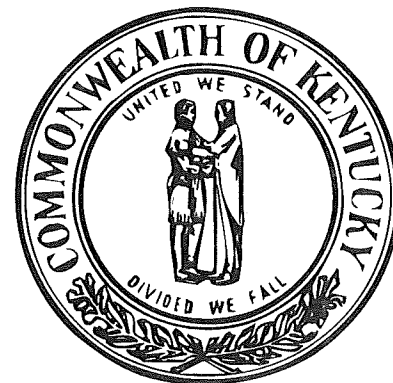


ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 26, NUMBER 4
FRIDAY, OCTOBER 1, 1999

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MEETING NOTICE

The Administrative Regulation Review Subcommittee is **tentatively** scheduled to meet on October 12, 1999, at 10:30 a.m. in Room 149 of the Capitol Annex. See **tentative agenda** on pages 685-687 of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 1999 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 26, Kentucky Register, page 318 (short form: 26 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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Statement of Ownership, Management, and Circulation

1. Publication Title Administrative Register of Kentucky	2. Publication Number 0 3 0 - 4 7 0	3. Filing Date 09-20-99
4. Issue Frequency Monthly	5. Number of Issues Published Annually 12	6. Annual Subscription Price \$48.00
7. Complete Mailing Address of Known Office of Publication (Not printer) (Street, city, county, state, and ZIP+4) Legislative Research Commission 700 Capital Ave - Rm 300 Capitol Building Frankfort, Franklin, KY 40601-3486		Contact Person Joan Curtis Telephone (502) 564-8100

8. Complete Mailing Address of Headquarters or General Business Office of Publisher (Not printer)

Same as #7 (Above)

9. Full Names and Complete Mailing Addresses of Publisher, Editor, and Managing Editor (Do not leave blank)

Publisher (Name and complete mailing address)

**Legislative Research Commission - Sam Hensley
700 Capital Ave - Rm 64 Capitol Building
Frankfort KY 40601-3486**

Editor (Name and complete mailing address)

**Susan Wunderlich - Register Compiler
702 Capital Ave - Rm 029 Capitol Annex
Frankfort KY 40601**

Managing Editor (Name and complete mailing address)

N/A

10. Owner (Do not leave blank. If the publication is owned by a corporation, give the name and address of the corporation immediately followed by the names and addresses of all stockholders owning or holding 1 percent or more of the total amount of stock. If not owned by a corporation, give the names and addresses of the individual owners. If owned by a partnership or other unincorporated firm, give its name and address as well as those of each individual owner. If the publication is published by a nonprofit organization, give its name and address.)

Full Name	Complete Mailing Address
Legislative Research Commission	
For the Commonwealth of Kentucky	Same as #7 (Above)

11. Known Bondholders, Mortgagees, and Other Security Holders Owning or Holding 1 Percent or More of Total Amount of Bonds, Mortgages, or Other Securities. If none, check box

☒ None

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12. Tax Status (For completion by nonprofit organizations authorized to mail at nonprofit rates) (Check one)

The purpose, function, and nonprofit status of this organization and the exempt status for federal income tax purposes:

☒ Has Not Changed During Preceding 12 Months☐ Has Changed During Preceding 12 Months (Publisher must submit explanation of change with this statement)

VOLUME 26, NUMBER 4 – OCTOBER 1, 1999

13. Publication Title Administrative Register of Kentucky		14. Issue Date for Circulation Data Below September 1, 1999	
15. Extent and Nature of Circulation		Average No. Copies Each Issue During Preceding 12 Months	No. Copies of Single Issue Published Nearest to Filing Date
a. Total Number of Copies (<i>Net press run</i>)		825	825
b. Paid and/or Requested Circulation	(1) Paid/Requested Outside-County Mail Subscriptions Stated on Form 3541. (<i>Include advertiser's proof and exchange copies</i>)	485	449
	(2) Paid In-County Subscriptions (<i>Include advertiser's proof and exchange copies</i>)	38	36
	(3) Sales Through Dealers and Carriers, Street Vendors, Counter Sales, and Other Non-USPS Paid Distribution	N/A	N/A
	(4) Other Classes Mailed Through the USPS	N/A	N/A
c. Total Paid and/or Requested Circulation (<i>Sum of 15b. (1), (2), (3), and (4)</i>)		523	485
d. Free Distribution by Mail (<i>Samples, compliment any, and other free</i>)	(1) Outside-County as Stated on Form 3541	N/A	N/A
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e. Free Distribution Outside the Mail (<i>Carriers or other means</i>)		120	102
f. Total Free Distribution (<i>Sum of 15d. and 15e.</i>)		120	102
g. Total Distribution (<i>Sum of 15c. and 15f</i>)		643	587
h. Copies not Distributed		182	238
i. Total (<i>Sum of 15g. and h.</i>)		825	825
j. Percent Paid and/or Requested Circulation (<i>15c. divided by 15g. times 100</i>)		81.3	82.6
16. Publication of Statement of Ownership <input checked="" type="checkbox"/> Publication required. Will be printed in the <u>October</u> issue of this publication. <input type="checkbox"/> Publication not required.			
17. Signature and Title of Editor, Publisher, Business Manager, or Owner <div style="display: flex; align-items: center; justify-content: space-between;"> <div style="text-align: center;"> PUBLICATIONS OFFICER </div> <div style="text-align: right;"> Date <u>9/20/99</u> </div> </div>			
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VOLUME 26, NUMBER 4 – OCTOBER 1, 1999

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA – October 12, 1999 at 10:30 a.m. in Room 149, Capitol Annex**

**GENERAL GOVERNMENT CABINET
Kentucky State Treasurer**

State Treasury (Public Hearing)

- 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.

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

Corporate License Tax

- 103 KAR 20:020. Items of capital for corporation license tax.

Sales and Use Tax; General Exemptions

- 103 KAR 30:091. Sales to farmers. (Public Hearing)
- 103 KAR 30:096. Repeal of 103 KAR 30:095. (Deferred from September)

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

Training Incentives

- 109 KAR 2:020 & E. Training incentive. (Deferred from September)

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

Travel Expense and Reimbursement

- 200 KAR 2:006E. Employees' reimbursement for travel. (Deferred from September)

Office of the Secretary

State Investment Commission (Deferred from September)

- 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

- 201 KAR 2:020E. Examinations. (Deferred from September)
- 201 KAR 2:095. Dispensing responsibilities. (Deferred from September)

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 (Deferred from September)

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

KENTUCKY LOTTERY CORPORATION

Corporation

- 202 KAR 3:020. Procurement procedures. (Deferred from July)

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

Fish

- 301 KAR 1:015. Boats and motor restrictions. (Public Hearing)

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

Water Quality

- 401 KAR 5:002. Definitions for 401 KAR Chapter 5. (Amended After Hearing)
- 401 KAR 5:026. Designation of uses of surface waters. (Amended After Hearing)
- 401 KAR 5:029. General provisions. (Amended After Hearing)
- 401 KAR 5:030. Antidegradation policy implementation methodology. (Amended After Hearing)
- 401 KAR 5:031. Surface water standards. (Amended After Hearing)

**JUSTICE CABINET
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.

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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. (Deferred from September)

Kentucky Law Enforcement Council

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

Law Enforcement Foundation Program Fund

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

EDUCATION, ARTS AND HUMANITIES CABINET

Board of Education

Department of Education

Office of Management Support Services

School Administration and Finance

702 KAR 3:075. Substitute teacher's salary scheduling.
702 KAR 3:120. Uniform school financial accounting system.

702 KAR 3:244. Repeal of 702 KAR 3:245, school council allocation formula: Kentucky Uniform School Financial Accounting System.

EDUCATION PROFESSIONAL STANDARDS BOARD

Board

704 KAR 20:210E. Substitute teachers and emergency school personnel. (Deferred from September)

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Board of Regents (Deferred from September)

739 KAR 1:010E. Acquisition and disbursement of funds, accounting system - records and annual report.
739 KAR 1:020E. Delegation of financial management responsibility.
739 KAR 1:030E. Annual audit.
739 KAR 1:040E. Purchase - inventories - sale of surplus property procedures.
739 KAR 1:050E. Affiliated corporations.

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 2:300 & E. General.
803 KAR 2:301 & E. Adoption and extension of established federal standards.
803 KAR 2:306 & E. Occupational health and environmental control.
803 KAR 2:307 & E. Hazardous materials.
803 KAR 2:309 & E. General environmental controls.
803 KAR 2:313 & E. Materials handling and storage.
803 KAR 2:414 & E. Motor vehicles, mechanized equipment, and marine operations.
803 KAR 2:500 & E. Maritime employment.

Department of Insurance

Agents, Consultants, Solicitors and Adjusters

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

Health Insurance Contracts

806 KAR 17:066 & E. Medicare supplement insurance policies. (Not Amended After Hearing))
806 KAR 17:205E. High-cost condition codes and severity questionnaire. (Deferred from September)

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Department of Financial Institutions**

Securities

808 KAR 10:400. Examination fees and criteria.

**Department of Housing, Buildings and Construction
Office of State Fire Marshal**

Electrical Inspectors

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

Department of Charitable Gaming

Charitable Gaming

820 KAR 1:015. Permanent licensure. (Deferred from August)

CABINET FOR HEALTH SERVICES

Certificate of Need

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

Department for Public Health

State Health Plan

902 KAR 17:041. State health plan for facilities and services. (Public Hearing)

Health Services and Facilities

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

902 KAR 20:275. Mobile health services. (Amended After Hearing)

Department for Medicaid Services

Division of Member and Provider Services

Medicaid Services

907 KAR 1:011E. Technical eligibility requirements. (Deferred from September)

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

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

907 KAR 1:060. Medical transportation.

907 KAR 1:061. Payments for medical transportation.

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

907 KAR 1:640E. Income standards for Medicaid. (Deferred from September)

Kentucky Children's Health Insurance Program

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

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

Child Support

921 KAR 1:390. Child Support Program paternity establishment.

ADMINISTRATIVE REGULATION REVIEW PROCEDURE
(See KRS Chapter 13A for specific provisions)

Notice of Intent

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

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

Filing and Publication

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

Public Hearing

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

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

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

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

Review Procedure

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

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

KENTUCKY PERSONNEL BOARD

September 10, 1999

- (1) **101 KAR 1:325.** Probationary periods.
- (2) The Kentucky Personnel Board 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 October 22, 1999 at 9 a.m., 5 Fountain Place, 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 October 22, 1999, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mr. R. Hanson Williams, Executive Director, Kentucky Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601, Phone: (502) 564-7830, FAX: (502) 564-1693.
- (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 Personnel 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 probationary periods is KRS Chapter 13A and 18A.0751.
 - (b) The administrative regulation that the Kentucky Personnel Board intends to promulgate will amend 101 KAR 1:325, Probationary periods. Section 1(2) will be amended to delete Title Code 7228, Forester Regional. Section 1(2) will further be amended to add the following title codes, job classifications and length of initial probationary periods: Title Code 2302, Arson Investigator II, 12 months; Title Code 4701, Vocational Rehabilitation Assistant I, 12 months; and Title Code 8236, Right-of-way Agent I, 12 months. Section 1(2) will also be amended to change the job classification name in the title codes which already have extended probationary periods as follows: Title Code 2001, changed from Fish and Wildlife Law Enforcement Officer Trainee to Wildlife and Boating Officer Recruit; Title Code 2112, changed from DES Duty Officer to DEM Duty Officer I; Title Code 2113, changed from DES Duty Officer Senior to DEM Duty Officer II; Title Code 2301, changed from Arson Investigator to Arson Investigator I; Title Code 2330, changed from MVE Officer to MVE Officer I; Title Code 2401, changed from Police Communications Dispatcher to Police Communications Dispatcher I; Title Code 2403, changed from Police Communications Dispatcher Senior to Police Communications Dispatcher II; Title Code 2493, changed from Mounted Security Officer to Mounted Patrol Officer; Title Code 2494, changed from Mounted Security Sergeant to Mounted Patrol Sergeant; Title Code 2495, changed from Mounted Security Captain to Mounted Patrol Captain; Title Code 2496, changed from Mounted Security Officer Trainee to Mounted Patrol Officer Recruit; Title Code 3254, changed from Boiler Inspector Trainee to Boiler Inspector I; Title Code 3416, changed from Financial Institution Examiner Trainee to Financial Institution Examiner I; Title Code 3550, changed from Insurance Fraud Investigator to Insurance Fraud Investigator I; Title Code 3551, changed from Insurance Fraud Investigator Senior to Insurance Fraud Investigator II; Title Code 3552, changed from Insurance Fraud Investigator Chief to Insurance Fraud Investigator III; Title Code 4051, changed from Questioned Documents Examiner to Questioned Documents Examiner I; Title Code 4056, changed from Firearms and Toolmark Examiner to Firearms and Toolmark Examiner I; Title Code 4061, changed from Forensic Serologist to Forensic Serologist I; Title Code 5120, changed from Student Development Trainee to Student Development Associate; Title Code 6253, changed from Disability Determiner to Disability Determiner I; Title Code 6290, changed from Administrative Hearing Officer to Administrative Hearing Officer I; Title Code 7221, changed from Forester to Forester I; Title Code 7222, changed from Forester Senior to Forester II; Title Code 7224, changed from Forester Chief to Forester III; Title Code 7250, changed from Forest Ranger Technician to Forest Ranger Technician I; Title Code 7251, changed from Forest Ranger Technician Senior to Forest Ranger Technician II; Title Code 7252, changed from Forest Ranger Technician Chief to Forest Ranger Technician III; Title Code 9175, changed from Public Accounts Auditor Trainee to Public Accounts Auditor-in-Training; Title Code 9885, changed from Investigator to Investigator I.
 - (c) The necessity and function of the proposed administrative regulation is as follows: This regulation is needed to amend Section 1(2) to provide probationary periods for the classifications listed in (7)(b) above and correct the job classification names listed in (7)(b) above.
 - (d) The benefits expected from the proposed amendment to this regulation are: Provides for new initial probationary periods for three (3) classifications listed in paragraph 7(b) above. It also amends the existing regulation to remove obsolete title codes, job classifications, and their corresponding initial probationary periods. This amendment further amends the existing regulation to change the job classification name for 30 positions. These amendments are necessary to meet the agency needs and allow for longer probationary periods for the enumerated title codes and corresponding job classifications in order to allow sufficient time for a probationary employee to complete all initial training that is required to perform the duties of the employee's specific position.
 - (e) The administrative regulation will be implemented as follows: The successful completion of the initial probationary periods will be required in order to obtain status in the enumerated job classifications.

KENTUCKY STATE BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

July 15, 1999

- (1) **201 KAR 18:010.** Work experience criteria for applicants.
- (2) The Kentucky State Board of Licensure for Professional Engineers and Land Surveyors 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 October 21, 1999, at 1:30 p.m., at the office of the board, 160 Democrat Drive, Frankfort, Kentucky.
- (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 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 October 21, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Larry Perkins, Executive Director, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, Phone: (502) 573-2680, FAX: (502) 573-6687.
- (b) On request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form by writing to Larry Perkins at the above address, or by calling (502) 573-2680 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of an administrative regulation relating to work experience criteria is KRS 322.040.
 - (b) The administrative regulation that the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors intends to promulgate will amend 201 KAR 18:010. It will establish work experience criteria for applicants seeking licensure.
 - (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 322.040 requires applicants to complete a requisite number of years in progressive work experience. This regulation establishes uniform criteria for applicants seeking licensure.
 - (d) The benefit expected from this administrative regulation is that the work experience is clarified for applicants.
 - (e) This administrative regulation will be implemented as follows: All applicants for licensure will comply with the regulation and the board will enforce the regulation.

July 15, 1999

- (1) **201 KAR 18:040. Fees.**
- (2) The Kentucky State Board of Licensure for Professional Engineers and Land Surveyors 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 October 21, 1999, at 1 p.m., at the office of the board, 160 Democrat Drive, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, 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 October 21, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Larry Perkins, Executive Director, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, Phone: (502) 573-2680, FAX: (502) 573-6687.
- (b) On request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form by writing to Larry Perkins at the above address, or by calling (502) 573-2680 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of an administrative regulation relating to work experience criteria is KRS 322.090, 322.100, and 322.160.
 - (b) The administrative regulation that the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors intends to promulgate will amend 201 KAR 18:010. It will establish fees for application, examination, licensure, renewal, and reciprocity.
 - (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To implement the fees authorized by KRS 322.090, 322.100, and 322.160.
 - (d) The benefit expected from this administrative regulation is to notify applicants and licensees of the fee structure.
 - (e) This administrative regulation will be implemented as follows: All applicants and licensees will comply with the regulation and the board will enforce the regulation.

April 14, 1999

- (1) **201 KAR 18:131. Disciplinary and grievance hearing procedures.**
- (2) The Kentucky State Board of Licensure for Professional Engineers and Land Surveyors 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 October 21, 1999, at 11 a.m., at the office of the board, 160 Democrat Drive, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, 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 October 21, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Larry Perkins, Executive Director, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, Phone: (502) 573-2680, FAX: (502) 573-6687.
- (b) On request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or

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

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

(b) Persons who wish to file this request may obtain a request form by writing to Larry Perkins at the above address, or by calling (502) 573-2680 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to disciplinary and grievance hearing procedures is KRS 322.180, 322.190, 322.200, 322.220, and 322.290.

(b) The administrative regulation that the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors intends to promulgate will amend 201 KAR 18:131. It will establish procedural guidelines for administrative hearings under KRS Chapter 322.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To implement disciplinary and grievance hearing procedures as authorized by KRS Chapter 322.

(d) The benefit expected from this administrative regulation is that the procedures for administrative hearings will be clarified and brought into conformity with KRS Chapter 13B.

(e) This administrative regulation will be implemented as follows: Licensees and applicants for licensure will be required to comply with the administrative regulations, and the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors will enforce the administrative regulation. This proposed amendment will affect all licensees and applicants for licensure and will be applied the same to all.

April 14, 1999

(1) **201 KAR 18:140.** Code of professional practice and conduct.

(2) The Kentucky State Board of Licensure for Professional Engineers and Land Surveyors 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 October 21, 1999, at 11:30 a.m., at the office of the board, 160 Democrat Drive, Frankfort, Kentucky.

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

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

2. A minimum of 5 persons, or the administrative body or association, 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 October 21, 1999, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Larry Perkins, Executive Director, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, Phone: (502) 573-2680, FAX: (502) 573-6687.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form by writing to Larry Perkins at the above address, or by calling (502) 573-2680 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to a code of professional practice and conduct is KRS 322.290.

(b) The administrative regulation that the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors intends to promulgate will amend 201 KAR 18:140. It will establish a code of professional code and practice which clarifies the responsibilities of professional engineers and land surveyors.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To implement the code of professional practice and conduct as mandated by KRS 322.290(11).

(d) The benefit expected from this administrative regulation is that the responsibilities of professional engineers and land surveyors will be clarified and more easily understood by licensees, applicants, and the general public.

(e) This administrative regulation will be implemented as follows: Professional engineers and land surveyors will be required to comply with the administrative regulations, and the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors will enforce the administrative regulation. The proposed amendments will affect all licensees and will be applied the same to all.

February 12, 1999

(1) **201 KAR 18:180.** Permit to practice for business entity.

(2) The Kentucky State Board of Licensure for Professional Engineers and Land Surveyors 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 October 21, 1999, at 12 noon, at the office of the board, 160 Democrat Drive, Frankfort, Kentucky.

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

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

2. A minimum of 5 persons, or the administrative body or association, 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 October 21, 1999, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Larry Perkins, Executive Director, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, Phone: (502) 573-2680, FAX: (502) 573-6687.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form by writing to Larry Perkins at the above address, or by calling (502)

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573-2680 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to permit to practice is KRS 322.060 and 322.290.

(b) The administrative regulation that the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors intends to promulgate will amend 201 KAR 18:180. It will establish requirements for permits to practice for business entities.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The regulation establishes procedures and fees for issuance of a permit to practice pursuant to KRS 322.060.

