KAR 6:181	2478	6-16-99	803 KAR 2:310		
501 KAR 6:190	2054		Amended	2445	6-16-99
As Amended	2871	6-16-99	803 KAR 2:311		
501 KAR 6:200	2057		Amended	2447	6-16-99
As Amended	2875	6-16-99	803 KAR 2:313		
501 KAR 6:210	2058		Amended	2448	6-16-99
As Amended	2876	6-16-99	803 KAR 2:317		
502 KAR 12:010	2479	(See Volume 26)	Amended	2450	6-16-99
503 KAR 1:140	2723	(See Volume 26)	803 KAR 2:320		
503 KAR 3:040	2063		Amended	2451	6-16-99
As Amended	2877	6-16-99	803 KAR 2:402		
505 KAR 1:080	2985	(See Volume 26)	Amended	2457	6-16-99
600 KAR 3:030	2235		803 KAR 2:403		
Amended	2598		Amended	2458	6-16-99
As Amended	2881	6-1-99	803 KAR 2:405		
601 KAR 14:010			Amended	2459	6-16-99
Amended	2952	(See Volume 26)	803 KAR 2:420		
603 KAR 4:035			Amended	2461	6-16-99
Amended	2195		803 KAR 2:425		
As Amended	2882	(See Volume 26)	Amended	2464	6-16-99



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803 KAR 2:500			904 KAR 2:017		
Amended	2465	6-16-99	Amended	2006	
804 KAR 4:210			Amended	2621	
Amended	2675	(See Volume 26)	As Amended	2911	6-16-99
807 KAR 5:007	2989	(See Volume 26)	904 KAR 2:370		
808 KAR 12:010			Amended	2013	
Repealed	2899	6-16-99	Amended	2625	6-16-99
808 KAR 12:011	2480		904 KAR 2:500	2075	
As Amended	2899	6-16-99	As Amended	2913	6-16-99
815 KAR 7:105			904 KAR 2:510	2077	6-16-99
Amended	2958	8-16-99	905 KAR 1:180		
815 KAR 10:050			Amended	2678	(See Volume 26)
Repealed	2899	5-26-99	905 KAR 2:090		
815 KAR 10:051	2481		Amended	1729	
As Amended	2899	5-26-99	906 KAR 1:110		
815 KAR 10:060	2482		Amended	2979	(See Volume 26)
As Amended	2900	5-26-99	907 KAR 1:002		
815 KAR 20:020			Amended	1731	
Amended	2959	(See Volume 26)	907 KAR 1:019		
815 KAR 20:030			Amended	1248	
Amended	2467		Amended	1937	
As Amended	2902	5-26-99	907 KAR 1:021		
815 KAR 20:120			Amended	1252	
Amended	2961	(See Volume 26)	Amended	1940	
902 KAR 20:091			907 KAR 1:780	2080	
Amended	2469		Amended	2629	(See Volume 26)
Amended	2916	(See Volume 26)	907 KAR 3:035	2732	(See Volume 26)
902 KAR 20:140			907 KAR 3:065	1299	
Amended	2676	(See Volume 26)	As Amended	1662	
902 KAR 20:160			907 KAR 3:090	2993	(See Volume 26)
Amended	2967		907 KAR 3:100	2993	(See Volume 26)
902 KAR 20:240			907 KAR 4:020	2734	
Amended	2971		Withdrawn		6-23-99
902 KAR 22:040	2074	(See Volume 26)	908 KAR 1:310		
902 KAR 55:105	721		Amended	2017	
Amended	1074		Amended	2632	
As Amended	1366		908 KAR 1:311	2484	(Volume 24)
902 KAR 55:110	966		908 KAR 1:370	2485	(Volume 24)
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902 KAR 55:115	723		920 KAR 1:060	2740	(See Volume 26)
As Amended	1369		921 KAR 2:015		
904 KAR 2:006			Amended	2679	(See Volume 26)
Amended	1989		921 KAR 3:030		
Amended	2605		Amended	2684	8-18-99
As Amended	2904	6-16-99	922 KAR 5:070		
904 KAR 2:016			Amended	2473	(See Volume 26)
Amended	1997		922 KAR 7:061	2995	8-16-99
Amended	2613	6-16-99	922 KAR 7:101	2996	8-16-99
			922 KAR 7:251	2996	