(d) The benefit expected from this administrative regulation is that it provides information necessary to receive a permit to practice.

(e) This administrative regulation will be implemented as follows: Business entities will be required to comply with this administrative regulation and the board will enforce the administrative regulation.

February 12, 1999

(1) **201 KAR 18:191.** Repeal of 201 KAR 18:190.

(2) The Kentucky State Board of Licensure for Professional Engineers and Land Surveyors 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 October 21, 1999, at 10 a.m., at the office of the board, 160 Democrat Drive, Frankfort, Kentucky.

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

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

2. A minimum of 5 persons, or the administrative body or association, 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 October 21, 1999, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Larry Perkins, Executive Director, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, Phone: (502) 573-2680, FAX: (502) 573-6687.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form by writing to Larry Perkins at the above address, or by calling (502) 573-2680 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to repeal of a regulation is KRS 322.290.

(b) The administrative regulation that the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors intends to promulgate will not amend an existing regulation. It will serve to repeal 201 KAR 18:190.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The board needs to repeal 201 KAR 18:190, so that it may promulgate a new regulation on continuing professional development.

(d) The benefit expected from this administrative regulation is that there will be much less confusion by repealing 201 KAR 18:190 and filing a new regulation, then there would be if 201 KAR 18:190 was amended.

(e) This administrative regulation will be implemented as follows: Once the existing administrative regulation is repealed, the repealing regulation is no longer necessary and will not require implementation.

February 12, 1999

(1) **201 KAR 18:192.** Continuing professional development.

(2) The Kentucky State Board of Licensure for Professional Engineers and Land Surveyors 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 October 21, 1999, at 10:30 a.m., at the office of the board, 160 Democrat Drive, Frankfort, Kentucky.

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

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

2. A minimum of 5 persons, or the administrative body or association, 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 October 21, 1999, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Larry Perkins, Executive Director, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, Phone: (502) 573-2680, FAX: (502) 573-6687.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form by writing to Larry Perkins at the above address, or by calling (502) 573-2680 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to continuing professional development is KRS 322.290.

(b) The administrative regulation that the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors intends to promulgate will not amend an existing regulation. It will clarify the statutory requirement of continuing professional development, explain how the reporting of hours will take place, and the procedure for audits.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To implement the continuing professional development program mandated by KRS 322.290 for land surveyors in Kentucky.

(d) The benefit expected from this administrative regulation is that clarification through rulemaking will create an open, uniform, and con-

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sistent approach to satisfying the mandate of KRS 322.290.

(e) This administrative regulation will be implemented as follows: Land surveyors will be required to comply with the administrative regulation, and the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors will enforce the administrative regulation. This proposed regulation will affect all land surveyors licensed by the board and will be applied the same to all.

July 15, 1999

(1) **201 KAR 18:220.** English proficiency criteria.

(2) The Kentucky State Board of Licensure for Professional Engineers and Land Surveyors 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 October 21, 1999, at 12:30 p.m., at the office of the board, 160 Democrat Drive, Frankfort, Kentucky.

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

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

2. A minimum of 5 persons, or the administrative body or association, 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 October 21, 1999, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Larry Perkins, Executive Director, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, Phone: (502) 573-2680, FAX: (502) 573-6687.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form by writing to Larry Perkins at the above address, or by calling (502) 573-2680 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to continuing professional development is KRS 322.070(3).

(b) The administrative regulation that the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors intends to promulgate will not amend an existing regulation. It will establish criteria to determine proficiency in written and spoken English.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To implement the mandate of KRS 322.070(3).

(d) The benefit expected from this administrative regulation is that it will establish a minimal level of proficiency in written and spoken English.

(e) This administrative regulation will be implemented as follows: All applicants whose primary language is not English will be required to comply with the administrative regulation, and the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors will enforce the administrative regulation. This proposed regulation will affect all applicants whose primary language is not English and will be applied the same to all.

KENTUCKY BOARD OF LICENSURE FOR MARRIAGE AND FAMILY THERAPISTS

September 15, 1999

(1) **201 KAR 32:080.** Inactive licensure status.

(2) The Kentucky Board of Licensure for Marriage and Family Therapists intends to promulgate the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 26, 1999 at 10 a.m., EST, at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky.

(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 October 26, 1999 the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to inactive licensure status is KRS 335.325(6).

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

(c) The necessity and function of the proposed administrative regulation is to set forth the conditions necessary to obtain an inactive license.

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

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

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September 15, 1999

- (1) **201 KAR 32:090.** Reinstatement of expired license.
- (2) The Kentucky Board of Licensure for Marriage and Family Therapists intends to promulgate the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 26, 1999 at 10 a.m., EST, at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky.
 - (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 October 26, 1999 the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should file their written request with the executive director at the following address: Ms. Nancy Black, Executive Director, Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Phone: (502) 564-3296, FAX: (502) 564-4818.
 - (b) On a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing;" or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by an administrative body.
 - (b) Persons who wish to file this request may obtain a request form from Nancy Black at the Division of Occupations and Professions at the address above.
- (7) Information relating to the proposed regulation.
 - (a) The statutory authority for the promulgation of an administrative regulation relating to reinstatement of an expired license is KRS 335.340(3).
 - (b) The administrative regulation the Board of Licensure for Marriage and Family Therapists intends to promulgate will set forth the requirements for reinstating an expired license.
 - (c) The necessity and function of the proposed administrative regulation is to set forth the conditions necessary to reinstate an expired license.
 - (d) The benefit expected from this administrative regulation is increased clarity of the regulations and statutes pertaining to the Board of Licensure for Marriage and Family Therapists.
 - (e) The regulation will be implemented by the Division of Occupations and Professions. The implementing body will merely adhere to the definitions as outlined in the regulation.

September 15, 1999

- (1) **201 KAR 32:100.** Reinstatement of revoked license.
- (2) The Kentucky Board of Licensure for Marriage and Family Therapists intends to promulgate the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 26, 1999 at 10 a.m., EST, at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky.
 - (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 October 26, 1999 the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should file their written request with the executive director at the following address: Ms. Nancy Black, Executive Director, Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Phone: (502) 564-3296, FAX: (502) 564-4818.
 - (b) On a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing;" or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by an administrative body.
 - (b) Persons who wish to file this request may obtain a request form from Nancy Black at the Division of Occupations and Professions at the address above.
- (7) Information relating to the proposed regulation.
 - (a) The statutory authority for the promulgation of an administrative regulation relating to reinstatement of an expired license is KRS 335.360.
 - (b) The administrative regulation the Board of Licensure for Marriage and Family Therapists intends to promulgate will set forth the requirements for reinstating a revoked license.
 - (c) The necessity and function of the proposed administrative regulation is to set forth the conditions necessary to reinstate a revoked license.
 - (d) The benefit expected from this administrative regulation is increased clarity of the regulations and statutes pertaining to the Board of Licensure for Marriage and Family Therapists.
 - (e) The regulation will be implemented by the Division of Occupations and Professions. The implementing body will merely adhere to the definitions as outlined in the regulation.

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

August 31, 1999

- (1) **301 KAR 2:225.** Dove, wood duck, teal and other migratory game bird hunting.
- (2) The Department of Fish and Wildlife Resources intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 21,

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1999 at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, 5 miles west of Frankfort on U.S. 60.

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

1. It is requested, in writing, by at least 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 October 21, 1998, the public hearing will be canceled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 150.025(1) and 150.360(1).

(b) The administrative regulation that the department intends to promulgate will amend 301 KAR 2:225 as follows: It will establish hunting dates and shooting hours for the 1999-2000 season for migratory game birds.

(c) The necessity and function of the proposed administrative regulation is to establish migratory game bird hunting seasons within U.S. Fish and Wildlife Service guidelines.

(d) The benefits expected from the administrative regulation are: Allowing controlled harvest of migratory game birds within sound conservation guidelines.

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

JUSTICE CABINET Department of Corrections

September 13, 1999

(1) **501 KAR 4:001**, Repeal of 501 KAR 4:010, 4:020, 4:030, 4:040, 4:050, 4:060, 4:070, 4:080, 4:090, 4:100, 4:110, 4:120, 4:130 and 4:140, Ninety-six (96) hour local confinement facilities.

(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 October 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 October 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, Phone: (502) 564-2024, FAX: (502) 564-6494.

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

1. "I agree to attend the public hearing."; or
2. "I 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 441.055.

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 4:001, as follows: For the purpose of repealing 501 KAR 4:010, 4:020, 4:030, 4:040, 4:050, 4:060, 4:070, 4:080, 4:090, 4:100, 4:110, 4:120, 4:130 and 4:140, as the Jail Standards Commission voted to do away with this classification of facilities. Other standards and regulations now apply to facilities currently in use.

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

1. KRS 196.035 and 441.055 authorizes the commissioner to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.

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

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

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

September 13, 1999

(1) **501 KAR 6:050**, Luther Luckett Correctional Complex.

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

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- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 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 October 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, Phone: (502) 564-2024, FAX: (502) 564-6494.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
 2. "I 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 6:050, as follows:
1. Duty Officer Responsibilities (LLCC 01-02-01) shall be amended to reflect changes of personnel titles and reporting procedure.
 2. Smoking: LLCC Facility (LLCC 01-13-01) shall be amended to reflected operational standards.
 3. Fiscal Management: Accounting Procedures (LLCC 02-01-02) shall be amended to reflect changes in state agency accounting programs.
 4. Fiscal Management: Agency Funds (LLCC 02-01-03) shall be amended to reflect changes in state agency accounting programs.
 5. Fiscal Management: Insurance (LLCC 02-01-04) shall be amended to clarify the physical plan certificate.
 6. Fiscal Management: Audits (LLCC 02-03-01) shall be amended to reflect changes in state agency accounting programs.
 7. Inmate Control of Personal Funds (LLCC 02-06-01) shall be established to relocate (LLCC 20-05-01) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers. No changes were made in the text.
 8. Storage and Deposition of Monies Received on Weekends, Holidays and between 4 p.m. and 8 p.m. Weekdays (LLCC 02-06-02) shall be established to relocate (LLCC 20-05-02) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers. No changes were made in the text.
 9. Canteen Purchase Durable Items (LLCC 02-05-05) shall be amended to clarify vendor orders and to relocate from (LLCC 20-05-05) so LLCC chapters coincide with the Department of Corrections chapter numbers.
 10. Offender Records (LLCC 08-01-01) shall be amended to clarify open records, access staff to records and LRC language requirements.
 11. Storage of Void Disciplinary Records (LLCC 08-04-01) shall be amended to clarify language.
 12. Psychological and Psychiatric Reports (LLCC 08-05-01) shall be amended to delete repetitive statute language.
 13. Special Management Inmates (LLCC 10-01-01) shall be amended to comply with the American Correctional Standards language and to relocate from (LLCC 12-01-01) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.
 14. Dining Room Guidelines (LLCC 11-01-01) shall be amended to clarify language and to relocate from (LLCC 13-01-01) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.
 15. Food Service Meals (LLCC 11-04-01) shall be amended to clarify language and to relocate from (LLCC 13-04-01) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.
 16. Medical Screening of Food Handlers (LLCC 11-05-02) shall be amended to clarify the Food Service Manager's responsibilities and to relocate from (LLCC 13-05-02) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.
 17. Food Services: Inspection and Sanitation (LLCC 11-06-01) shall be amended to comply with LRC language requirements and to relocate from (LLCC 13-06-01) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.
 18. Food Services: Purchasing and Farm Products (LLCC 11-07-01) shall be amended to comply with LRC language requirements and to relocate from (LLCC 13-07-01) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.
 19. OJT Food Service Training Placement (LLCC 11-08-01) shall be amended to comply with LRC language requirements and to relocate from (LLCC 13-08-01) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.
 20. Sanitation, Living Condition Standards and Clothing Issues (LLCC 12-01-01) shall be amended to comply with LRC language requirements and to relocate from (LLCC 14-01-01) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.
 21. Health Maintenance Services: Sick Call and Pill Call (LLCC 13-01-01) shall be amended to comply with LRC language requirements and to relocate from (LLCC 15-01-01) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.
 22. Medical Services Co-Pay (LLCC 13-01-02) shall be established to reflect the operational standards.
 23. Medication Receipt Storage, Dispensing, and Administration (LLCC 13-03-03) shall be amended in the interest of clarify and ease of reference and to relocate from (LLCC 15-03-03) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.
 24. Inmate Self-administration of Medication (LLCC 13-03-04) shall be amended to comply with LRC language requirements and to relocate from LLCC (15-03-04) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.
 25. Use of Psychotropic Medications (LLCC 13-03-05) shall be amended to clarify language and to relocate from (LLCC 15-03-05) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.
 26. Licensure and Training Standards (LLCC 13-05-02) shall be amended to comply with LRC language requirements and to relocate from (LLCC 15-05-02) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.
 27. Mental Health Services (LLCC 13-06-01) shall be amended to comply with LRC language requirements and to relocate from (LLCC 15-06-01) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.
 28. Specialized Health Services (LLCC 13-06-02) shall be amended to reflect operational standards and to relocate from (LLCC 15-06-02) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.
 29. Emergency Medical Dental and Mental Health Services (LLCC 13-06-03) shall be amended to reflect operational standards and to relocate from (LLCC 15-06-03) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.
 30. First Aid and CPR Training Program (LLCC 13-06-04) shall be amended to comply with the American Correctional Association's Standards and to relocate from (LLCC 15-06-04) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.
 31. Health Records (LLCC 13-07-01) shall be amended to comply with the American Correctional Associations Standards and to relocate

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from (LLCC 15-07-01) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.

32. Special Diets (LLCC 13-08-01) shall be amended to comply with LRC language requirements and to relocate from (LLCC 15-08-01) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.

33. Inmate Medical Screenings and Health Evaluations (LLCC 13-10-01) shall be amended to reflect operational standards and to relocate from (LLCC 15-10-01) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.

34. Informed Consent (LLCC 13-14-01) shall be amended to comply with LRC language requirements and to relocate from (LLCC 15-14-01) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.

35. Medical Restraints (LLCC 13-14-01) shall be amended to reflect operational standards and to relocate from (LLCC 15-15-01) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.

36. Health Education and Special Health Programs (LLCC 13-16-01) shall be amended to comply with American Correctional Association Standards and to relocate from (LLCC 15-16-01) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.

37. Serious and Infectious Diseases (LLCC 13-17-01) shall be amended to clarify language and to relocate from (LLCC 15-17-01) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.

38. Inmate Rights and Responsibilities (LLCC 14-01-01) shall be amended to reflect operational standards and to relocate from (LLCC 16-01-01) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.

39. Inmate Legal Services (LLCC 14-03-01) shall be amended to comply with LRC language requirements and to relocate from (LLCC 16-03-01) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.

40. Institutional Inspections (LLCC 14-05-01) shall be deleted to avoid repetition of statute language and CPP 9.10.

41. Rules and Regulations of the Unit (LLCC 15-01-04) shall be amended to comply with LRC language requirements and to relocate from (LLCC 11-09-01) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.

42. Inmate Dress and Access (LLCC 15-01-05) shall be amended to comply with LRC language requirements and to relocate from (LLCC 11-13-01) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.

43. Searches and Control of Excess Property (LLCC 15-01-08) shall be amended to clarify language and moved from (LLCC 11-19-01) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.

44. Pharmacy (LLCC 15-03-01) shall be deleted in the interest of clarity and ease of reference. It is combined into LLCC 13-03-03.

45. Pharmacy Personnel (LLCC 15-03-02) shall be deleted in the interest of clarity and ease of reference. It is combined into LLCC 13-05-02.

46. Distribution, Procurement and Control (LLCC 15-03-03) shall be deleted in the interest of clarity and ease of reference. It is combined into LLCC 13-03-03.

47. Suicide Intervention and Prevention Training (LLCC 15-06-05) shall be deleted to comply with American Correctional Association Standards.

48. Inmate Correspondence (LLCC 16-01-01) shall be amended to comply with LRC language requirements and to relocate from (LLCC 18-01-01) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.

49. Inmate Privileged or Legal Mail (LLCC 16-01-02) shall be amended to clarify language and to relocate from (LLCC 18-01-02) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.

50. Inmate Packages (LLCC 16-01-03) shall be amended to comply with LRC language requirements and to relocate from (LLCC 18-01-03) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.

51. Inmate Visiting (LLCC 16-02-01) shall be amended to comply with LRC language requirements and to relocate from (LLCC 18-02-01) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.

52. Modification of Visitation Privileges (LLCC 16-02-03) shall be amended to comply with LRC language requirements and to relocate from (LLCC 18-02-03) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.

53. Meritorious Visitation Program (LLCC 16-02-04) shall be amended to comply with LRC language requirements and to relocate from (LLCC 18-02-04) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.

54. Entry and Identification of Visitors for Inmate Visitation (LLCC 16-03-01) shall be amended to reflect operational procedures and to relocate from (LLCC 18-03-01) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.

55. Parole Hearings: Media and Visitors (LLCC 16-03-04) shall be amended to comply with LRC language requirements and to relocate from (LLCC 18-03-04) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.

56. Personal Property Control (LLCC 17-04-01) shall be amended to reflect operational procedures and to relocate from (LLCC 20-01-01) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.

57. Theft of Inmate Personal Property (LLCC 17-04-02) shall be amended to reflect operational procedures and to relocate from (LLCC 20-05-03) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.

58. Procedure for Sending Appliances to Outside Dealers for Repair (LLCC 17-05-01) shall be amended to comply with LRC language requirements and to relocate from (LLCC 20-06-01) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.

59. On The Job Training and Job Assignments (LLCC 19-01-01) shall be amended to clarify definitions, LRC language requirements and to relocate from (LLCC 22-01-01) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.

60. Education Programs (LLCC 20-01-01) shall be established to comply with a new program Kentucky Community and Technical College System (KCTCS).

61. Inmate Canteen (LLCC 20-04-02) shall be deleted due to repeating the language of the statute and Department of Corrections Policy and Procedure CPP 2.11.

62. Religious Services (LLCC 23-01-01) shall be amended to comply with the American Correctional Association Standards, LRC language requirements, inclusion of obligatory prayer and to relocate from (LLCC 26-01-01) so LLCC chapter numbers coincide with the Department of Corrections chapter numbers.

63. Prayer (LLCC 26-01-02) shall be deleted as inclusion of obligatory prayer is included in LLCC 23-01-01.

(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 Luther Luckett Correctional Complex to comply with KRS Chapter 13A and to reflect current operating procedures.

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

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

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September 14, 1999

(1) **501 KAR 6:130**, Western Kentucky Correctional Complex.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 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 October 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, Phone: (502) 564-2024, FAX: (502) 564-6494.

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

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

2. "I 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 6:130, as follows:

1. Public Information and Media Communication (WKCC 01-02-01) shall be amended to make changes to reflect reference to Corrections Policy and Procedures and also notes the procedures development specialist and the fiscal officer as back-up for media communications.

2. Purchasing Procedures (WKCC 02-00-06) shall be amended to meet requirements of the American Correctional Association (ACA) Standard and to make minor changes to include changing reference from fiscal officer to fiscal manager and also the deletion of Attachment II.

3. Inmate Funds (WKCC 02-01-01) shall be amended to include the "Inmate Money Transfer Authorization Form" and minor changes to meet requirements of the ACA Standards.

4. Inmate Canteen (WKCC 02-01-02) shall be amended to change inmate canteen account balance from \$45 to \$60, reference from fiscal officer to fiscal manager and to meet ACA Standards requirements.

5. Travel Reimbursement for Official Business and Attendance at Professional Meetings (WKCC 04-01-01) shall be amended to include that staff shall complete the "Request for Travel" form.

6. Administrative Process for Inmate Court Orders (WKCC 06-00-02) shall be amended for minor changes in the policy and the deletion of old Attachment I and to include the new Attachment I.

7. Drug Abuse and Alcohol Testing (WKCC 09-00-01) shall be deleted as this information is delineated in CPP 15.8.

8. Inmate Clothing (WKCC 12-01-01) shall be amended to make only the warden or his designee able to approve questionable items or exception to authorized inmate clothing and to also note that state-issued linens shall be exchanged minimally on a monthly basis.

9. Special Health Programs (WKCC 13-00-01) shall be amended to change the reference made to CPP 13.5 which has been deleted, to reference CPP 13.10 "High-Risk Behavior", and other minor changes.

10. Use of Pharmaceutical Products (WKCC 13-01-01) shall be amended to include reference to KRS 218A.010(4) in regard to "Controlled Substance".

11. Health Care Services (WKCC 13-02-01) shall be amended for minor changes throughout the policy and references made to Corrections Policy and Procedures.

12. Inmate Grievance Procedure (WKCC 14-06-01) shall be deleted as this information is delineated in CPP 14.6.

13. Hair and Grooming Standards (WKCC 15-01-01) shall be amended for minor changes and to include canteen privileges in Section C. "Security Practices".

14. Visiting Policy and Procedures (WKCC 16-01-01) shall be amended to reflect changes throughout the policy to correspond with Corrections Policy and Procedure 16.1.

15. Inmate Correspondence (WKCC 16-02-01) shall be amended to include the reference made to CPP 16.2 on "Privileged Mail" and minor grammatical changes.

16. Inmate Packages (WKCC 16-04-01) shall be amended to reflect changes throughout the policy and reference made to refer to Corrections Policy and Procedure 16.4

17. Inmate Personal Property (WKCC 17-01-01) shall be established to comply with the Third Edition American Correctional Standards (ACA).

18. Education Program (WKCC 20-01-01) shall be amended to change references to the Workforce Cabinet which is now the Kentucky Community and Technical College System (KCTCS).

19. Inmate Organizations (WKCC 22-00-02) shall be amended to change name of policy, minor grammatical changes, the addition of new Attachments I and II, and the deletion of Attachment III.

20. Religious Services (WKCC 23-00-01) shall be amended for minor changes throughout the policy, with noted changes to "definitions", and Section G. "Deathbed Visits and Funeral Trips", and the addition of a new Attachment II "Funeral Trip or Deathbed Request" form.

21. Social Services (WKCC 24-00-01) is a new policy which prohibits discrimination based on disability in providing services, programs and activities, outlines the service available and sets forth the duties and responsibilities of staff.

22. Inmate Release Process (WKCC 25-02-01) shall be amended to add changes to "Notification of Persons of Inmate Release and Property Controls".

(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 Western Kentucky Correctional Complex to comply with KRS Chapter 13A and to reflect current operating procedures.

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(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.

September 13, 1999

(1) **501 KAR 9:001**, Repeal of 501 KAR 9:010, 9:025, 9:030, 9:040, 9:050, 9:060, 9:070, 9:080, 9:090, 9:100, 9:110, 9:120, 9:130, 9:140 and 9:150, Juvenile holding facilities.

(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 October 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 October 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, Phone (502) 564-2024, FAX: (502) 564-6494.

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

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

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 91, as follows: For the purpose of repealing 501 KAR 9:010, 9:025, 9:030, 9:040, 9:050, 9:060, 9:070, 9:080, 9:090, 9:100, 9:110, 9:120, 9:130, 9:140 and 9:150, as the Department of Corrections no longer has authority to govern the management of juvenile facilities and to permit the Department of Juvenile Justice to promulgate its own regulations and assume responsibility for these facilities.

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

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

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

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

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

PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance

September 3, 1999

(1) **806 KAR 17:240**, Health insurance data reporting.

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

(3) A public hearing to receive written and oral comments on the proposed administrative regulation has been scheduled for October 21, 1999, at 11 a.m. (ET), at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to October 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: Sharron S. Burton, Kentucky Department of Insurance, 215 West Main Street, PO Box 517, Frankfort, Kentucky 40602, Phone: (502) 564-6032, FAX: (502) 564-1456.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of this administrative regulation is KRS 304.17A-330.

(b) The administrative regulation that the department intends to promulgate will not amend an existing regulation. It will establish the guidelines and format for reporting to the commissioner the information required pursuant to KRS 304.17A-330.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 304.17A-330 authorizes the commissioner to prescribe the guidelines and format for insurers and self-insured employer-organized associations to report their insurance experience in

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Kentucky for the preceding calendar year. This administrative regulation is necessary in order to standardize the reports required pursuant to KRS 304.17A-330.

(d) The benefits expected from the administrative regulation are as follows: By prescribing the reporting format, the reports required pursuant to KRS 304.17A-330 will be uniform and more manageable for the department.

(e) The administrative regulation will be implemented as follows: All insurers that write health insurance in Kentucky and all employer-organized associations that self-insure will be required to comply with the guidelines and format prescribed by this administrative regulation to report their insurance experience in Kentucky as required by KRS 304.17A-330.

August 30, 1999

(1) **806 KAR 38:100.** Risk-based capital for health maintenance organizations.

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

(3) A public hearing to receive written and oral comments on the proposed administrative regulation has been scheduled for October 21, 1999, at 10 a.m. (ET), at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to October 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: Sharron S. Burton, Kentucky Department of Insurance, 215 West Main Street, PO Box 517, Frankfort, Kentucky 40602. Phone: (502) 564-6032. FAX: (502) 564-1456.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of this administrative regulation is KRS 304.38-150.

(b) The administrative regulation that the department intends to promulgate will not amend an existing regulation. It will require health maintenance organizations to report its risk-based capital levels to the Commissioner of Insurance. In addition, this administrative regulation will define certain risk-based capital action level events and establish requirements for a health maintenance organization that meets the criteria for an action level event. Lastly, this administrative regulation establishes the administrative action required by the commissioner in the event that a health maintenance organization meets the criteria for any particular action level event.

(c) The necessity and function of the proposed administrative regulation is as follows: In order to determine the financial strength of a health maintenance organization, this administrative regulation is necessary in that it establishes risk-based capital requirements exclusively for health maintenance organizations. Currently, life and health and property and casualty carriers are subject to risk-based capital requirements. Pursuant to the capital and surplus section of the accreditation manual, states accredited by the National Association of Insurance Commissioners are required to implement risk-based capital or other similar provisions. Since Kentucky is a state that is accredited by the NAIC, it is necessary to implement risk-based capital requirements for health maintenance organizations.

(d) The benefits expected from the administrative regulation are as follows: The risk-based capital report required by this administrative regulation for each health maintenance organization will assist the department in evaluating the financial strength of a health maintenance organization and identifying a health maintenance organization that may be in financial difficulties. In addition, this administrative regulation establishes uniform guidelines for administrative action in the event that a health maintenance organization meets the criteria for a risk-based capital action level event.

(e) The administrative regulation will be implemented as follows: Each health maintenance organization will be required to prepare and submit to the commissioner a report of its risk-based capital levels. The report will be required at least on an annual basis and will cover the risk-based capital levels as of the end of the calendar year just ended. The commissioner or his designee will review the reports submitted pursuant to this administrative regulation to determine if the risk-based capital levels of the health maintenance organization are appropriate or if administrative action regarding the risk-based capital levels is necessary.

August 30, 1999

(1) **806 KAR 39:061.** Repeal of 806 KAR 39:060.

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

(3) A public hearing to receive written and oral comments on the proposed administrative regulation has been scheduled for October 21, 1999, at 2 p.m. (ET), at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to October 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: Sharron S. Burton, Kentucky Department of Insurance, 215 West Main Street, PO Box 517, Frankfort, Kentucky 40602. Phone: (502) 564-6032. FAX: (502) 564-1456.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of this administrative regulation is KRS 304.39-300.

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(b) The administrative regulation that the department intends to promulgate will not amend an existing regulation. It will repeal 806 KAR 39:060, Stickers and emblems.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 304.39-300 permits the commissioner to establish rules to provide effective administration of KRS Chapter 304, Subtitle 39 which are consistent with Subtitle 39. Since the effective date of 806 KAR 39:060 in 1982, the statute on which that regulation was based, KRS 304.39-085, has been amended to eliminate the affixation of stickers or emblems to a motor vehicle to show proof of insurance. For this reason, 806 KAR 39:060 is no longer necessary since that administrative regulation prescribes the form, content, and location in which the sticker or emblem shall be affixed.

(d) The benefits expected from the administrative regulation are as follows: The repeal of 806 KAR 39:060 will delete reference to stickers or emblems as proof of motor vehicle insurance from the Kentucky insurance administrative regulations. The repeal of 806 KAR 39:060 will avoid confusion over whether or not stickers or emblems are still required in this state to show proof of motor vehicle insurance.

(e) The administrative regulation will be implemented as follows: No active implementation by the department will be necessary. The repeal of 806 KAR 39:060 will clarify that stickers or emblems affixed to motor vehicles will no longer be required in order to show proof of motor vehicle insurance in the state of Kentucky.

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

September 15, 1999

(1) **902 KAR 55:020.** Schedule II substances.

(2) Cabinet for Health Services, Department for Public Health 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 October 29, 1999 at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to October 29, 1999, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 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, FAX (502) 564-7573.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Public Health, Health Services 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 902 KAR 55:020 is KRS 194A.030, 194A.050, 211.090, 218A.020, 218A.060, 218A.250.

(b) The administrative regulation that the Department for Public Health intends to promulgate will amend 902 KAR 5:020 to conform to recently amended federal regulations.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: KRS 218A.020 authorizes the Cabinet for Health Services to add substances to or delete or reschedule substances enumerated in KRS Chapter 218A. After considering the criteria set forth in KRS 218A.020 and 218A.060, the Cabinet for Health Services designates the substances set forth in this administrative regulation as Schedule II controlled substances.

(d) The benefits expected from administrative regulation are: Conformity with federal regulation.

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

September 15, 1999

(1) **902 KAR 55:025.** Schedule III substances.

(2) The Cabinet for Health Services, Department for Public Health 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 9 a.m., October 29, 1999, in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to October 29, 1999, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 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, FAX (502) 564-7573.

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

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

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

(b) Persons who wish to file this request may obtain a request form by writing the Administrative Regulation Coordinator, Commissioner's Office, Department for Public Health, 275 E. 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 902 KAR 55:025 is KRS 194A.030, 194A.050, 211.090, 218A.020, 218A.080 and 218A.250.

(b) The administrative regulation that the Department for Public Health intends to promulgate will amend 902 KAR 55:025 to conform with recently amended federal regulations.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: KRS 218A.020 authorizes the Cabinet for Health Services to add substances to or delete or reschedule substances enumerated in KRS Chapter 218A. After considering the criteria set forth in KRS 218A.020 and 218A.080, the Cabinet for Health Services designates the substances set forth in this administrative regulation as Schedule III controlled substances.

(d) The benefits expected from administrative regulation are: conformity with federal regulation and a decrease in recordkeeping and paperwork for one of the substances.

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

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

September 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 October 29, 1999 at 9 a.m., in the Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky, 40621.

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

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or 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 October 29, 1999, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Judy Trigg, Cabinet for Families and Children, Cabinet Regulation Coordinator, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, Phone: (502) 564-7900, FAX: (502) 564-7573.

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

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

(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. Amending 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, JULY 15, 1999

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

STATEMENT OF EMERGENCY
301 KAR 2:225E

This emergency administrative regulation establishes season dates, limits, shooting hours and other requirements for hunting dove, woodcock, snipe, and other migratory game birds. Migratory bird hunting season frameworks are established annually by the U.S. Fish and Wildlife Service. Under federal law, states that wish to establish migratory bird hunting seasons must do so within the federal frameworks. Development of the federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six (6) weeks before the opening dates of the hunting season in Kentucky. An ordinary administrative regulation will not suffice because the federal framework is not established until days before the start of the migratory bird season. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The notice of intent was filed with the Regulations Compiler on August 31, 1999.

PAUL E. PATTON, Governor
C. THOMAS BENNETT, Commissioner

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 2:225E. Dove, wood duck, teal, and other migratory game bird hunting.

RELATES TO: KRS 150.025(1), 150.320(1), 150.330, 150.340, 150.360, 150.603(1), 150.620

STATUTORY AUTHORITY: KRS 150.025(1), 150.360(1)

EFFECTIVE: August 31, 1999

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to establish open seasons for the taking of wildlife. KRS 150.360(1) authorizes the department to promulgate an administrative regulation restricting the methods for the taking of wildlife. This administrative regulation allows the taking of migratory game birds within reasonable limits based upon an adequate supply, and within the frameworks established by the U.S. Fish and Wildlife Service.

Section 1. Definitions. (1) "Migratory game bird" means mourning dove, wood duck, teal, common moorhen, woodcock, common snipe, purple gallinule, Virginia rail, or sora rail.

(2) "Teal" means green-winged teal, blue-winged teal, or cinnamon teal.

Section 2. Season Dates for Gun Archery and Falconry. (1) A person shall not hunt a migratory game bird except on a date established in this administrative regulation.

(2) A person may hunt:

(a) Dove beginning on:

1. September 1 for ~~fifty-four (54)~~ [thirty-(30)] consecutive days;

2. [The first Saturday in October for twenty-four (24) consecutive days; and

3.] Thanksgiving Day for six (6) consecutive days.

(b) Woodcock beginning on the ~~fourth~~ [third] Saturday in October for forty-five (45) consecutive days.

(c) Common snipe: beginning on:

1. The third Wednesday in September for forty-seven (47) consecutive days; and

2. Thanksgiving Day for sixty (60) consecutive days.

(d) Wood duck and teal beginning on the third Wednesday in September for five (5) consecutive days.

(e) Virginia and sora rails, common moorhen and purple gallinule: beginning on September 1 for seventy (70) consecutive days.

Section 3. Bag and Possession Limits. A person shall not exceed the following limits:

(1) Doves: daily limit, fifteen (15); possession limit, thirty (30).

(2) Woodcock: daily limit, three (3); possession limit, six (6).

(3) Common snipe: daily limit, eight (8); possession limit, sixteen (16).

(4) Virginia rails and sora rails, singly or in the aggregate: daily and possession limit, twenty-five (25).

(5) Common moorhen and purple gallinules singly or in the aggregate: daily limit, fifteen (15); possession limit, thirty (30).

(6) Wood duck and teal:

(a) Daily limit, four (4), which shall not include more than two (2) wood ducks;

(b) Possession limit, eight (8), which shall not include more than four (4) wood ducks.

(7) A person shall leave the head or one (1) fully feathered wing attached to a migratory game bird, except a dove, being held in the field or transported.

Section 4. Shooting Hours. A person shall not take a migratory game bird except during a time established in this section.

(1) Doves:

(a) From 11 a.m. until sunset during the September and October portions of the season; and

(b) From one-half (1/2) hour before sunrise to sunset during the November and December portions of the season.

(2) Other species listed in this administrative regulation, from one-half (1/2) hour before sunrise to sunset.

Section 5. Shot Requirements. A person hunting wood duck or teal shall not use or possess a shotgun shell:

(1) Longer than three and one-half (3 1/2) inches; or

(2) Containing:

(a) Lead shot;

(b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or

(c) Shot larger than size "T".

Section 6. Exceptions to Statewide Migratory Game Bird Seasons on Specified Wildlife Management Areas. (1) On a wildlife management area owned or controlled by the department:

(a) Except as provided in this section, all provisions of this administrative regulation shall apply.

(b) A person shall not:

1. Hunt wood duck or teal on an area closed to waterfowl hunting by 301 KAR 2:222;

2. Hunt in an area marked by a sign as closed to hunting;

3. Enter an area marked by a sign as closed to the public.

(2) A person hunting dove on the Ballard, Barlow Bottoms, Sloughs, Ohio River Islands, Duck Island, Kaler Bottoms, Kentucky River or Westvaco Wildlife Management Area shall only possess or use United States Fish and Wildlife Service approved nontoxic [not use or possess a shotgun shell containing lead] shot.

(3) Ballard Wildlife Management Area.

(a) A person shall not hunt doves, rails, moorhens or gallinules after October 13, except as provided in 301 KAR 2:221.

(b) A person shall not hunt snipe after October 13.

(c) The body of water known as Swan Lake and all other areas designated by signs are closed to all migratory bird hunting.

(d) A person shall not hunt woodcock on any portion of the Ballard Wildlife Management Area. [A person shall not hunt a migratory game bird after October 13, except as provided in 301 KAR 2:221.]

(4) Central Kentucky Wildlife Management Area.

(a) A person shall not hunt doves [a migratory game bird] after October 13, except as provided in 301 KAR 2:221.

(b) A person shall not hunt snipe after October 13, except as provided in 301 KAR 2:221.

(c) No woodcock hunting is permitted on the Central Kentucky Wildlife Management Area.

(d) A dove hunter shall not carry a firearm except during shooting hours.

(5) Grayson Lake Wildlife Management Area.

(a) A migratory game bird hunter shall check in and out daily at a designated check station.

(b) A person shall not hunt:

1. Within the no wake zone at the dam site marina;

2. On Deer Creek Fork; or

3. On or from the shores of Camp Webb or the state park.

(6) Land Between the Lakes. A person shall not hunt dove, woodcock or common snipe between the last Saturday in September and November 30.

(7) West Kentucky Wildlife Management Area. A person shall not hunt:

(a) Dove after September 30, except on tracts 2, 3, 6, and 7.

(b) Woodcock and snipe except on tracts 2, 3, 6, and 7.

(c) On a tract designated by a number followed by the letter "A".

(8) Yatesville Lake Wildlife Management Area. A migratory game bird hunter shall check in and out daily.

(9) A person shall not hunt a migratory game bird on the main block of Robinson Forest.

Section 8. Dove Hunter Guidelines on Wildlife Management Areas. (1) The department may establish hunter density guidelines for a dove hunting field on department property after considering the following:

(a) Terrain of the field;

(b) Topography of the field; and

(c) Providing for approximately forty (40) yards between hunters.

(2) A strategically located sign shall be posted in a field advising a hunter:

(a) Of the recommended hunter density; and

(b) That hunting in excess of the desired hunter density limit shall be at the hunter's own risk.

(3) A hunter behaving in an unsafe or uncooperative manner shall be required to leave the premises.

C. THOMAS BENNETT, Commissioner

TOM BAKER, Chairman

ANN R. LATTA, Secretary

DOUGLAS S. PORTER, Assistant Attorney General

APPROVED BY AGENCY: June 4, 1999

FILED WITH LRC: August 31, 1999 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Jennifer Fetter Fields

(1) Type and number of entities affected: An estimated 90,000 persons will participate in the migratory bird hunting proposed by this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. Direct costs involve the purchase of a state hunting license, a federal migratory bird hunting and conservation stamp and a state waterfowl stamp if hunting waterfowl or a migratory bird permit if hunting nonwaterfowl migratory birds. Indirect costs would be determined by the hunter, depending on his level of participation. U.S. Fish and Wildlife Service approved nontoxic shot is required for all waterfowl hunting. Approved nontoxic shot costs approximately \$2 to \$7 more per box of 25 shells, dependent on shot material selected, than does lead shot.

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

cost of doing business.

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

1. First year following implementation: This administrative regulation imposes no reporting or paperwork requirements.

2. Second and subsequent years: Same as for first year.

(3) Effects on the promulgating administrative body: Requires time and effort in developing, publishing reporting on, and enforcing the proposed administrative regulation.

(a) Direct and indirect costs or savings: Primary costs are associated with enforcement of the administrative regulation.

1. First year: This administrative regulation will not impose additional costs or create additional savings.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional reporting or paper work requirements.