\*Statement Of Consideration Not Filed By Deadline

## VOLUME 26

Regulation Number	26 Ky.R Page No.	Effective Date	Regulation Number	26 Ky.R Page No.	Effective Date
<b>EMERGENCY ADMINISTRATIVE REGULATIONS:</b> (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)			503 KAR 5:090E	538	8-10-99
200 KAR 2:006E	341	7-1-99	704 KAR 20:210E	345	7-6-99
502 KAR 31:020E	24	5-26-99	725 KAR 1:071E	346	6-28-99
503 KAR 1:110E	536	8-10-99	739 KAR 1:010E	348	6-22-99
			739 KAR 1:020E	349	6-22-99
			739 KAR 1:030E	350	6-22-99
			739 KAR 1:040E	351	6-22-99
			739 KAR 1:050E	352	6-22-99
			803 KAR 2:300E	26	6-15-99

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803 KAR 2:301E	27	6-15-99	101 KAR 2:120		
803 KAR 2:306E	29	6-15-99	Amended	101	
803 KAR 2:307E	31	6-15-99	As Amended	573	
803 KAR 2:309E	33	6-15-99	101 KAR 2:140		
803 KAR 2:313E	35	6-15-99	Amended	103	
803 KAR 2:414E	37	6-15-99	As Amended	575	
803 KAR 2:500E	38	6-15-99	101 KAR 2:150		
806 KAR 17:205E	353	6-24-99	Amended	105	
815 KAR 35:015E	541	7-30-99	As Amended	576	
907 KAR 1:011E	355	7-2-99	101 KAR 2:160		
907 KAR 1:013E	544	7-21-99	Amended	412	
907 KAR 1:025E	548	7-21-99	101 KAR 3:011	265	
907 KAR 1:155E	359	7-2-99	As Amended	577	
907 KAR 1:640E	361	7-2-99	101 KAR 3:015	266	
907 KAR 4:020E	364	6-23-99	As Amended	577	
<b>ORDINARY ADMINISTRATIVE REGULATIONS:</b>			101 KAR 3:045		
11 KAR 5:001			Amended	106	
As Amended	367	8-2-99	As Amended	581	
11 KAR 12:010			101 KAR 3:050		
Amended	85		Amended	413	
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11 KAR 12:020			103 KAR 30:091		
Amended	86		Amended	415	
Amended	626		103 KAR 30:096	493	
11 KAR 12:060			109 KAR 2:020	494	
Amended	88		109 KAR 9:010		
11 KAR 12:070			As Amended	368	8-16-99
Amended	89		109 KAR 15:020	496	
As Amended	558		200 KAR 14:011		
20 KAR 1:040			Amended	418	
Amended	409		200 KAR 14:081		
20 KAR 1:070			Amended	420	
Amended	411		200 KAR 14:091		
20 KAR 1:080	491		Amended	422	
32 KAR 1:180	492		200 KAR 21:010		
101 KAR 2:020			As Amended	41	6-23-99
Amended	90		200 KAR 21:030		
As Amended	558		As Amended	42	7-14-99
101 KAR 2:034	257		200 KAR 30:010	270	
As Amended	559		As Amended	584	
101 KAR 2:037	260		200 KAR 30:020	271	
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101 KAR 2:046			200 KAR 30:030	273	
Amended	91		As Amended	585	
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101 KAR 2:056			As Amended	586	
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101 KAR 2:066			200 KAR 30:060	275	
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Amended	97		As Amended	370	8-16-99
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101 KAR 2:102	261		As Amended	371	8-16-99
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101 KAR 2:105			As Amended	371	8-16-99
Amended	100		201 KAR 9:340		
As Amended	572		As Amended	372	8-16-99
			201 KAR 16:015		
			Amended	423	
			201 KAR 16:080	498	
			201 KAR 16:090	499	