(4) Assessment of anticipated effect on state and local revenues: A positive effect could be expected on state revenues since hunters are required to purchase a hunting license and pay other state taxes on items purchased in connection with hunting and the hunting trip. The average migratory bird hunter in Kentucky will expend about \$228 a season on food, lodging, transportation and equipment. This will add about \$20,520,000 to the income of local businesses.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation. Revenue from the sale of hunting and fishing licenses and will be used for implementation and enforcement of this administrative regulation.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods, reasons why alternatives were rejected: Reasons why alternatives were rejected: The U.S. Fish and Wildlife Service requires that any harvest of migratory game birds be through a regulated hunting season that is held within a specific time frame. Therefore, the only available alternative to regulated hunting is to close the season which was rejected since migratory birds are a renewable resource and involved species are at population levels that permit regulated hunting for the benefit of Kentucky.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is intended to conserve populations of migratory birds, a positive impact on environmental welfare. It also allows utilization of these populations as a recreational resource, having a positive effect on the health and well-being of those who participate.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Reduction in the potential recreational opportunity and the loss of conservation of migratory birds.

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

(a) Necessity of proposed regulation if in conflict: Not applicable.

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied? No. (Explain why tiering was or was not applied.) Only one class of citizen, the hunter, is impacted by this administrative regulation. Disregarding physiography, distribution of the species sought by hunters is assumed to be uniform, thus negating the need to recognize tiers. Tiering according to physiography is impractical and unnecessary as a means of species protection or provision of hunter opportunity.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or administrative regulation constituting the federal mandate. 50 CFR Part 20.

2. State compliance standards. State seasons and bag limits are within federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Woodcock - season frameworks between the Saturday nearest September 22, and January 31, with a 45 day maximum season. Bag limits may be a maximum of 3 per day with 6 in possession.

Wood duck and teal - season frameworks allow 5 days in September. Bag limits may total 4 per day with not more than 2 of these being wood ducks. Possession limit is 8 of which not more than 4 may be wood ducks.

Dove - season frameworks allow either 70 or 60 days between September 1 and January 15. Bag limits may be either 12 per day with 24 in possession for the 70 day season or 15 per day with 30 in possession for the 60 day season.

Common snipe - season frameworks allow a 107 day season between

September 1 and February 28. Bag and possession limit is 8 and 16, respectively.

Virginia and sora rails - the season may not exceed 70 days with a season framework between September 1 and January 20. Bag and possession limit of 25 per day, singly or in aggregate.

Common moorhen and purple gallinule - the season may not exceed 70 days with a season framework between September 1 and January 20. Daily bag limit of 15, singly or in aggregate. Possession limit is twice the daily bag limit.

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

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

**STATEMENT OF EMERGENCY
902 KAR 55:020E**

The federal regulations that classified drugs and substances into the controlled substance schedules have been amended. The comparable Kentucky administrative regulations are no longer parallel. This is creating confusion and excessive recordkeeping among physicians, pharmacists and drug distributors. An ordinary administrative regulation will not suffice because the federal regulation became effective on July 2, 1999. The cabinet was not notified in advance so that an ordinary administrative regulation could be promulgated. The comparable Kentucky administrative regulation is no longer parallel to the federal regulation and must be amended in order to allow physicians, pharmacists and drug distributors to comply with federal law. 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 20, 1999.

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

**CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Adult and Child Health**

902 KAR 55:020E. Schedule II substances.

RELATES TO: KRS 218A.010 to 218A.030, 218A.060 to 218A.070, 21 CFR 1308.12

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, [194.050,] 211.090, 218A.020, 218A.060, 218A.250

EFFECTIVE: August 20, 1999

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.020 authorizes the Cabinet for Health Services [Human-Resources] to add substances to or delete or reschedule substances enumerated in KRS Chapter 218A. After considering the criteria set forth in KRS 218A.020

and 218A.060, the Cabinet for Health Services [human-Resources] designates the substances set forth in this administrative regulation as Schedule II controlled substances.

Section 1. Depressants. Except as provided in subsection (5) of this section, the Cabinet for Health Services [Human-Resources] designates as Schedule II controlled substances in addition to those specified by KRS 218A.070 any material, compound, mixture, or preparation which contains any quantity of the following substances:

- (1) Amobarbital;
- (2) Glutethimide;
- (3) Pentobarbital; and
- (4) Secobarbital.

(5) Any suppository dosage form containing amobarbital, secobarbital and pentobarbital or any of their salts which has been approved by the United States Food and Drug Administration for marketing only as a suppository shall be in "Schedule III."

Section 2. Immediate Precursors. The Cabinet for Health Services [Human-Resources] designates as Schedule II controlled substances, in addition to those specified by KRS 218A.070 any material, compound, mixture, or preparation which contains any quantity of the following substances:

- (1) 1-Phenylcyclohexylamine, immediate precursor to Phencyclidine;
- (2) Phenylacetone (some trade or other names include: phenyl-2-propanone, P2P, benzyl methyl ketone, and methyl benzyl ketone, immediate precursors to amphetamine and methamphetamine);
- (3) 1-Piperidinocyclohexanecarbonitrile, immediate precursor to Phencyclidine.

Section 3. Hallucinogenic Substances. The Cabinet for Health Services [Human-Resources] designates as Schedule II controlled substances, in addition to those specified by KRS 218A.070 and material, compound, mixture, or preparation which contains any quantity of the following substances:

- (1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product. (Some other names for dronabinol: (6aR-trans)-6a, 7, 8, 10a-tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo[b, d]-pyran-1-ol or (-) delta-9-(trans)-tetrahydrocannabinol.)
- (2) Nabilone. (Another name for nabilone: (plus or minus) - trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one).

Section 4. Opium and Derivatives. The Cabinet for Health Services [Human-Resources] designates as Schedule II controlled substances, in addition to those specified by KRS 218A.070, any of the following opium and opiates, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone, and their respective salts, but including the following:

- (1) Raw opium;
- (2) Opium extracts;
- (3) Opium fluid;
- (4) Powdered opium;
- (5) Granulated opium;
- (6) Tincture of opium;
- (7) Codeine;
- (8) Ethylmorphine;
- (9) Etorphine hydrochloride;
- (10) Hydrocodone;
- (11) Hydromorphone;
- (12) Metopon;
- (13) Morphine;
- (14) Oxycodone;
- (15) Oxymorphone;
- (16) Thebaine;

Section 5. Opiates. The Cabinet for Health Services [Human-Resources] designates as Schedule II controlled substances, in addition to those specified by KRS 218A.070, any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters,

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and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

- (1) Alfentanil;
- (2) Bulk dextropropoxyphene (nondosage forms);
- (3) Carfentanil;
- (4) Levo-alphaacetylmethadol (LAAM); [and]
- (5) Remifentanil; and
- (6) Sufentanil.

JOHN H. MORSE, Secretary
RICE C. LEACH, M.D., Commissioner
JOHN H. WALKER, Attorney

APPROVED BY AGENCY: August 9, 1999
FILED WITH LRC: August 20, 1999 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Agency contact: John H. Walker

(1) Type and number of entities affected: Approximately 14,000 practitioners, pharmacies and drug distributors who possess, dispense or distribute controlled substances listed in schedule II.

(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: Unknown

(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: Unknown

(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 amendment will decrease the paperwork required of practitioners, pharmacies and drug distributors.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no anticipated costs or savings to the administrative agency because the amendment merely adds a substance to and deletes a substance from the list of schedule II controlled substances.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There is no reporting or paperwork required of the administrative body by these amendments.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The administration of drug regulations is financed by the general fund.

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

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

(b) Kentucky: Unknown

(7) Assessment of alternative methods: reasons why alternatives were rejected: Alternatives were rejected because nonconformity with federal regulations would result. The nonconformity requires additional paperwork on the medical community and drug distributors.

(8) Assessment of expected benefits: Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The benefit is conformity with federal regulations and decreased paperwork.

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

(b) If detrimental effect would result, explain detrimental effect: If the administrative regulation is not implemented, nonconformity with federal regulations will perpetuate the confusion and excessive record-keeping among affected individuals.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute,

regulation, or policy conflicts, overlaps or duplicates these 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: None

(11) TIERING: Is tiering applied? No. (Explain why tiering was or was not used) Tiering was not applied because the provisions apply to all persons who prescribe, administer or dispense schedule II controlled substances.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal laws and regulations are 84 Stat. 1242, 21 USC 801 and 21 CFR 1308.12.

2. State compliance standards. The state compliance standards are KRS 218A.020 and 218A.060.

3. Minimum or uniform standards contained in the federal mandate. The criteria for substances in schedule II are set forth in 21 USC 812(b)(2).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. These amendments will be identical to federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards are not imposed by the amendments.

STATEMENT OF EMERGENCY 902 KAR 55:025E

The federal regulations that classified drugs and substances into the controlled substance schedules have been amended. The comparable Kentucky administrative regulations are no longer parallel. This is creating confusion and excessive recordkeeping among physicians, pharmacists and drug distributors. An ordinary administrative regulation will not suffice because the federal regulation became effective on July 2, 1999. The cabinet was not notified in advance so that an ordinary administrative regulation could be promulgated. The comparable Kentucky administrative regulation is no longer parallel to the federal regulation and must be amended in order to allow physicians, pharmacists and drug distributors to comply with federal law. 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 20, 1999.

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

CABINET FOR HEALTH SERVICES Department for Public Health Division of Adult and Child Health

902 KAR 55:025E. Schedule III substances.

RELATES TO: KRS 218A.010 to 218A.030, 218A.080 to 218A.090, 21 CFR 1308.13

STATUTORY AUTHORITY: KRS 194A.030, 194A.050 [194-050], 211.090, 218A.020, 218A.080, 218A.250

EFFECTIVE: August 20, 1999

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.020 authorizes the Cabinet for Health Services [Human Resources] to add substances to or delete or reschedule substances enumerated in KRS Chapter 218A. After considering the criteria set forth in KRS 218A.020 and 218A.080, the Cabinet for Health Services [Human Resources] designates the substances set forth in this administrative regulation as Schedule III controlled substances.

Section 1. Amphetamine and Methamphetamine Combination Products. The Cabinet for Health Services [Human Resources] desig-

FILED WITH LRC: August 20, 1999 at 9 a.m.

notes the following amphetamine and methamphetamine combination products as "Schedule III Controlled Substances":

- (1) Mediatric; Tablet or capsule: Methamphetamine hydrochloride 1 mg.; conjugated estrogens-equine 0.25 mg.; methyl testosterone 2.5 mg; and
- (2) Mediatric Liquid; Solution (15 cc.): Methamphetamine hydrochloride 1 mg.; conjugated estrogens-equine 0.25 mg.; methyl testosterone 2.5 mg.

Section 2. Stimulants. The Cabinet for Health Services [Human Resources] designates as "Schedule III" controlled substances any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers (whether optical position or geometric), and salts of such isomers if the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Benzphetamine;
- (2) Chlorphentermine;
- (3) Chlortermine; and
- (4) Phendimetrazine.

Section 3. Depressants. The Cabinet for Health Services [Human Resources] designates as "Schedule III" controlled substances the following:

- (1) Any material, compound, mixture, or preparation containing amobarbital, secobarbital, or pentobarbital, or any of their salts and one (1) or more other active medicinal ingredients which is not a controlled substance.
- (2) Any suppository dosage form containing amobarbital, secobarbital, or pentobarbital, or any of their salts which has been approved by the United States Food and Drug Administration for marketing only as a suppository.
- (3) Ketamine, its salts, isomers, and salts of isomers. Some other names for ketamine: (+)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone.
- (4) Tiletamine and zolazepam or any of their salts. Trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-(3,4-e) (1,4)-dizepin-7(1H)one, fluprazpon.

Section 4. Pentazocine Drug Products. The Cabinet for Health Services [Human Resources] designates, in addition to the parenteral or injectable form of Pentazocine which is designated as a "Schedule III" controlled substance by KRS 218A.090(3), any material, compound, mixture, or preparation which contains any quantity of Pentazocine, including its salts.

Section 5. Anabolic Steroids. The Cabinet for Health Services [Human Resources] designates as "Schedule III Controlled Substances", in addition to those listed in KRS 218A.090(5), any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers if the existence of such salts of isomers is possible within the specific chemical designation:

- (1) Chlorotestosterone;
- (2) Dihydrotestosterone; and
- (3) Methandranone.

Section 6. Hallucinogenic Substances. The Cabinet for Health Services designates as "Schedule III controlled substances", in addition to those listed in KRS 218A.090, any material, compound, mixture, or preparation which contains any quantity of the following substances: Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved product. Some other names for dronabinol: (6aR-trans)-6a, 7, 8, 10a- tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo [b, d] pyran-1-ol or (-)- delta-9-(trans)- tetrahydrocannabinol.

JOHN H. MORSE, Secretary
RICE C. LEACH, M.D., Commissioner
JOHN H. WALKER, Attorney
APPROVED BY AGENCY: August 9, 1999

REGULATORY IMPACT ANALYSIS

Agency contact: John H. Walker

(1) Type and number of entities affected: Approximately 14,000 practitioners, pharmacies and drug distributors who possess, dispense or distribute controlled substances listed in schedule III.

(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: Unknown

(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: Unknown

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

1. First year following implementation: There is no additional compliance, reporting or paperwork required by these amendments.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no anticipated costs or savings to the administrative agency because the amendment merely adds substances to the list of schedule III controlled substances.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There is no reporting or paperwork required of the administrative body by these amendments.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The administration of drug regulations is financed by the general fund.

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

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

(b) Kentucky: Unknown

(7) Assessment of alternative methods: reasons why alternatives were rejected: Alternatives were rejected because nonconformity with federal regulations would result.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The benefit is conformity with federal regulations.

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

(c) If detrimental effect would result, explain detrimental effect: If the administrative regulation is not implemented, nonconformity with federal regulations will perpetuate the confusion and excessive record-keeping among affected individuals.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy conflicts, overlaps or duplicates these 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: None

(11) TIERING: Is tiering applied? No. (Explain why tiering was or was not used) Tiering was not applied because the provisions apply to all persons who prescribe, administer or dispense schedule III controlled substances.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal laws and regulations are 84 Stat. 1242, 21 USC 801 and 21 CFR 1308.13.

2. State compliance standards. The state compliance standards

are KRS 218A.020 and 218A.080.

3. Minimum or uniform standards contained in the federal mandate. The criteria for substances in schedule II are set forth in 21 USC 812(b)(3).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. These amendments will be identical to federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards are not imposed by the amendments.

STATEMENT OF EMERGENCY
921 KAR 4:120E

On August 3, 1999, the President made Low Income Home Energy Assistance Program (LIHEAP) emergency funds available to states experiencing extreme heat. Kentucky received a share of these funds to provide immediate relief from the heat. This emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a) to meet an imminent threat to public health, safety, or welfare, to prevent the loss of federal funds, and to meet a deadline established by federal law. Therefore, in order to implement the program at the earliest possible date to prevent the potential loss of lives of the elderly, age sixty-five (65) or older, children under the age of six (6), and those with a medical condition or disability that could become life threatening due to hot weather, the cabinet requests that this emergency administrative regulation become effective immediately.

An ordinary administrative regulation shall not be filed with the Regulations Compiler because at least ninety (90) percent of the funds must be obligated by September 30, 1999, and the program will end September 10, 1999, or until funds are exhausted, whichever comes first.

PAUL E. PATTON, Governor
VIOLA MILLER, Secretary

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

921 KAR 4:120E. Summer Cooling Program.

RELATES TO: KRS 194B.050(1), 42 USC 8621 et. seq., 9902(2), 921 KAR 4:116

STATUTORY AUTHORITY: KRS 194B.050(1), 42 USC 8621 et. seq.

EFFECTIVE: August 19, 1999

NECESSITY, FUNCTION, AND CONFORMITY: This emergency administrative regulation establishes the criteria and procedures for a summer cooling program. Emergency funds from the Department of Health and Human Services have been made available to provide relief to low income households most severely affected by the heat.

Section 1. Definitions. (1) "Economic unit" means one (1) or more persons sharing a common living arrangement.

(2) "Household" means an individual or group of individuals who are living together in the principal residence as one (1) economic unit and who purchase energy in common.

(3) "LIHEAP" means Low Income Energy Assistance Program.

(4) "Principal residence" means a place that:

- (a) A person is living voluntarily and not on a temporary basis;
- (b) He shall consider home;
- (c) When absent, he shall intend to return; and
- (d) Shall be identifiable from another residence, commercial establishment or institution.

Section 2. Application Period. An application for emergency cooling shall be accepted:

- (1) From August 9, 1999, through September 10, 1999, or until all available funds have been expended, whichever comes first; and
- (2) At a site designated by the county's local community action agency.

Section 3. Eligibility Criteria. (1) To be eligible for emergency cooling benefits to be paid to the household's electric utility provider, the household shall:

(a) Have a gross income at or below 110 percent of the official poverty income guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services, under authority of 42 USC 9902(2);

(b) Be responsible for home cooling cost directly or as an undesignated portion of rent;

(c) Be a resident of Kentucky; and

(d) Have liquid assets at the time of application not to exceed \$1,500 or \$4,000 if resources are being used for living expenses due to catastrophic illness.

(2) To be eligible for a window unit air conditioner, a household shall:

(a) Meet the eligibility criteria pursuant to subsection (1) of this section;

(b) Not have access to a window unit air conditioner; and

(c) Include a household member who:

1. Has a health condition that requires cooling to prevent further deterioration verified by a physician's statement on his letterhead;
2. Is sixty-five (65) years of age or older; or
3. Is under the age of six (6) years.

Section 4. Benefits. (1) A household may be eligible for:

(a) One (1) time cooling assistance benefit paid to the household's electric utility provider; or

(b) A window unit air conditioner, pursuant to Section 3(2) of this administrative regulation; or

(c) Both benefits pursuant to paragraphs (a) and (b) of this subsection.

(2) Benefits shall be determined based on:

(a) The household's level of poverty;

(b) Subsidized housing; or

(c) Nonsubsidized housing.

(3) A benefit level shall be as follows:

- (a) Subsidized, a household with:
 1. Zero percent to fifty-five (55) percent of poverty - fifty (50) dollars;
 2. Fifty-six (56) to 110 percent of poverty - seventy-five (75) dollars;

(b) Nonsubsidized, a household with:

1. Zero percent to fifty-five (55) percent of poverty - \$175;
2. Fifty-six (56) to 110 percent of poverty - \$125;

(4) Cash benefits shall be paid to the:

- (a) Household's electric utility provider; or
- (b) Landlord, if cooling cost is included in the rent.

Section 5. Right to a Fair Hearing. An individual who has been denied assistance or whose application has not been acted upon with reasonable promptness shall have a right to request and receive a fair hearing pursuant to 921 KAR 2:055.

Section 6. Provider Responsibilities. A utility or landlord provider accepting a payment for a service provided to an eligible household shall comply with the following:

(1) In the normal billing process, a household shall be charged the difference between the actual cost of the electricity used and the amount of payment made through this program;

(2) A household receiving cooling assistance shall be treated the same as a household not receiving assistance;

(3) A household on whose behalf benefits are paid shall not be discriminated against, either in the cost of goods supplied or a service provided; and

(4) A landlord shall not increase the rent of a household receiving cooling benefits.

Section 7. Incorporation by Reference. (1) "Community Action

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Energy Assistance Application LIHEAP", August 1999, 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 at Law

REGULATORY IMPACT ANALYSIS

Agency contact: Cathy G. Mobley, Director

(1) Type and number of entities affected: The Summer Cooling Program will provide 1 time payment benefits to an electric utility or a landlord if cooling costs are included in the rent or window unit air conditioners where there is a medical condition or disability that has been documented cooling is required. To be eligible, the household shall be responsible for electric utility costs, at or below 110 percent of the federal poverty level, have a member who is 65 years or older, have a child under age of 6, have a member who has a medical condition or disability that could be life threatening without cooling. Approximately 35,000 eligible households will be assisted by the 23 community action agencies that will operate the program statewide.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: Since this is an emergency administrative regulation and will not be replaced by an ordinary regulation, a notice of intent will not be filed and a public hearing will not be held.

(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: Since this is an emergency administrative regulation and will not be replaced by an ordinary regulation, a notice of intent will not be filed and a public hearing will not be held.

(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 service providers are required to accept applications, determine eligibility, benefit amounts, issue vouchers, reimburse vendors, conduct an outreach program, submit reports to the contracting agency, and obtain an annual audit. These requirements will neither increase nor decrease the costs. Cost of the program is determined by the federal appropriation; the cost of administration is relative to the allocation, not to exceed 10 percent of the grant.

2. Second and subsequent years: Since this is a 1 time allotment of funds for an emergency situation, there will not be an effect on subsequent years.

(3) Effects on the promulgating administrative body: The Cabinet for Families and Children, Department for Community-Based Services, shall be responsible for the overall administration of the Summer Cooling Program. The Department for Community-Based Services recently received \$7.7 million from the federal Department of Health and Human Services for this program. As allowed by the LIHEAP Block Grant rules, 15 percent funds will be set aside for weatherization purposes. Of the remaining funds, up to 10 percent is available for administration and the remainder is available for cooling benefits. These administrative and benefit funds are contracted out through the Kentucky Association for Community Action (KACA) to the 23 community action agencies that will operate the program statewide. The 100 percent federal funds received from the U.S. Department of Health and Human Services will support the total program costs for summer cooling.

(a) Direct and indirect cost or savings: Up to 10 percent of available funds may be used for administration.

1. First year: Normal costs associated with administration of this program and contract management shall be incurred.

2. Continuing cost or savings: There will not be any continuing

costs or savings.

3. Additional factors increasing or decreasing costs: The Department for Community-Based Services is not aware of additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: All applicants shall complete an application and provide materials to verify eligibility. The local administering agencies shall report services provided, submit invoices necessary for reimbursement and shall be subject to reporting and paperwork requirements necessary for appropriate administration of the Summer Cooling Program including audits. The Department for Community-Based Services shall collect and analyze data on households receiving assistance and report such to the U.S. Department of Health and Human Services.

(4) Assessment of anticipated effect on state and local revenues: The Summer Cooling Program shall have little impact upon state or local revenues. Increased tax revenues will be generated from the sale of air conditioners or receipt of cooling assistance benefits.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 100 percent federal funds.

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

(a) Geographical area in which administrative regulation will be implemented: Since this is an emergency administrative regulation and will not be replaced by an ordinary regulation, a Notice of Intent will not be filed and a public hearing will not be held.

(b) Kentucky: Since this is an emergency administrative regulation and will not be replaced by an ordinary regulation, a Notice of Intent will not be filed and a public hearing will not be held.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The funds were allocated by the Department of Health and Human Services to assist in relief of the extreme summer heat. Pursuant to the LIHEAP Block Grant rules, 15 percent of the funds will be set aside for weatherization purposes.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Implementation of the Summer Cooling Program will have a positive effect on the public health and safety of the low income eligible population in that they will receive benefits to maintain a cooling source, or will be assisted in having a cooling source. The extreme heat will be less of a threat to their lives and their health.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on the public health of low-income families would result if the program is not implemented.

(c) If detrimental effect would result, explain detrimental effect: If the Summer Cooling Program is not implemented, a number of elderly individuals 65 of age or older, children under the age of 6, or individuals with a medical condition or disability may be in a life threatening situation by having insufficient cooling during the summer.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation or governmental policy is in conflict, overlapping or a duplication of the Summer Cooling Program.

(a) Necessity of proposed regulation if in conflict: Not applicable.

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No (Explain why tiering was or was not used) federal statutes mandate that eligibility requirements be in a like manner on a statewide basis; therefore, tiering is prohibited.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government.

This emergency administrative regulation will affect cities which own and operate utilities.

3. State the aspect or service of local government to which this administrative regulation relates. Municipal electric utilities.

4. How does this administrative regulation affect the local government or any service it provides? The provision of benefits helps low income households pay for and maintain electricity. Municipal utilities, and thus the cities, will benefit through reductions in the amount of payments in arrears and through helping households to maintain service.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 8621, and 45 CFR 96

2. State compliance standards. This emergency administrative regulation specifies income eligibility at 110 percent of poverty. It also provides for local administration by community action agencies.

3. Minimum or uniform standards contained in the federal mandate. The federal statute permits income eligibility to range between 110 percent and 150 percent of poverty. Outreach activities must be conducted to assure that eligible households, especially the elderly 65 years of age or older, young children under the age of 6, an individual with a medical condition or disability, are made aware of the Summer Cooling Program. The designation of local agencies administering similar low income energy assistance programs shall be given priority as service deliverers. The statute requires that owners and renters be treated equitably.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. The block grant concept permits state flexibility within broad guidelines contained in the statute. In order to target assistance to the most needy and vulnerable, the state has adopted the minimum income eligibility criteria permitted under the statute, those 65 years of age or older, children under the age of 6, and those with a medical condition or disability that could be life threatening without cooling.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. Due to the limited amount of funds, it is necessary to target assistance to those households most in need and most vulnerable, the elderly age 65 or older, children under the age of 6 and those with a medical condition or disability that could become life threatening without cooling.

STATEMENT OF EMERGENCY 922 KAR 2:090E

This emergency administrative regulation is being promulgated to implement the reduction of day care licensure user fees in order to bring them into compliance with state law, KRS 199.896(4), as well as to implement the prohibition of the employment of persons in day care centers, convicted of any sexual offense, to comply with KRS 199.896(2), pursuant to KRS 13A.190(1)(a)3. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation will be filed with the Regulations Compiler at the same time as this emergency administrative regulation.

PAUL E. PATTON, Governor
VIOLA MILLER, Secretary

CABINET FOR FAMILIES AND CHILDREN Department for Community-Based Services

922 KAR 2:090E. Child care facility licensure.

RELATES TO: KRS 13A.140(1), 17.165, 199.892, 199.894, [to] 199.898, 209.020(4), (7), (8), (15), 209.990, 508.100, 508.110, 508.120, 600.020(1), 620.010, 620.120

STATUTORY AUTHORITY: KRS 194B.050(1), [194.050;] 199.896(2), (4), EO 98-731

EFFECTIVE: September 8, 1999

NECESSITY, FUNCTION, AND CONFORMITY: KRS 199.896(2) grants authority to the Cabinet for Families and Children to promulgate [establish] administrative regulations and establish standards for day care of children. [The function of] This administrative regulation establishes provisional and regular [is to establish] licensure requirements for child day care facilities.

Section 1. Application. (1) An applicant for a provisional and regular licensure shall submit to the Cabinet for Health Services a completed Application for a License to Operate a Day Care Center, Form L&R-204.

(2) An application shall be considered under the provisions of Section 6 of this administrative regulation.

(3) If the applicant is:

(a) A corporation, the application shall include a current certificate of existence or authorization from the Secretary of State; or

(b) A partnership, the application shall include a written statement from the partners that the partnership is current and viable.

(4) If the status of a corporation or partnership changes, the new entity shall submit an application, pursuant to Section 2(8) of this administrative regulation. [Prior to licensure, a complete application shall be submitted to the cabinet. The application for a license to operate a day care center, L&R-204, herein incorporated by reference, may be obtained from the Office of Inspector General, 4th Floor, 275 East Main Street, Frankfort, Kentucky 40621. The application may be denied in accordance with Section 6 of this administrative regulation.]

Section 2. License Issuance. (1) A provisional and regular license shall be issued pursuant to KRS 199.896(3), (4), and (6).

(2) Effect of previous denial or revocation for failure to meet regulatory standards.

(a) The Cabinet for Health Services shall not accept an application to operate a child care facility from an entity who has within the previous:

1. Five (5) years, had a certification, license, registration, or permit to operate a human services center denied or revoked for reasons set forth in Section 6(1)(b) or (2)(a) or (b) of this administrative regulation;

2. Five (5) years, voluntarily forfeited his certification, license, registration, or permit after the cabinet has initiated denial or revocation action; or

3. Two (2) years, had his certification, license, registration, or permit revoked for a reason set forth in Section 6(1)(a) of this administrative regulation. [An individual, partnership, corporation, or other entity who has had certification, license, registration or permit to operate a human services center denied for reasons set forth in Section 6(1)(b) or (c) of this administrative regulation or revoked or voluntarily forfeits their certification, license, registration or permit after the cabinet has initiated denial or revocation action shall not apply for a license to operate a child care facility for a period of five (5) years from the date of revocation.]

(b) [(a)] After the expiration of the five (5) year period, an entity meeting the criteria of subparagraph 1 or 2 of this paragraph [the person] may apply for a provisional license after establishing that he [the applicant] has:

1. The ability to comply with the provisions of this administrative regulation; and

2. Completed [has demonstrated completion of at least] sixty (60) hours of cabinet-approved training in developmentally appropriate child care practice since the time of the prior denial or revocation.

(c) [(b)] If a provisional license is granted after the five (5) year period, the licensee [provider] shall serve a two (2) year provisional [probationary] period during which the child care facility shall be inspected on at least a quarterly basis. An inspection [inspections] shall be unannounced. A provisional license shall not be sold or transferred. Upon completion of the two (2) year provisional period, a regular license shall be issued if the licensee is in compliance with subsection (4) of this section.

(3) A provisional and regular [(2)-A] license shall specify [be issued for]:

(a) A particular [specified] physical location;

(b) [Operation by] A designated sponsor or owner as operator;

(c) Age category [categories];

(d) The [A-specified] maximum number of children to be under facility supervision [on-premises] at one (1) time, including a child [children] related to the licensee, based upon: [-The number of children for which the facility is licensed shall be determined by:]

1. Available space as determined by the State Fire Marshal's Office in conjunction with the Cabinet for Health Services;

2. Adequacy of program;

3. Equipment; and

4. Staff.

(e) Nighttime care, if provided; [and]

(f) Transportation, if provided; and

(g) A list of [-

(3) The license shall list the] services to be provided by the facility.

(4) To qualify for a provisional and regular license, a child day care facility shall:

(a) Provide written documentation from the Zoning Commission showing compliance [Comply] with local zoning requirements;

(b) Be approved by the Office of the State Fire Marshal or designee;

(c) Have an approved water and sewage system in accordance with local, county and state laws;

(d) Have adequate equipment, supplies, and staff to serve initial enrollment of a child [children];

(e) Provide written proof of liability insurance coverage [Have liability insurance] in the amount of \$100,000 per occurrence; and

(f) Comply with provisions of this administrative regulation and 922 KAR [2:001, 922 KAR] 2:110 and 922 KAR 2:120.

(5) Corrective plans.

(a) The Cabinet for Health Services shall perform an on-site facility inspection, pursuant to KRS 199.896(10), in order to ascertain compliance with subsection (4) of this section. A regulatory violation identified during inspection shall be reported to the facility in a written statement of deficiency.

(b) A facility not in compliance shall submit, within ten (10) days of receipt of the statement of deficiency, a written plan for the elimination or correction of a violation. The plan shall detail:

1. Specific action undertaken to correct a violation;

2. The date action was initiated; and

3. Action utilized to assure ongoing compliance.

(c) The Cabinet for Health Services shall review the plan and notify the facility, in writing, of the their decision to:

1. Accept the plan;

2. Not accept the plan; or

3. Deny, suspend or revoke the facility's license, pursuant to Section 6 of this administrative regulation.

(d) A notice of unacceptability shall state the specific reasons the plan is unacceptable.

(e) A facility notified of unacceptability of its plan shall, within ten (10) days of notification:

1. Submit an amended plan; or

2. Have its license revoked or denied.

[(a) The facility shall be in compliance with subsection (4) of this section or shall Have submitted an acceptable plan of correction:

1. Compliance shall be ascertained through on-site inspections of the facility;

2. Regulatory violations identified during these inspections shall be transmitted in writing to the facility;

(b) The facility shall submit a written plan for the elimination or correction of the regulatory violations to the inspecting agency within ten (10) days of the statement of deficiencies. The plan shall specify the dates by which each of the violations shall be corrected.

(c) Following a review of the plan, the facility shall be notified in writing of the acceptability of the plan:

1. If the plan is unacceptable, the reasons shall be specified;

2. In these cases, the facility shall modify or amend the plan and resubmit within ten (10) days of notice of the plan's unacceptability.]

(6) A regular and provisional license shall be issued if [when] the facility has met the requirements contained in this administrative regulation and KRS 199.896(4), (9), (11), (12), (14), and (15) [199.896].

(7) A regular and provisional license shall not be transferable. [A change in ownership of a facility shall require a new application and fee. If circumstances covered by the license change, as listed in 922

KAR 2:110, Section 4(4)(b) through (e), notification shall be made in writing to the cabinet. These changes shall not require an additional fee.]

(8) Change of ownership.

(a) A prospective new owner shall submit :

1. An application, L&R 204;

2. A fee as specified in Section 3 of this administrative regulation; and

3. If the facility increases capacity, proof of approval by the Office of the State Fire Marshal.

(b) The Office of Inspector General, Division of Licensing and Regulation shall perform on-site facility inspection, pursuant to KRS 199.896(10), in order to ascertain compliance with this administrative regulation, KRS 199.896(12), 922 KAR 2:110, and 922 KAR 2:120.

(c) The effective date of a license granted on an application for change of ownership shall be for a facility that:

1. Meets requirements, the date the facility is acquired by the new owner; or

2. Does not meet requirements, the date that compliance is achieved; or

3. Increases capacity, not prior to the approval date issued by the State Fire Marshal.

(9) Changes to the facility.

(a) A licensee shall notify the Cabinet for Health Services, in writing, if there is a change to the facility pursuant to 922 KAR 2:110, Section 4(4)(b) through (e).

(b) The notification shall be signed by each owner listed on the license application.

(c) No fee shall be charged.

(d) Notification shall be submitted to the Division of Licensing and Regulation, 275 East Main Street, 4E-A, Frankfort, Kentucky 40621.

(10) The license shall be posted in a conspicuous place in the facility.

(11) [(9)] A facility shall not begin operation without a license to operate from the Cabinet for Health Services [Families and Children].

(12) [(10)] A facility operating without having a license shall be subject to legal action.

Section 3. Fees. (1) Licensing fees shall be:

(a) Fifty (50) [Eighty (80)] dollars for provisional and regular [initial] licensure [for a Type I facility];

(b) Twenty-five (25) [Forty (40)] dollars for initial licensure of a Type II facility; or

(c) Forty (40) dollars for renewal licensure; or

(c) Fifty (50) dollars for change of ownership.

(2) A check or money order payable to the Kentucky State Treasurer shall be attached to the [initial and renewal] licensure application.

(3) A fee [Initial application fee and renewal fees] shall not be refunded if a survey has been made by the Cabinet for Health Services [Families and Children] or the State Fire Marshal's Office.

Section 4. Inspections. A representative [Representatives] of the Cabinet for Health Services shall be trained to apply the administrative regulations and shall have the authority to:

(1) Make an unannounced inspection [inspections] of a facility's:

(a) [(1)] Premises;

(b) Administrative [(2)] records required by Section 2(4)(a) and (e) and (5)(c) of this administrative regulation, [922 KAR 2:090,] 922 KAR 2:110, and 922 KAR 2:120; and

(c) [(3)] Programs.

(2) Provide, upon request, public information pursuant to KRS 199.896(6) and (7) and 199.898(2)(d) and (e).

Section 5. Annual Renewal. A licensee shall submit, one (1) month prior to license expiration, his Application for Renewal of a License to Operate a Day Care Center, Form L&R-204A, in compliance with the provisions of Section 1(3) and (4) of this administrative regulation.

[(1)] Licenses shall be renewed annually.

(2) The renewal application and fee shall be submitted one (1) month prior to the expiration date of the license.

(3) The facility shall comply with the requirements of Sections 2 and 4 of this administrative regulation.]

Section 6. Basis for Denial, Suspension or Revocation. (1) The Cabinet for Health Services shall deny an application or suspend or revoke a provisional or regular license if the individual licensee, director, employee, or a person under the supervision of the licensee:

(a) Fails to meet the requirements of this administrative regulation or those of 922 KAR Chapter 2, except for grounds involving abuse, neglect, or exploitation of a child or adult, or a sexual offense as set forth in subsection (1)(b), (c), or (d) of this section; or

(b) Has been convicted:

1. Of a sexual offense designated in KRS 510.040 to 510.140, 510.150, 529.020 to 520.050, 530.020, 530.064, or 531.300 to 531.370;

2. Of a crime of abuse, neglect or exploitation of a child, pursuant to KRS 508.100, 508.110, or 508.120, or a crime resulting from a criminal charge filed pursuant to KRS 620.120; or

3. As a violent offender, pursuant to KRS 17.165(2).

(c) Has had a human services center or facility registration, certification, permit, or license denied or revoked for a reason set forth in paragraph (a), (b), (c), or (d) of this subsection; or

(d) Has voluntarily forfeited a registration, certification, permit, or provisional or regular license, after Cabinet for Health Services initiation of a denial or revocation action against him, for a reason set forth in paragraph (a), (b), or (c) of this section.

(2) A director of a child day care center shall not:

(a) Have had an allegation of abuse or neglect of a child, pursuant to KRS 600.020(1), substantiated by the Cabinet for Families and Children pursuant to 922 KAR 1:330 and, if appealed, 922 KAR 1:320; or

(b) Be listed on the Nurse's Aid Abuse Registry by the Inspector General's Office.

(3) Emergency action shall be taken pursuant to KRS 199.896(5) and 13B.125.

(4) Public information shall be provided pursuant to KRS 199.896(6) and (7) and 199.898(2)(d) and (e). [The Cabinet for Families and Children may deny, suspend or revoke a license or application:

(a) For failure to meet the standards of this administrative regulation;

(b) If the licensee, an adult living in the facility or person under the supervision of the licensee has been convicted of a crime related to abuse, neglect or exploitation of a child or an adult;

(c) If the licensee or an adult living in the facility:

1. Has abused, neglected or exploited a child or an adult; or

2. Is listed on the Nurse's Aid Abuse Registry by the Inspector General's Office.

(2) If the licensee has had a human services center or facility registration, certification, permit or license denied for reasons set forth in subsection (1)(b) or (c) of this section or revoked or voluntarily forfeits their certification, license, registration or permit after the cabinet initiates denial for reasons set forth in subsection (1)(b) or (c) of this section or revocation action.

(3) If one (1) of the grounds for denial, suspension or revocation set forth in this section exists and the condition creates an immediate danger to the children in care, the cabinet may suspend or revoke the license immediately.]

Section 7. Right of Appeal. (1) If an application or license has been denied, suspended, or revoked, the Cabinet for Health Services shall notify the applicant or licensee, in writing, of his right to appeal, pursuant to KRS Chapter 13B.

(2) If, within fifteen (15) days after receiving notice of the Cabinet for Health Services' action, the applicant or licensee requests a hearing, the Cabinet for Health Services shall:

(a) Appoint a hearing officer; and

(b) Proceed pursuant to KRS 13B.050.

(3) Emergency action pursuant to Section 6(3) of this administrative regulation shall conform to the requirements of KRS 199.896(5) and 13B.125. [If a license or application has been denied, suspended or revoked, the licensee shall be notified in writing of the

right to appeal. The request for a hearing shall be made in writing within fifteen (15) days after receiving the notice of the action of the cabinet.

(2) Upon receipt of the request for a hearing:

(a) The cabinet shall notify the licensee in writing within fifteen (15) days of the time and place of the hearing:

(b) The cabinet shall appoint a hearing officer to review the record, take additional evidence, and make recommendations upon the matter appealed.

(c) The hearing officer shall have the authority to issue subpoenas to compel the attendance of witnesses and the production of documents to be used as evidence in hearings held pursuant to this section.

(3) Based upon the record and upon the information obtained at the hearing, the hearing officer shall affirm or overturn the initial decision of negative action. The decision shall be final. If license denial or revocation is upheld, the cabinet shall specify the date by which the facility shall close and the licensee shall be notified in writing:

(4) If a provider whose license has been suspended or revoked pursuant to Section 6(3) of this administrative regulation requests a hearing, the cabinet shall conduct a hearing within five (5) working days of receipt of the request for a hearing. The hearing may be continued at the request of the provider.