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201 KAR 20:420			401 KAR 57:005		
As Amended	372	8-16-99	Repealed by 401 KAR 57:019		7-14-99
201 KAR 20:430			401 KAR 57:015		
As Amended	373	8-16-99	Repealed by 401 KAR 57:019		7-14-99
201 KAR 20:440			401 KAR 57:021		
As Amended	374	8-16-99	Repealed by 401 KAR 57:019		7-14-99
201 KAR 23:075	277		401 KAR 57:025		
201 KAR 32:010			Repealed by 401 KAR 57:019		7-14-99
Amended	109		401 KAR 57:030		
201 KAR 32:020			Repealed by 401 KAR 57:019		7-14-99
Amended	425		401 KAR 57:035		
201 KAR 32:025	500		Repealed by 401 KAR 57:019		7-14-99
201 KAR 32:041	501		401 KAR 57:040		
201 KAR 32:045	279		Repealed by 401 KAR 57:019		7-14-99
201 KAR 32:050			401 KAR 57:045		
Amended	111		Repealed by 401 KAR 57:019		7-14-99
201 KAR 32:060			401 KAR 57:050		
Amended	426		Repealed by 401 KAR 57:019		7-14-99
201 KAR 36:060	280		401 KAR 57:055		
201 KAR 38:010	282		Repealed by 401 KAR 57:019		7-14-99
As Amended	587		401 KAR 57:130		
201 KAR 38:020	283		Repealed by 401 KAR 57:019		7-14-99
As Amended	587		401 KAR 57:270		
201 KAR 38:030	284		Repealed by 401 KAR 57:019		7-14-99
As Amended	588		401 KAR 57:300		
201 KAR 38:040	285		Repealed by 401 KAR 57:019		7-14-99
As Amended	589		401 KAR 59:450		
201 KAR 38:050	285		Repealed by 401 KAR 57:019		7-14-99
Withdrawn		8-10-99	401 KAR 59:455		
201 KAR 38:060	286		Repealed by 401 KAR 57:019		7-14-99
As Amended	589		401 KAR 59:460		
301 KAR 1:015			Repealed by 401 KAR 57:019		7-14-99
Amended	428		401 KAR 59:465		
301 KAR 1:201			Repealed by 401 KAR 57:019		7-14-99
Amended	113		401 KAR 59:485		
301 KAR 1:400	288		Repealed by 401 KAR 57:019		7-14-99
301 KAR 2:049			401 KAR 59:490		
As Amended	43	7-14-99	Repealed by 401 KAR 57:019		7-14-99
301 KAR 2:140			401 KAR 59:495		
Amended	116		Repealed by 401 KAR 57:019		7-14-99
301 KAR 2:178			401 KAR 59:500		
As Amended	44	7-14-99	Repealed by 401 KAR 57:019		7-14-99
301 KAR 2:179			401 KAR 59:505		
As Amended	48	7-14-99	Repealed by 401 KAR 57:019		7-14-99
301 KAR 2:181			401 KAR 59:535		
Repealed by 301-2:182		8-16-99	Repealed by 401 KAR 57:019		7-14-99
301 KAR 6:060			401 KAR 59:540		
As Amended	48	7-14-99	Repealed by 401 KAR 57:019		7-14-99
401 KAR 5:002			401 KAR 59:545		
Amended	118		Repealed by 401 KAR 57:019		7-14-99
401 KAR 5:026			401 KAR 59:550		
Amended	130		Repealed by 401 KAR 57:019		7-14-99
401 KAR 5:029			401 KAR 59:555		
Amended	141		Repealed by 401 KAR 57:019		7-14-99
401 KAR 5:030			401 KAR 59:570		
Amended	145		Repealed by 401 KAR 57:019		7-14-99
401 KAR 5:031			401 KAR 59:575		
Amended	150		Repealed by 401 KAR 57:019		7-14-99
401 KAR 47:110			401 KAR 59:580		
Amended	73		Repealed by 401 KAR 57:019		7-14-99
As Amended	374		401 KAR 59:585		
401 KAR 48:320			Repealed by 401 KAR 57:019		7-14-99
Amended	75		401 KAR 59:590		
As Amended	376		Repealed by 401 KAR 57:019		7-14-99
401 KAR 57:002			401 KAR 59:595		
As Amended	49	7-14-99	Repealed by 401 KAR 57:019		7-14-99