(a) The sole issue of the hearing shall be whether one (1) or more grounds for suspension or revocation create an immediate danger to the children in care.

(b) The cabinet shall render a decision within five (5) working days of the close of the hearing. If a decision is not rendered within five (5) working days of the close of the hearing, the provider shall have its license returned and be allowed to operate pending action on other regulatory violations, if any.

(c) If the hearing officer decides within five (5) working days of the close of the hearing that one (1) or more of the grounds for suspension or revocation create an immediate danger to the children in care, the license of the provider shall be suspended pending action of the cabinet to accept the plan of correction or revoke the license.]

Section 8. Incorporated [Incorporation] by Reference. (1) The following material is incorporated by reference: [The form necessary for the implementation of the application for license shall be herein incorporated by reference.]

(a) L&R-204, "Application for a License to Operate a Day Care Center, August, 1999"; and

(b) L&R-204A, "Application for Renewal of a License to Operate a Day Care Center, August, 1999".

(2) This material [incorporated by reference] may be inspected, [or] copied, or obtained at the Inspector General's Office, 4th Floor, 275 East Main Street, Frankfort, Kentucky, office hours 8 a.m. to 4:30 p.m.

VIOLA MILLER, Secretary

DIETRA PARIS, Commissioner

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: September 7, 1999

FILED WITH LRC: September 8, 1999 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Director

(1) Type and number of entities affected: There are 2,021 licensed child care facilities as of August 1999. The owners and staff of these facilities will be affected.

(2) Direct and indirect cost or savings to those affected: There is a savings to those affected of the cost of the initial license from \$80 to \$50, and savings resulting from the cost of the renewal of a license from \$40 to \$25.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the Notice of Intent is published on this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available

from the public comment received: To be determined after the Notice of Intent is published on this administrative regulation.

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: The administering agency will have an increase in costs in the first year of for the annual salary, fringe, operating costs for an administrative assistant to perform criminal records checks, as well as the cost of a computer. This increase is estimated to be \$25,089.

2. Continuing cost or savings: There is no increase or decrease in costs to the regulated entities. The administering agency will have an increase in costs in the second and subsequent years of the annual salary, fringe, and operating costs for an administrative assistant to perform criminal records checks. This cost increase is estimated to be \$24,248.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The administrative assistant will be performing additional criminal records checks on day care providers and staff.

(4) Assessment of anticipated effect on state and local revenues: There will be an impact on state revenues of approximately 30% of the total costs to the administrative body.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The portion of the total cost to the administrative body is 30% state funds, 70% will be federal CCDF funds.

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

(a) Geographical area in which administrative regulation will be implemented: To be determined after the Notice of Intent is published on this administrative regulation.

(b) Kentucky: To be determined after the Notice of Intent is published on this administrative regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered because these requirements are mandated by legislation passed by the 1998 General Assembly.

(8) Assessment of expected benefits: The benefits expected from this regulation are broader protection of children, improved public access, and better quality licensed child care.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is not required as these policies will become effective statewide as the cabinet implements the amended child care facility licensure policy pursuant to this emergency administrative regulation.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
(As Amended at ARRS, September 14, 1999)

11 KAR 12:020. General rules for investments and fund transfers.

RELATES TO: KRS 164A.310(4), 164A.325(7), 164A.335[(+)], 164A.375

STATUTORY AUTHORITY: KRS 164A.325(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.325(7) authorizes the board to promulgate administrative regulations necessary for the administration of the savings plan trust. KRS 164A.310(4) requires the board to invest monies within the program fund in investments determined by the board to be appropriate. This administrative regulation establishes the requirements for investments and fund transfers. [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, an [any] investment manager, a [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) of this subsection, maximizing investment yield shall be the prime objective of an [any] investment.

(2) In accordance with the standards established in subsection (1) of this section, the board through the program administrator or an [any] investment manager shall [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 a [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, which shall be:

1. [must be] Governed by a Public Securities Association or equivalent master repurchase agreement including the appropriate annexes; and

2. [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 rated [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 a [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, if [provided that] the obligations are either:

1. Fully insured by a U.S. government insurance entity; or

2. [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 the [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. (1) The costs of administering the Kentucky educational savings plan trust shall be paid out of the administrative fund.

(2) 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.

(3) The total amount transferred to the administrative fund during a [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.

(4) Monies transferred to the administrative fund pursuant to KRS 164A.335[(+)] 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.

DEPARTMENT OF STATE
Kentucky Registry of Election Finance
(As Amended at ARRS, September 14, 1999)

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

RELATES TO: KRS 121A.020(5), 121A.030(5), 121A.080

STATUTORY AUTHORITY: KRS 121A.020(7), Gable v. Patton, 142 F.3d 940 (6th Cir. 1998)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121A.020(7) requires the registry to promulgate administrative regulations and official forms necessary to implement KRS Chapter 121A. KRS 121A.020(5) provides reporting requirements for all

slates of candidates, including slates rejecting expenditure limits ("nonparticipating slates") and slates accepting expenditure limits ("participating slates"). The public interest requires effective and timely disclosure of all campaign contributions and expenditures. Slates are prohibited from accepting contributions during the twenty-eight (28) days preceding a primary or regular election and during the fourteen (14) days immediately preceding a runoff primary, except for nonparticipating slates of candidates who choose to expend their own personal funds during the foregoing statutory periods. See *Gable v. Patton*, 142 F.3d 940 (6th Cir. 1998), *cert. denied*, ___ U.S. ___, 119 S.Ct. 1112, 143 L.Ed.2d 108 (1999). Further, under KRS 121A.080, participating slates of candidates may resume fundraising upon a ruling by the registry or voluntary notice that a slate of candidates has received contributions or made expenditures in excess of the campaign expenditure limits established by KRS 121A.030. Therefore, in order to effectively administer the public financing program, it is necessary to promulgate this administrative regulation to require all slates of candidates, both participating and nonparticipating, to report to the registry within twenty-four (24) hours the receipt of or authorization to receive any contribution or deposit to the campaign depository from the personal funds of the members of the slate and the expenditure of or commitment to expend funds outside of the campaign depository to purchase media during the twenty-eight (28) days immediately preceding a primary or regular election and during the fourteen (14) days immediately preceding a runoff primary.

Section 1. A slate of candidates or a campaign committee organized to support a slate of candidates that under KRS 121A.040(1) files its intent to accept or reject public fund transfers and accept or reject the expenditure limits of KRS 121A.030(1) shall report to the registry in the manner provided by KRS 121.180(3)(a) and Section 3 of this administrative regulation any of the following transactions within twenty-four (24) hours after the transaction is made, if made during the twenty-eight (28) days immediately preceding a primary or regular election and if made during the fourteen (14) days immediately preceding a runoff primary:

(1) Any contribution within the meaning of KRS 121A.010(11)(a) received from the personal funds of a member of the slate of candidates;

(2) Any deposit of funds to the slate's candidate campaign account that may be attributed to the personal funds of a member of the slate of candidates; and

(3) Any expenditure authorized, incurred, committed to, reserved for or made by an authorized agent of a slate of candidates for the purchase of advertising, including the reservation of time or space for the purchase of advertising, from a newspaper, magazine, owner or lessor of billboards, radio or television station or network, direct mail vendor or other business organization offering communications or advertising services for hire.

Section 2. A twenty-four (24) hour slate report filed pursuant to Section 1 of this administrative regulation shall be supplementary to any other reports required under KRS Chapters 121 and 121A.

Section 3. Reports required under Section 1 of this administrative regulation shall be reported using the gubernatorial election finance statement form.

Section 4. Incorporation by Reference. (1) "Gubernatorial Slate Election Finance Statement", (1999 Edition), Kentucky Registry of Election Finance, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the office of the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [election finance statement form promulgated under 32 KAR 1:030, which is distributed to gubernatorial slates of candidates and is available at the office of the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky, 40601, between the hours of 8 a.m. and 4:30 p.m.]

DONALD L. COX, CHAIR
ROSEMARY F. CENTER, General Counsel

APPROVED BY AGENCY: July 7, 1999
FILED WITH LRC: July 7, 1999 at 2 p.m.

PERSONNEL CABINET
(As Amended at ARRS, September 14, 1999)

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

RELATES TO: KRS [~~18A.025;~~] 18A.030(2)(l), 18A.110(7)(l), 18A.155(1)(e)

STATUTORY AUTHORITY: KRS [~~Chapter 18A;~~ 18A.025; 18A.030(2)(l), 18A.110(7)(l) [(5)(k), (h)], 18A.155(1)(e)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.030(2)(l), [and] KRS 18A.110(7)(l), and 18A.155(1)(e) requires the Secretary [Commissioner] of Personnel to promulgate [comprehensive] administrative regulations [consistent with KRS Chapter 18A;] which govern development, operation and enforcement of programs to improve the work effectiveness of employees in the state service including health, welfare, counseling and employee relations. This administrative regulation establishes requirements relating to the Kentucky Employee Assistance Program (KEAP) [is necessary to comply with these statutory requirements].

Section 1. Establishment of Kentucky Employee Assistance Program. [(1)] The Personnel Cabinet [Department of Personnel] shall establish and administer through the Division of Employee Benefits the Kentucky Employee Assistance Program (KEAP) to coordinate employee assistance programs that exist in state agencies and to supplement them with additional services. [Kentucky employee assistance program shall be available to assist employees whose agencies do not have employee assistance programs or to provide alternative services;]

Section 2. Eligibility for Services. (1) [(2)] An [Any] employee whose job performance is or may be adversely affected by personal problems may [is eligible to] initiate a request for confidential personal [service for himself] or [and] family [or to receive] services from [for himself and family upon referral to] the Kentucky Employee Assistance Program.

(2) [(3)] An employee shall [Employees may] [shall be entitled to] obtain a Kentucky Employee Assistance Program service [services] without discrimination or reprisal [reprisals].

(3) [(4)] Participation of the employee in the Kentucky Employee Assistance Program shall not preclude an agency [agencies] [supervisors] from taking disciplinary or a corrective action as needed in dealing with job behavior or job performance problem [problems].

[(5)] Each appointing authority shall designate an employee assistance program liaison for disseminating information;]

Section 3. [2.] Referrals. (1) A supervisor [Supervisors] may extend to an employee an offer of assistance through the Kentucky Employee Assistance Program if [when] the employee's job behavior or job performance is unacceptable or deteriorating [inadequate].

(2) An employee's participation in services offered by the Kentucky Employee Assistance Program shall be [is] voluntary and confidential.

(3) An employee [Employees] shall be allowed [up] to contact KEAP [five (5) contacts] for assessment or referral on state time with the prior approval of the supervisor [to be confirmed by the employee assistance program when referred by a supervisor or on self-referral with supervisor's approval].

(4) A supervisor may direct the employee to provide written confirmation of participation from KEAP, which [the program; however; the program] shall provide confirmation [only] upon the employee's written consent.

(5) An employee's participation in counseling or treatment upon referral by the Kentucky Employee Assistance Program shall take place on the employee's own time or while on leave.

[(3)] Employees shall participate in counseling or treatment on their own time, or take leave as provided by law;]

(6) [(4)] Employee involvement in the Kentucky Employee Assis-

lance Program shall remain confidential as permitted by state and federal law, unless the employee authorizes release of specific information to a specifically identified person [persons].

(7) [(5)] Kentucky Employee Assistance Program services shall be free of charge to an employee and his family [employees and their families] for information, assessment or [and] referral. The Commonwealth shall not be liable for a [any] counseling or treatment cost [costs] incurred except as provided through health benefits.

CAROL M. PALMORE, Secretary

DANIEL F. EGBERS, General Counsel

APPROVED BY AGENCY: July 13, 1999

FILED WITH LRC: July 13, 1999 at 2 p.m.

PERSONNEL CABINET

(As Amended at ARRS, September 14, 1999)

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

RELATES TO: KRS 12.040, 12.050, 18A.115, 18A.155

STATUTORY AUTHORITY: KRS [Chapter 13A:] 18A.155(i)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.155(1) requires the Secretary of Personnel to promulgate administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (t), and (u). KRS 18A.155(2) provides that administrative regulations promulgated pursuant to KRS 18A.155(1) may be used on behalf of employees enumerated in KRS 18A.115(1)(a), (b), (d), (e), (p), (u), and (w) and on behalf of members of state boards and commissions who work on a full-time, salaried basis. This administrative regulation establishes requirements for the employment, promotion, transfer or discipline of employees in unclassified service. [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) [and (v)]. KRS 18A.155 further provides that these administrative regulations shall be approved by the Governor. Nothing herein shall be construed to preclude the optional use of administrative regulations promulgated under this section on behalf of employees enumerated in paragraphs (a), (b), (d), (e), (p), (u), and (w) [and (q)] of subsection (1) of KRS 18A.115 [18A.155] and on behalf of members of state boards and commissions who work on a full-time, salaried basis. This administrative regulation complies with and implements this statutory provision.]

Section 1. Appointment. (1) An employee [Employees] appointed to a position [positions] in the unclassified service, subject to this administrative regulation, shall [be required to] meet the minimum requirements established for the class of position to which the appointment is made.

(2) An interim employee may serve in an [any] interim capacity for less than nine (9) full months in a [any] single department during a [any] twelve (12) month period.

(3) An employee [Employees] appointed to a position [positions] subject to this administrative regulation shall serve at the will of the appointing authority and shall be [are] subject to termination without notice or cause.

Section 2. Promotion. (1) A vacant position [Vacant positions] subject to this administrative regulation, other than an interim position [positions], may be filled by promotion from the classified or unclassified service.

(2) If the promotion is to a position requiring approval under KRS 12.040 or 12.050, approval shall be obtained prior to the effective date of the promotion. [Vacancies may be filled by promotion whenever practicable and in the best interest of the service. Employees in the executive policy-making positions serve at the pleasure of the appointing authority.]

(2) Any career employee promoted from a classified to an unclassified position retains his status in the classified service. On separation from the unclassified service, he reverts to a position in that class in

which he had status in the agency from which he was terminated if a vacancy in that class exists. If no such vacancy exists in a position of the former class, the statutes (KRS 18A.113 and 18A.1132) pertaining to layoff shall apply. He shall be considered for employment in any vacant position for which he is qualified pursuant to KRS 18A.130 and 18A.135.

(3) An employee's promotion to a different agency must be approved by the appointing authority and the commissioner.

Section 3. [2:] Transfer. (1) A vacant position [Vacant positions] subject to this administrative regulation, other than an interim position [positions], may be filled by transfer from the classified or unclassified service.

(2) If the transfer is to a position requiring approval under KRS 12.040 or 12.050, approval shall be obtained [is required] prior to the effective date of the transfer. [The movement of an employee from one (1) position to another of the same grade having the same salary ranges and the same level of responsibility shall be deemed a transfer. An employee appointed in accordance with KRS 12.050 cannot be transferred. A transfer may be an interagency or intra-agency action. An appointing authority, with written notice, may transfer an employee from one (1) position to another in the unclassified service. An employee may request a transfer. The employee must meet the minimum requirements of the job class to which transferred.]

(2) An employee may be transferred between agencies to a position having the same salary range and level of responsibility, with the approval of the commissioner.

Section 4. [3:] Demotion. (1) An employee subject to this administrative regulation, other than an interim employee, may be demoted to another position subject to this administrative regulation with or without cause on a voluntary or involuntary basis. An involuntary demotion shall be done on an intra-agency basis only.

(2) If the demotion is to a position requiring approval under KRS 12.040 or 12.050, approval shall be obtained prior to the effective date of the action. [If, for personal or other reasons, an employee requests in writing that he be assigned to a position of a lower class, the appointing authority may make such a voluntary demotion. Involuntary demotions shall be intra-agency only.]

Section 5. [4:] Detail to Special Duty. (1) If [When] the services of an employee subject to this administrative regulation, other than an interim employee, are needed in an unclassified [a] position within an [the] agency other than the position to which regularly assigned, the employee may be detailed to that position for a period not to exceed one (1) year with approval of the Secretary [Commissioner] of Personnel.

(2) If the detail is to a position requiring approval under KRS 12.040 or 12.050, approval shall be obtained prior to the effective date of the detail. [For detail to special duty the Commissioner of Personnel may waive the minimum requirements when requested by the appointing authority in writing.]

Section 6. [5:] Temporary Overlap. (1) With the prior approval of the Secretary of Personnel [commissioner], an agency may place an employee, other than an interim employee [for training purposes], in an unclassified [a] position currently occupied by another employee for a period not to exceed sixty (60) calendar days for training purposes.

(2) If the overlap is in a position requiring approval under KRS 12.040 or 12.050, approval shall be obtained prior to the effective date of the action.

Section 7. [6:] Separations. (1) Resignations and retirement.

(a) An employee who desires to terminate his service with the state shall submit a written resignation or notice of retirement to the appointing authority.

(b) A resignation or notice of retirement [Resignations] shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation or notice of retirement shall be attached to the personnel action [advice] effecting the separation and shall be filed in the employee's service record in the agency and the Personnel Cabinet [department].

(c) Failure of an employee to give fourteen (14) calendar days

notice of [with-his] resignation or notice of retirement [without good cause] may result in forfeiture of accrued annual leave.

(2) ~~[Retirement. Failure of an employee to give fourteen (14) calendar days notice of retirement may result in forfeiture of accrued annual leave;~~

~~(3) Termination. An employee subject to this administrative regulation may be terminated with or without cause.~~

(a) If the appointing authority elects to terminate the employee for cause, the employee shall be provided with notice in writing of the reasons for termination and of the employee's right to appeal to the Personnel Board under KRS 18A.095.

(b) If the appointing authority elects to terminate the employee without cause, this **decision** shall be stated in the written notice to the employee.

Section 8. Applicability for Classified Employees. Except as provided in this administrative regulation, [Incorporation by Reference:] the provisions of 101 KAR 2:095, 101 KAR 2:105, 101 KAR 2:140, 101 KAR 2:150 and 101 KAR 2:160 shall apply to an employee [the employees] in the unclassified service. [If an employee is retired, he is considered as separated without prejudice.]

PAUL E. PATTON, Governor
CAROL M. PALMORE, Secretary
DANIEL F. EGBERS, General Counsel
APPROVED BY AGENCY: July 13, 1999
FILED WITH LRC: July 13, 1999 at 2 p.m.

**FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(As Amended at ARRS, September 14, 1999)**

200 KAR 5:340. Privatization evaluation process [for evaluating information for use in determining whether to approve privatization of a government service].

RELATES TO: KRS 45A.550 to 45A.554

STATUTORY AUTHORITY: KRS 45A.552

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 45A.552 [1998 Ky. Acts ch. 492, sec. 3]** requires the Finance and Administration Cabinet to develop an objective and systematic process for evaluating the information required to be submitted by state agencies for use in determining whether to approve privatization of a government service. **This administrative regulation establishes the process for evaluating information when determining whether to approve a request for privatization. [and to adopt the process by promulgation of an administrative regulation.]**

Section 1. Request to Privatize. (1) An agency desiring to enter into a privatization contract, as defined in KRS 45A.550, shall ~~after issuance of a competitive solicitation document and review of responses;~~ submit a Request to Privatize, signed by the agency head, and accompanied by the written documentation described in KRS 45A.551(2) and (3), ~~[and a copy of the proposed contract;]~~ to the Secretary of the Finance and Administration Cabinet.

(2) The secretary shall:

(a) Appoint an ad hoc committee to review the request;

1. The committee shall consist of:

a. Two (2) employees from the Personnel Cabinet;

b. Two (2) employees from the Finance and Administration Cabinet; and

c. One (1) employee of the requesting agency likely to be affected by the requested privatization.

2. The committee shall issue a written recommendation to the secretary within thirty (30) days of submission of the request to the secretary; and

(b) Issue a written determination approving or rejecting the Request to Privatize, within ten (10) days from receipt of the committee's recommendation.

Section 2. Basis of Determination. (1) The secretary shall base the determination to approve or reject a request for priva-

tization on the following factors:

(a) The agency analysis provided pursuant to KRS 45A.551(2) and (3); and

(b) The effect of privatization upon:

1. Continuation of funds currently available;

2. Other programs and responsibilities;

3. The exercise of discretion in applying governmental authority;

4. The making of value judgments in decisions affecting the government;

5. Quality of services; and

6. Overall cost.

(2) If the information submitted by the agency is insufficient, the committee or the secretary shall request additional information or clarification from the requesting agency.

(3) If the information demonstrates that it would be in the best interest of the Commonwealth to privatize the service, the secretary shall approve the request for privatization.

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

(a) "Request to Privatize" 9/1999; and

(b) "Cost Benefit Analysis" 9/1999.

(2) This material may be inspected, copied, or obtained at the Finance and Administration Cabinet, Office of the Secretary, Room 383 Capitol Annex, Frankfort, Kentucky, 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [issue a written determination approving or rejecting the proposed privatization based upon the analyses provided by the agency and the criteria set out in Section 2 of this administrative regulation. The agency shall not proceed with award and execution of the contract until review is completed and approval is given by the Secretary of the Finance and Administration Cabinet.]

Section 2. In determining whether to approve or reject a proposed privatization contract, the Secretary of the Finance and Administration Cabinet shall consider:

(1) Whether the funds or revenues presently available would continue to be available if the private sector performs the activity;

(2) Whether the privatization of the activity will affect other programs and responsibilities;

(3) Whether privatization will transfer functions to a non-governmental entity that require either the exercise of discretion in applying government authority or the making of value judgments in making decisions for the government;

(4) Whether the quality of the services to be privatized will be equal to or exceed the quality of services which could be provided by the government agency or the proposed contract will result in overall cost savings to the state which estimated savings will not be eliminated by contractor rate increases during the term of the contract;

(5) Whether the solicitation required the submittal of third-party references;

(6) Whether the proposed contract includes provisions for periodic evaluations to continually measure performance;

(7) Whether the proposed minimum qualifications required of the contractor and staff meet or exceed the state's qualifications for similar work performed in the personnel system;

(8) Whether the proposed contract contains provisions for termination by the state for breach of the contract by the contractor;

(9) Whether responses to the solicitation indicate the availability of multiple qualified and competitive private vendors.

Section 3. In comparing costs, there shall be included in the cost of a contractor providing a service any continuing state costs that would be directly associated with the contracted function, including, but not limited to inspection, supervision, and monitoring costs.

(1) Cost comparison shall determine what it costs government to perform the activity and what future costs can be avoided by transferring the activity to the private sector.

(2) Estimated costs of the government activity shall be provided for the base contract plus all option years.]

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JOHN MCCARTY, Secretary
ANGELA C. ROBINSON, Assistant General Counsel
APPROVED BY AGENCY: April 14, 1999
FILED WITH LRC: April 15, 1999 at 11 a.m.

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(As Amended at ARRS, September 14, 1999)

201 KAR 2:010. Schools approved by the board.

RELATES TO: KRS 315.050
STATUTORY AUTHORITY: KRS 315.050, 315.191(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.050(1) requires the board to approve the schools or colleges of pharmacy whose curricula or course of studies are acceptable. This administrative regulation establishes the educational standards for an applicant for licensure as a pharmacist in Kentucky and identifies the acceptable and approved colleges or schools of pharmacy from which an applicant shall graduate. [The Kentucky Board of Pharmacy is directed by KRS 315.050(1) to approve the schools or colleges of pharmacy whose curricula or course of studies are acceptable. This administrative regulation is to assure that applicants for licensure are graduates of acceptable and approved colleges or schools.]

Section 1. An [Every] applicant for licensure as a pharmacist, [other than graduates of foreign colleges or schools of pharmacy,] shall have graduated and received a degree in an accredited pharmacy degree program which has been approved by the Board of Pharmacy. A program shall be considered approved if the program's standards are equivalent to the minimum standards for accreditation for a similar program established by:

(1) The American Council on Pharmaceutical Education in:
(a) "Accreditation Manual for Professional Programs"; or
(b) "Accreditation Standards and Guidelines for the Professional Program in Pharmacy Leading to the Doctor of Pharmacy Degree"; or

(2) The Canadian Council for Accreditation of Pharmacy Programs in "Accreditation Standards and Guidelines for Pharmacy Professional Degree Programs in Canada". [Approved programs shall be those programs whose standards are equivalent to the minimum standards required by the American Council on Pharmaceutical Education for the accreditation of such programs or the Canadian Council on Pharmaceutical Education.] [The American Council on Pharmaceutical Education, "Accreditation Standards and Guidelines," 8th Edition, July, 1984, effective January 1, 1985; and the American Council on Pharmaceutical Education, "Accredited Professional Programs of Colleges and Schools of Pharmacy", July 1, 1991, are incorporated by reference. A copy of the referenced material may be reviewed at or obtained from the Kentucky Board of Pharmacy, 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.]

Section 2. An [Each] applicant for licensure as a pharmacist who shall have graduated and received a degree in a foreign pharmacy degree program, other than from a college or school accredited by the Canadian Council for Accreditation of Pharmacy Programs [on Pharmaceutical Education] shall be deemed to be a graduate of a pharmacy degree program which has been approved by the Board of Pharmacy if the applicant has [they have] obtained a Foreign Pharmacy Graduate Examination Committee Certificate through the Foreign Pharmacy Graduate Examination Committee Certification Program which is administered by the National Association of Boards of Pharmacy Foundation.

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

(a) "Accreditation Manual for Professional Programs", 8th Edition (3rd Printing) January 1995, American Council on Pharmaceutical Education;

(b) "Accreditation Standards and Guidelines for the Profes-

sional Program in Pharmacy Leading to the Doctor of Pharmacy Degree," June 14, 1997, American Council on Pharmaceutical Education; and

(c) "Accreditation Standards and Guidelines for Pharmacy Professional Degree Programs in Canada", Revised January 1998, Canadian Council for Accreditation of Pharmacy Programs.

(2) This material may be inspected, copied, or obtained at the Kentucky Board of Pharmacy, 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601-8204, Monday through Friday 8 a.m. to 4:30 p.m. [The American Council on Pharmaceutical Education, "Accreditation Standards and Guidelines," 8th Edition, 3rd Printing January 1995, and the American Council on Pharmaceutical Education, "Accredited Standards and Guidelines for the Professional Program in Pharmacy Leading to the Doctor of Pharmacy Degree", adopted June 14, 1997, are incorporated by reference. A copy of the referenced material may be reviewed at or obtained from the Kentucky Board of Pharmacy, 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601-8204, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.]

RODNEY C. STACEY, President
CHERYL LALONDE-MOONEY, J.D., Assistant Attorney General
APPROVED BY AGENCY: April 19, 1999
FILED WITH LRC: May 13, 1999 at 11 a.m.

GENERAL GOVERNMENT CABINET
Kentucky State Board of Licensure for
Professional Engineers and Land Surveyors
(As Amended at ARRS, September 14, 1999)

201 KAR 18:050. Branches of professional engineering for testing.

RELATES TO: KRS 322.020, 322.040, 322.080 [322.110]
STATUTORY AUTHORITY: KRS 322.010(4), 322.040(1)(a)3a, 322.080(2), 322.290(2)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.040(1)(a)3a requires a passing score on the Principles and Practice of Engineering Examination (PPEE). KRS 322.080(2) requires the board to prescribe the scope of the examination. Because the PPEE is administered by discipline, it is necessary for the board to establish the disciplines recognized in Kentucky for the examination. This administrative regulation establishes the branches of engineering for the examination. [sets forth examination requirements for professional engineers while KRS 322.080 requires the board to prescribe the scope of examination. Under KRS Chapter 322, the board considers the field of sanitary engineering has developed to the extent that it warrants specific recognition as a registerable branch of engineering in the Commonwealth.] This administrative regulation sets forth branches of engineering for testing and for which licenses will be issued.]

Section 1. Branches of Professional Engineering. The examination required by KRS 322.040(1)(a)3a shall be administered in Kentucky for [board at the present time recognizes for the purpose of testing] the following branches of engineering: agricultural, chemical, civil, control systems, electrical, environmental, fire protection, industrial, mechanical, metallurgical, mining, petroleum, ship design, structural I, and structural II [-and sanitary]. [An applicant for license as "Licensed Professional Engineer," in order to be accepted and licensed, should qualify in one (1) or more of the above classifications.]

JOSEPH F. SISLER, Chair
CHERYL LALONDE-MOONEY, Assistant Attorney General
APPROVED BY AGENCY: May 6, 1999
FILED WITH LRC: May 13, 1999 at 3 p.m.

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GENERAL GOVERNMENT CABINET
Kentucky State Board of Licensure for
Professional Engineers and Land Surveyors
(As Amended at ARRS, September 14, 1999)

201 KAR 18:080. Display of Licenses [Licensing certificates and cards].

RELATES TO: KRS 322.110, 322.120, [322.130,] [322.140,] 322.160, 322.170, 322.220[, 322.300, 322.420]

STATUTORY AUTHORITY: KRS [322.110, 322.120,] [322.150,] 322.290(4) [, 322.420]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.290(4) authorizes the board to promulgate administrative regulations necessary for the proper performance of its duties. KRS 322.110(1) requires the board to issue a license authorizing the practice of engineering or land surveying to an applicant who meets the requirements of KRS Chapter 322. This administrative regulation establishes requirements relating to the display of licenses issued by the board. [Outlines the board's responsibility under KRS Chapter 322 to issue certificates to successful applicants seeking licensure [registration/certification] and [annual] renewal [registration] cards to licensees [registrants] complying with license renewal procedures.]

Section 1. a professional engineer or land surveyor licensed pursuant to KRS 322.110 shall conspicuously display his license issued by the board in his place of business if the professional engineer or land surveyor:

(1) Does business with the public;

(a) Individually; or

(b) As a chief executive or consultant; or

(2) Teaches a design course in an engineering or land surveying program accredited by the Accreditation Board for Engineering and Technology. [Licensing-Certificates and Cards. (1) Upon initial licensure, the board shall [will] issue to each successful applicant a certificate, serially numbered, of such size and form as it may approve indicating [certifying] that the applicant is either "in training," or is licensed to practice. Each licensee is also issued, [simultaneously] a card, [which is] renewable biennially, [each year] upon payment of the required renewal fee. This card indicates [to indicate] that the [his] license certificate is currently valid. Cards are not issued to those holding in-training status [certificates].

(2) Licensed professional engineers or land surveyors licensed under this Act and doing business with the public on their own account or as chief executives or consultants, or those teaching design courses in an engineering or land surveying program accredited by the Accreditation Board for Engineering and Technology, shall keep their licenses issued by the board posted conspicuously in their places of business where they can be readily examined by the public.]

JOSEPH F. SISLER, Chair
CHERYL LALONDE-MOONEY, Assistant Attorney General
APPROVED BY AGENCY: May 6, 1999
FILED WITH LRC: May 13, 1999 at 3 p.m.

GENERAL GOVERNMENT CABINET
Kentucky State Board of Licensure for
Professional Engineers and Land Surveyors
(As Amended at ARRS, September 14, 1999)

201 KAR 18:100. Seals.

RELATES TO: KRS 322.340, 322.400[, 322.440]

STATUTORY AUTHORITY: KRS 322.290(4), 322.340(1) [, 322.440]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.290(4) authorizes the board to promulgate administrative regulations necessary for the proper performance of its duties. KRS 322.340(1) requires a professional engineer or land surveyor, upon licensure, to obtain a seal or stamp of the design authorized by the board. This administrative regulation establishes

[Sets forth] the requirements and uses for personal seals for licensees.

Section 1. Seals. The seal for a professional licensee shall be embossed metallic. A licensee may obtain a facsimile of the seal in the form of a rubber stamp for convenience in his professional practice. [The board requires that the seal specified for professional licensees be embossed metallic. In addition each licensee may obtain a facsimile of the seal in the form of a rubber stamp if required for convenience in his professional practice. Electronic reproductions of the stamp, seal, or signature are prohibited.]

Section 2. One (1) set of a manual or electronic final report, specification, drawing, and plan shall have an original stamp or seal and signatures. [At least one (1) set of all final reports, specifications, drawings, and plans, whether produced manually or electronically, shall have an original stamp or seal, and signature. Other copies may have a nonelectronic reproduction of the seal and signatures.]

Section 3. The statement required by KRS 322.340(3)(b) shall be:

(1) Placed in the electronic record after the original approval tracings are plotted; and

(2) [It shall] Not appear on an original [originals] submitted for approval.

JOSEPH F. SISLER, Chair
CHERYL LALONDE-MOONEY, Assistant Attorney General
APPROVED BY AGENCY: May 6, 1999
FILED WITH LRC: May 13, 1999 at 3 p.m.

GENERAL GOVERNMENT CABINET
Kentucky State Board of Licensure for
Professional Engineers and Land Surveyors
(As Amended at ARRS, September 14, 1999)

201 KAR 18:110. License renewals and reinstatement.

RELATES TO: KRS [322.150,] 322.160[, 322.330, 322.420]

STATUTORY AUTHORITY: KRS 322.160(3)(a), 322.290(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.290(4) authorizes the board to promulgate administrative regulations necessary for the proper performance of its duties. KRS 322.160(3)(a) requires a licensee or permit holder who fails to renew within one (1) year after expiration to furnish the board with satisfactory evidence of qualification of continued practice. This administrative regulation establishes the requirements for license renewal and reinstatement. [Clarifies procedures in complying with KRS Chapter 322 requirements for notification of renewal fees due from licensees [registrants], reinstatements, and military credit.]

Section 1. Renewals of Licenses. (1) Reinstatement. Pursuant to KRS 322.160(3)(a), a person who fails to renew his license within one (1) year after expiration shall apply for reinstatement by submitting to the board satisfactory evidence that the person is qualified to continue to practice. If the evidence is unsatisfactory to six (6) or more members of the board, reinstatement shall not be approved. [Each licensee must keep the board informed of any change in his address. The board's notice of license expiration and the amount of the fee for the ensuing renewal cycle [fiscal year] is sent to the last known address of the licensee. It is the duty of the licensee to renew his license regardless of whether or not the board's notice reaches him.]

(2) The procedure to be followed by those who wish to renew a license after a lapse of more than one (1) year constitutes reinstatement. If the evidence submitted in support of a request for reinstatement is unsatisfactory to six (6) [five (5)] or more members of the board, reinstatement will not be approved.

(2) A [(3) Any] licensee who is serving or has served in the armed forces of the United States, shall [must] present proper evidence of

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his service entry, service continuation or discharge in order for the board to give proper credit for his service [therefor] in the administration of his professional records.

JOSEPH F. SISLER, Chair
CHERYL LALONDE-MOONEY, Assistant Attorney General
APPROVED BY AGENCY: May 6, 1999
FILED WITH LRC: May 13, 1999 at 3 p.m.

GENERAL GOVERNMENT CABINET Kentucky State Board of Licensure for Professional Engineers and Land Surveyors (As Amended at ARRS, September 14, 1999)

201 KAR 18:120. Reissuance of license [certificate].

RELATES TO: KRS 322.170
STATUTORY AUTHORITY: KRS [322.170;] 322.290(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.170 authorizes [permits] the board to reissue licenses and permits. This administrative regulation establishes [outlines] [the board's authority under KRS Chapter 322 and] the procedure for reissuance of licenses and permits [license certificates].

Section 1. Reissuance of License [Certificate]. The fee charged for the reissuance of a license shall be ten (10) [A {new} certificate issued to replace a {any certificate} lost, destroyed, or mutilated certificate shall [, may] be issued for [and] a charge not to exceed ten (10)] dollars. A replacement license shall:

- (1) [certificate shall] Bear the signatures of the current chairman; and
- (2) Secretary-treasurer of the board and shall be identified as a replacement certificate. [five (5) dollars shall be made for such reissuance.]

JOSEPH F. SISLER, Chair
CHERYL LALONDE-MOONEY, Assistant Attorney General
APPROVED BY AGENCY: May 6, 1999
FILED WITH LRC: May 13, 1999 at 3 p.m.

GENERAL GOVERNMENT CABINET Kentucky Board of Social Work (As Amended at ARRS, September 14, 1999)

201 KAR 23:075. Continuing education.

RELATES TO: KRS 335.130(4)
STATUTORY AUTHORITY: KRS 335.070(3), (6), 335.130(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.130(4) allows the board to require continuing education as a condition of license renewal. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Definitions. (1) "Academic courses offered by an accredited postsecondary institution" means a social work course, at the graduate level:

- (a) Designated by a social work title or content; or
- (b) An academic course, at the graduate level, relevant to social work.
- (2) "Approved" means recognized by the Kentucky Board of Social Work.
- (3) "Continuing education hour" means fifty (50) clock minutes of participating in continuing educational experiences.
- (4) "Program" means an organized learning experience:
 - (a) Planned and evaluated to meet behavioral objectives; and
 - (b) Presented in one (1) session or series.
- (5) "Provider" means an organization approved by the Kentucky Board of Social Work for providing continuing education

programs.

(6) "Relevant" means having content applicable the practice of social work. [As used in this administrative regulation, unless the context otherwise requires:

- (1) "Approved" means recognized by the Kentucky Board of Social Work;
- (2) "Continuing education hour" means fifty (50) clock minutes of participating in continuing educational experiences;
- (3) "Program" means an organized learning experience:
 - (a) Planned and evaluated to meet behavioral objectives; and
 - (b) Presented in one (1) session or series;
- (4) "Academic courses offered by an accredited postsecondary institution" means:
 - (a) A social work course, at the graduate level:
 1. Designated by a social work title or content; or
 2. An academic course, at the graduate level, relevant to social work;
 - (b) A general education course, either electives or designed to meet degree requirements, will not be acceptable;
 - (c) Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equals fifteen (15) continuing education hours;
- (5) "Relevant" means having content applicable the practice of social work;
- (6) "Provider" means an organization approved by the Kentucky Board of Social Work for providing continuing education programs.]

Section 2. Accrual and Computation of Continuing Education Hours. (1) A minimum of thirty (30) continuing education hours shall be accrued by each licensed clinical social worker and certified social worker holding licensure during the three (3) year period for renewal with the following exceptions:

- (a) A person holding licensure or certification whose renewal date is before September 1, 2000 shall acquire ten (10) hours of continuing education for that renewal only;
- (b) A person holding licensure or certification whose renewal date is on or after September 1, 2000 and before September 1, 2001 shall acquire twenty (20) hours of continuing education for that renewal only.
- (2) A minimum of fifteen (15) continuing education hours shall be accrued by each licensed social worker holding licensure during the three (3) year period for renewal with the following exceptions:
 - (a) A person holding licensure whose renewal date is before September 1, 2000 shall acquire five (5) hours of continuing education for that renewal only;
 - (b) A person holding licensure or certification whose renewal date is on or after September 1, 2000 and before September 1, 2001 shall acquire ten (10) hours of continuing education for that renewal only.

(3) All continuing education hours shall be in or relevant to the practice of social work.

(4) Three (3) continuing education hours during each renewal period shall be acquired in the area of social work ethics.

(5) Two (2) of the continuing education hours during each renewal period shall be on HIV/AIDS courses approved by the Cabinet for Health Services pursuant to 902 KAR 2:160.

(6) Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equals fifteen (15) continuing education hours.

Section 3. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the license shall be directly related to the professional growth and development of the licensee. They may be earned by completing any of the following education activities:

(1) Programs not requiring board review and approval. An educational program from any of the following providers shall be deemed to be relevant to the practice of social work and shall be approved without further review by the board if it is:

(a) Sponsored or approved by the National Association of Social Workers or any of its affiliated state chapters;

(b) Sponsored by:

1. The National Federation of Clinical Social Workers or any of

its affiliated state chapters;

2. The American Psychological Association or any of its affiliated state chapters;

3. The American Counseling Association or any of its affiliated state chapters;

4. The National Board for Certified Counselors or any of its affiliated state chapters; and

5. The American Psychiatric Association or any of its affiliated state chapters.

(c) An academic course offered by an accredited postsecondary institution directly related to social work or counseling psychology.