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401 KAR 59:705			401 KAR 60:540		
Repealed by 401 KAR 57:019		7-14-99	Repealed by 401 KAR 57:019		7-14-99
401 KAR 59:725			401 KAR 60:560		
Repealed by 401 KAR 57:019		7-14-99	Repealed by 401 KAR 57:019		7-14-99
401 KAR 59:740			401 KAR 60:580		
Repealed by 401 KAR 57:019		7-14-99	Repealed by 401 KAR 57:019		7-14-99
401 KAR 59:745			401 KAR 60:590		
Repealed by 401 KAR 57:019		7-14-99	Repealed by 401 KAR 57:019		7-14-99
401 KAR 59:750			401 KAR 60:600		
Repealed by 401 KAR 57:019		7-14-99	Repealed by 401 KAR 57:019		7-14-99
401 KAR 59:755			401 KAR 60:620		
Repealed by 401 KAR 57:019		7-14-99	Repealed by 401 KAR 57:019		7-14-99
401 KAR 60:005			401 KAR 60:630		
As Amended 50		7-14-99	Repealed by 401 KAR 57:019		7-14-99
401 KAR 60:042			401 KAR 60:640		
Repealed by 401 KAR 57:019		7-14-99	Repealed by 401 KAR 57:019		7-14-99
401 KAR 60:043			401 KAR 60:680		
Repealed by 401 KAR 57:019		7-14-99	Repealed by 401 KAR 57:019		7-14-99
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Repealed by 401 KAR 57:019		7-14-99	Repealed by 401 KAR 57:019		7-14-99
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Repealed by 401 KAR 57:019		7-14-99	Repealed by 401 KAR 57:019		7-14-99
401 KAR 60:111			401 KAR 60:750		
Repealed by 401 KAR 57:019		7-14-99	Repealed by 401 KAR 57:019		7-14-99
401 KAR 60:150			401 KAR 63:002		
Repealed by 401 KAR 57:019		7-14-99	As Amended 53		7-14-99
401 KAR 60:160			401 KAR 63:070		
Repealed by 401 KAR 57:019		7-14-99	Repealed by 401 KAR 57:019		7-14-99
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Repealed by 401 KAR 57:019		7-14-99	Repealed by 401 KAR 57:019		7-14-99
401 KAR 60:180			401 KAR 63:101		
Repealed by 401 KAR 57:019		7-14-99	Repealed by 401 KAR 57:019		7-14-99
401 KAR 60:190			401 KAR 63:104		
Repealed by 401 KAR 57:019		7-14-99	Repealed by 401 KAR 57:019		7-14-99
401 KAR 60:250			401 KAR 63:110		
Repealed by 401 KAR 57:019		7-14-99	Repealed by 401 KAR 57:019		7-14-99
401 KAR 60:260			401 KAR 63:160		
Repealed by 401 KAR 57:019		7-14-99	Repealed by 401 KAR 57:019		7-14-99
401 KAR 60:330			401 KAR 63:190		
Repealed by 401 KAR 57:019		7-14-99	Repealed by 401 KAR 57:019		7-14-99
401 KAR 60:340			401 KAR 63:300		
Repealed by 401 KAR 57:019		7-14-99	Repealed by 401 KAR 57:019		7-14-99
401 KAR 60:370			401 KAR 63:320		
Repealed by 401 KAR 57:019		7-14-99	Repealed by 401 KAR 57:019		7-14-99
401 KAR 60:380			401 KAR 63:340		
Repealed by 401 KAR 57:019		7-14-99	Repealed by 401 KAR 57:019		7-14-99
401 KAR 60:390			401 KAR 63:360		
Repealed by 401 KAR 57:019		7-14-99	Repealed by 401 KAR 57:019		7-14-99
401 KAR 60:400			401 KAR 63:400		
Repealed by 401 KAR 57:019		7-14-99	Repealed by 401 KAR 57:019		7-14-99
401 KAR 60:420			401 KAR 63:420		
Repealed by 401 KAR 57:019		7-14-99	Repealed by 401 KAR 57:019		7-14-99
401 KAR 60:440			401 KAR 63:460		
Repealed by 401 KAR 57:019		7-14-99	Repealed by 401 KAR 57:019		7-14-99
401 KAR 60:450			401 KAR 63:520		
Repealed by 401 KAR 57:019		7-14-99	Repealed by 401 KAR 57:019		7-14-99
401 KAR 60:460			401 KAR 63:541		
Repealed by 401 KAR 57:019		7-14-99	Repealed by 401 KAR 57:019		7-14-99
401 KAR 60:470			401 KAR 63:560		
Repealed by 401 KAR 57:019		7-14-99	Repealed by 401 KAR 57:019		7-14-99
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Repealed by 401 KAR 57:019		7-14-99	Repealed by 401 KAR 57:019		7-14-99
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401 KAR 63:780			501 KAR 7:120		
Repealed by 401 KAR 57:019		7-14-99	Amended	182	
401 KAR 63:800			501 KAR 7:140		
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401 KAR 63:820			501 KAR 10:010		
Repealed by 401 KAR 57:019		7-14-99	Amended	185	
401 KAR 63:900			501 KAR 10:040		
Repealed by 401 KAR 57:019		7-14-99	Amended	186	
401 KAR 63:920			501 KAR 10:060		
Repealed by 401 KAR 57:019		7-14-99	Amended	188	
401 KAR 63:940			501 KAR 10:070		
Repealed by 401 KAR 57:019		7-14-99	Amended	189	
401 KAR 63:960			501 KAR 10:110		
Repealed by 401 KAR 57:019		7-14-99	Amended	190	
405 KAR 10:010			501 KAR 10:120		
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418 KAR 1:030			502 KAR 31:020		
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418 KAR 1:040			503 KAR 1:140		
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418 KAR 1:050			503 KAR 3:020		
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418 KAR 1:060			As Amended	599	
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418 KAR 1:070			As Amended	604	
As Amended	597		601 KAR 1:040		
500 KAR 13:020	289		Amended	201	
As Amended	597		601 KAR 14:010		
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Amended	158		603 KAR 4:035		
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