(2) Programs requiring board review and approval. A program from any of the following sources shall be reviewed and determined if it is relevant and therefore subsequently approved by the board:

(a) Relevant programs, including home study and in-service training provided by other organizations, educational institutions, or other service providers approved by the board;

(b) Relevant programs or academic courses presented by the licensee. A presenter of relevant programs or academic courses shall [may] earn full continuing education credit for each contact hour of instruction, not to exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of the same course;

(c) Authoring an article in a relevant, professionally recognized or juried publication. Credit shall not be granted unless an article was [may be granted only for an article that] was published within the one (1) year period immediately preceding the renewal date. A licensee shall not earn more than [may only earn] one-half (1/2) of the continuing education hours required for renewal under the provisions of this subsection. More than one (1) publication shall not [Only one (1) publication may] be counted during each renewal period.

(3) A general education course, elective or required for degree, shall not be counted toward the annual requirement of continuing education.

Section 4. Procedures for Approval of Continuing Education Programs. A program, which is offered by an entity that is not a provider, may be used for continuing education if approval is secured from the board for the course. In order for the board to adequately review these programs, the following information shall be submitted:

(1) A published course or similar description;

(2) Names and qualifications of the instructors;

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

(4) Number of continuing education hours requested;

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

(6) Application for continuing education credits approval.

Section 5. Procedures for Preapproval of Continuing Education Sponsors and Programs. (1) Sponsor approval. Any entity seeking to obtain approval of a continuing education program prior to its offering shall:

(a) Apply to the board at least sixty (60) days in advance of the commencement of the program, and shall provide the information required in Section 4 of this administrative regulation.

(b) Provide proof to the board that the entity seeking this status:

1. Consistently offers programs which meet or exceed all the requirements set forth in subsection (2) of this section; and

2. Does not exclude any licensee from its programs.

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

(a) Is an organized program of learning in which an identified licensed social worker was involved in the planning and review thereof;

(b) Is relevant to the practice of social work;

(c) Contributes to the professional competency of the licensee; and

(d) Has competent instructors with appropriate academic training, professional licensures or certification, or professionally recognized experience.

Section 6. Responsibilities and Reporting Requirements of Licensees. Each licensee shall be responsible for obtaining required continuing education hours. He shall identify his own continuing education needs, take the initiative in seeking continuing professional education activities to meet these needs, and seek ways to integrate new knowledge, skills and attitudes. Each person holding licensure shall:

(1) Select approved activities by which to earn continuing education hours;

(2) Submit to the board, when applicable, a request for continuing education activities requiring approval by the board as established in Section 4 of this administrative regulation;

(3) Maintain his own records of continuing education hours;

(4) At the time of renewal, list the continuing education hours obtained during that licensure renewal period;

(5) Furnish documentation of attendance and participation in the appropriate number of continuing education hours at the time of his renewal, as follows:

(a) Each person holding licensure shall maintain, for a period of one (1) year from the date of renewal, all documentation verifying successful completion of continuing education hours;

(b) In each calendar year, up to fifteen (15) percent of all licensees shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education hours for the current renewal period;

(c) Verification of continuing education hours shall not otherwise be reported to the board;

(d) Documentation sent in to the board prior to renewal shall be returned to the licensee by regular mail;

(e) Documentation shall take the form of official documents including:

1. Transcripts;

2. Certificates;

3. Affidavits signed by instructors; or

4. Receipts for fees paid to the sponsor; and

(f) Each licensee shall retain copies of his documentation.

Section 7. Responsibilities and Reporting Requirements of Providers and Sponsors. (1) Providers of continuing education not requiring board approval shall be responsible for providing documentation, as established in Section 6(5) of this administrative regulation, directly to the licensee.

(2) Sponsors of continuing education requiring board approval shall be responsible for submitting a course offering to the board for review and approval before listing or advertising that offering as approved by the board.

Section 8. Board to Approve Continuing Education Hours; Appeal when Approval Denied. In the event of denial, in whole or part, of any application for approval of continuing education hours, the licensee shall have the right to request reconsideration by the board of its decision. The request shall be in writing and shall be received by the board within thirty (30) days after the date of the board's decision denying approval of continuing education hours.

Section 9. Waiver or Extensions of Continuing Education. (1) The board may, in individual cases involving medical disability, illness, or undue hardship as determined by the board, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill the requirements or make the required reports.

(2) A written request for waiver or extension of time involving medical disability or illness shall be submitted by the person holding licensure and shall be accompanied by a verifying document signed by a licensed physician.

(3) Waivers of the minimum continuing education requirements or extensions of time within which to fulfill the continuing education requirements may be granted by the board for a period of time not to exceed one (1) calendar year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the person holding licensure shall reapply for the waiver or extension.

Section 10. Continuing Education Requirements for Reinstatement or Reactivation of Licensure. (1) A person requesting reinstatement or reactivation of licensure shall submit evidence of thirty (30) hours of continuing education within the thirty-six (36) month period immediately preceding the date on which the request for reinstatement or reactivation is submitted to the board.

(2) The person may request, and the board, at its discretion, may reinstate the licensure, with the provision that the person shall receive thirty (30) hours continuing education within six (6) months of the date on which the licensure is reinstated.

(3) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 2 of this administrative regulation and shall not be used to comply with the requirements of that section.

Section 11 . Incorporation by Reference. (1) "Application for Continuing Education Credit Approval", (9/99), Kentucky Board of Social Work, is incorporated by reference.

(2) It may be inspected, copied, or obtained at Kentucky Board of Licensure for Social Work, Berry Hill Annex, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

NANCY L. BLACK, Director

JAMES J. GRAWE, Assistant Attorney General

APPROVED BY AGENCY: June 14, 1999

FILED WITH LRC: June 15, 1999 at 10 a.m.

**GENERAL GOVERNMENT CABINET
Board of Certification of Marriage and Family Therapists
(As Amended at ARRS, September 14, 1999)**

201 KAR 32:010. Definitions.

RELATES TO: KRS 335.300 [335.330]

STATUTORY AUTHORITY: KRS 335.320

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.330 sets forth the requirements for licensure [certification] as a marriage and family therapist. The board is required to review the applications of applicants for licensure [certification]. In addition to other requirements, KRS 335.330 requires applicants to have experience under supervision. This administrative regulation establishes definitions necessary for the evaluation of experience under supervision.

Section 1. Definitions. (1) "Academic courses offered by an accredited postsecondary institution" means:

(a) A marriage and family therapy course, designated by a marriage and family therapy course title or content, beyond the undergraduate level; or

(b) An academic course, relevant to marriage and family therapy, beyond the undergraduate level. General education courses, either electives or designated to meet degree requirements, shall not be acceptable. Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equals fifteen (15) continuing education hours.

(2) "Approved" means recognized by the Kentucky Board of Licensure of Marriage and Family Therapists.

(3) "Approved supervisor" means an individual who:

(a) Holds a designation as an approved supervisor granted by the American Association for Marriage and Family Therapy; or

(b) Is licensed as a marriage and family therapist in the Commonwealth of Kentucky with a minimum of four (4) years of experience in the practice of marriage and family therapy.

(4) "Clinical supervision" means the process of utilizing a partnership aimed at enhancing the professional development of supervisees in providing marriage and family therapy services.

(5) "Continuing education hour" means fifty (50) clock minutes of participating in continuing educational experiences.

(6) "Equivalent course of study" means a master's or doctoral degree from a regionally accredited institution in a mental health field closely related to marriage and family therapy

which either contains, or has been supplemented by the coursework in each of the basic core areas listed in Section 2 of 201 KAR 32:020.

(7) "Program" means an organized learning experience planned and evaluated to meet behavioral objectives; programs may be presented in one (1) session or in a series.

(8) "Provider" means an organization approved by the Kentucky Board of Licensure for Marriage and Family Therapists for providing continuing education programs.

(9) "Raw data" means audio tapes, direct observations, interactive videos, oral or written reports, or video tapes.

(10) "Relevant" means having content applicable to the practice of marriage and family therapy as determined by the board.

(11) "Successful completion" means that the licensee has satisfactorily met the specific requirements of the program and the licensee has earned the continuing education hours.

(12) "Two (2) years experience in the practice of marriage and family therapy" means a minimum of two (2) years of the practice of marriage and family therapy consisting of 1,000 hours of direct, face-to-face contact with individuals, couples, and families in the practice of marriage and family therapy under the supervision of an approved supervisor. [The following terms relate to the evaluation of applications for licensure [certification]:

(1) "Approved supervisor" means an individual who:

(a) Holds a designation as an approved supervisor granted by the American Association for Marriage and Family Therapy;

(b) Is licensed [certified] as a marriage and family therapist in the Commonwealth of Kentucky with a minimum of four (4) years of experience in the practice of marriage and family therapy; or

(c) Holds licensure or certification in another mental health profession whose education and experience demonstrate to the board a level of competence equivalent to that contained in paragraph (b) of this subsection. After July 15, 1999, a supervisor qualifying under this paragraph shall no longer be considered as an approved supervisor.

(2) "Clinical supervision" means the process of utilizing a partnership aimed at enhancing the professional development of supervisees in providing marriage and family therapy services. Clinical supervision shall be equally distributed throughout the qualifying period. It shall be clearly distinguishable from psychotherapy, didactic enrichment or training activities. Supervision must focus on raw data from the supervisee's current clinical work made available to the supervisor.

(a) The supervision process shall focus on:

1. Accurate diagnosis of client problems leading to proficiency in applying professionally recognized nomenclature and developing a plan for treatment as set forth in the Diagnostic and Statistical Manual of Mental Disorders;

2. Development of treatment skills appropriate to the therapeutic process;

3. Development of sensitivity to context and issues of cultural diversity, gender, age and sexual orientation;

4. Acknowledgment of an awareness of the use of the professional self of the therapist in the process of therapy;

5. Increased theoretical and applied knowledge for the therapist;

6. Acquisition of a greater depth of knowledge and range of techniques in the provision of marriage and family therapy; and

7. Awareness of ethical issues in practice, in order to safeguard and enhance the quality of care available to marriage and family therapy clients.

(b) Examples of clinical supervision may include:

1. Supervision behind a one (1) way mirror;

2. Video either in individual or group supervision; and

3. Therapy and supervision involving supervisors and supervisees.

(3) "Equivalent course of study" means a master's or doctoral degree from a regionally accredited institution in a mental health field closely related to marriage and family therapy which either contains, or has been supplemented by the coursework in each of the basic core areas listed in Section 2 [1] of 201 KAR 32:020.

(4) "Raw data" includes audio tapes, direct observations, interactive videos, oral or written reports, or video tapes. Oral or written reports should never constitute more than fifty (5) percent of the

supervision provided each student. Not more than fifty (50) hours of clinical supervision may be via interactive video.

(5) "Supervision behind a one (1) way mirror" means supervisees in groups of up to six (6) persons, behind a one (1) way mirror, may receive credit for group supervision provided an approved supervisor is present and students are actively participating in the session. Up to two (2) students seeing a client on the other side of the one (1) way mirror may concurrently receive client contact and individual supervision hours provided the approved supervisor is actively supervising the session. ["The practice of marriage and family therapy" means the identification and treatment of cognitive, affective, and behavioral symptoms of marital and family dysfunctions that involves the professional application of psychotherapeutic and systems theories and techniques in the delivery of services to individuals, couples, and families.]

(6) [(5)] "Two (2) years" experience in the practice of marriage and family therapy means a minimum of two (2) years of the practice of marriage and family therapy which includes 1,000 hours of direct, face-to-face contact with individuals, couples, and families in the practice of marriage and family therapy under the supervision of an approved supervisor.

(7) "Therapy and supervision involving supervisors and supervisees" means an approved supervisor and no more than two (2) supervisees are physically present in the treatment room. The role of the approved supervisor as either supervisor or cotherapist must be clearly defined prior to the beginning of the session. The supervisees may receive client contact hours and supervision hours.

(8) "Video either in individual or group supervision" means an individual supervisee presents a video tape in group supervision with an approved supervisor. The individual supervisee may receive group supervision hours provided no more than five (5) additional students are present. The additional five (5) or fewer students receive group supervision credit provided they are actively involved in the process.]

JOHN P. SOHAN, Chair

DIANE SCHULER FLEMING, Assistant Attorney General

APPROVED BY AGENCY: June 14, 1999

FILED WITH LRC: June 15, 1999 at noon

FINANCE AND ADMINISTRATION CABINET

Division of Occupations and Professions

Kentucky Board of Licensure of Marriage and Family Therapists (As Amended at ARRS, September 14, 1999)

201 KAR 32:020. Equivalent course of study.

RELATES TO: KRS 335.330(1)

STATUTORY AUTHORITY: KRS 335.320(9), 335.330(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.330(3) provides that the board shall define a course of study equivalent to a master's degree in marriage and family therapy and promulgate the equivalency standard by administrative regulations. This administrative regulation defines the criteria for the equivalent course of study.

Section 1. **An applicant for licensure as a marriage and family therapist shall:**

(1) Comply with the requirements of KRS 335.330; and

(2) Submit an application on the "Application for Licensure as a Marriage and Family Therapist or Marriage and Family Therapist Associate" form. ["An equivalent course of study" means a master's or doctoral degree from a regionally accredited institution in a mental health field closely related to marriage and family therapy which either contains, or has been supplemented by the coursework in each of the basic core areas listed in Section 2 of this administrative regulation.]

Section 2. The basic core areas which are necessary in order to qualify as an equivalent course of study, shall include the following:

(1) Marriage and family studies. This area shall include a minimum of three (3) courses (nine (9) semester hours, twelve (12) quarter hours or 135 didactic contact hours). Courses in this area shall be

theoretical in nature and have a major focus of system theory orientation, and may include:

- (a) Systems theory;
- (b) Family development;
- (c) Blended families;
- (d) Cultural issues in families;
- (e) Family subsystems;
- (f) Major models of family systems theory; or
- (g) Gender issues in families.

(2) Marriage and family therapy. This area shall include a minimum of three (3) courses (nine (9) semester hours, twelve (12) quarter hours or 135 didactic contact hours). Courses in this area shall have a major focus on family systems theory and systemic therapeutic interventions. Courses shall relate to major theories of family systems change and therapeutic practices evolving from each theoretical model. Examples may include:

- (a) Structural communications family therapy;
- (b) Strategic object relations family therapy;
- (c) Behavioral family therapy;
- (d) Intergenerational family therapy;
- (e) Solution oriented family therapy;
- (f) Narrative family therapy; or
- (g) Systemic sex therapy.

(3) Human development. This area shall include a minimum of three (3) courses (nine (9) semester hours, twelve (12) quarter hours or 135 didactic contact hours). Courses in this area provide knowledge of individual human personality development in both normal and abnormal manifestations. Topic areas may include:

- (a) Human development;
- (b) Personality theory [Psychopathology];
- (c) Human sexuality; or [Personality theory];
- (d) Effects of gender and cultural issues on human development.

[Human sexuality; or

(e) Effects of gender and cultural issues on human development.]

(4) Psychopathology and Diagnostic and Statistical Manual of Mental Disorders. This area shall include a one (1) course minimum (three (3) semester hours, four (4) quarter hours or forty-five (45) didactic contact hours). Courses in this area should cover psychopathology, diagnosis through use of the Diagnostic and Statistical Manual of Mental Disorders, or applications of the Diagnostic and Statistical Manual of Mental Disorders to marriage and family therapy.

(5) Professional studies. This area shall include a minimum of one (1) course minimum (three (3) semester hours, four (4) quarter hours or forty-five (45) didactic contact hours). Courses may include:

- (a) Professional ethics in marriage and family therapy;
- (b) Legal responsibilities of the therapist;
- (c) Professional socialization and the role of the professional organization;

(d) Licensure or certification legislation; or

(e) Independent practice issues.

(6) [(5)] Research. This area shall include a minimum of one (1) course minimum (three (3) semester hours, four (4) quarter hours or forty-five (45) didactic contact hours). Courses may include:

- (a) Statistics;
- (b) Research methods;
- (c) Quantitative methodology; or
- (d) Other courses designed to assist the student to understand and perform research.

(7) [(6)] Practicum or internship. The practicum or internship shall include a minimum of one (1) year or 300 hours of supervised direct client contact with individuals, couples and families for family therapy.

(a) Applicants who did not complete a clinical practicum in graduate school may satisfy the practicum requirement with their first 300 post masters' client contact hours.

(b) These hours shall not be counted toward the two (2) years of required post master's experience or the 200 hours of clinical supervision.

Section 3. A course used to fulfill one (1) of the requirements set forth in Section 2 of this administrative regulation **shall not be used to fulfill more than [may be used to fulfill only] one (1) of the basic core area requirements.**

Section 4. (1) Applicants who completed their qualifying graduate degree in a mental health field prior to 1985 may substitute conferences, workshops, seminars, or in-service training related to marriage and family therapy attended or presented as a substitute for college coursework required in Section 2 of this administrative regulation.

(2) Forty-five (45) contact hours of relevant content shall equal three (3) semester hours of credit.

(3) A list of equivalencies the applicant wishes to have considered shall be organized by core area as set forth in Section 2 of this administrative regulation.

(4) Appropriate documentation shall include:

- (a) Date;
- (b) Title;
- (c) Course description;
- (d) Sponsoring organization;
- (e) Presenter, including presenter's qualifications;
- (f) Number of contact hours attended or presented; and
- (g) Certificates of attendance.

Section 5. Other acceptable equivalencies may be considered as follows:

(1) One (1) graduate level course taught on a subject relevant to marriage and family therapy after 1985 may be considered equivalent to three (3) semester hours of credit.

(2) Publication on a subject relevant to marriage and family therapy dated after 1985 may be submitted as equivalencies as acceptable to the board. Credit shall be granted as follows:

(a) A chapter in a book is equivalent to three (3) semester hours of credit. An applicant who authors or edits a book may be given credit equivalent to six (6) semester hours of credit. An applicant shall submit a copy of the title page, table of contents and bibliography.

(b) Publication in a professional refereed journal is equivalent to three (3) semester hours of credit. An applicant shall submit the journal table of contents and a copy of the article as it appeared in the journal including bibliography.

Section 6. Clinical membership in the American Association for Marriage and Family Therapy plus documentation of coursework in psychopathology and the Diagnostic and Statistical Manual of Mental Disorders shall be accepted as evidence that the applicant has met both the educational and experiential requirements for licensure [certification] as set forth in KRS 335.330(3) and (4)(a) and (b).

~~[Section 7. Incorporation by Reference. (1) Application for Licensure as a Marriage and Family Therapist or Marriage and Family Therapist Associate, first edition is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained at the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

JOHN P. SOHAN, Chair
DIANE SCHULER FLEMING, Assistant Attorney General
APPROVED BY AGENCY: June 17, 1999
FILED WITH LRC: June 17, 1999 at 2 p.m.

FINANCE AND ADMINISTRATION CABINET
Division of Occupations and Professions
Kentucky Board of Licensure of Marriage and Family Therapists
(As Amended at ARRS, September 14, 1999)

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

RELATES TO: KRS 335.330

STATUTORY AUTHORITY: KRS 335.320, 335.332

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes the requirements for marriage and family therapist associates.

Section 1. Marriage and Family Therapist Associate. (1) A person desiring to be a marriage and family therapist associate shall apply for and submit to the board an "Application for Licensure as

a Marriage and Family Therapist or Marriage and Family Therapist Associate" [application] with a fee of fifty (50) dollars for the first year. The initial application shall include a copy of a supervisory contract with the designated supervisor for approval by the board. No marriage and family therapist associate shall begin practice without a contract which includes a supervisor approved by the board. A marriage and family therapist associate shall cease practice of marriage and family therapy immediately upon termination of the supervisory contract.

(2) An annual renewal fee of twenty-five (25) dollars for each subsequent year shall be submitted to the board. Contract renewal and extension shall be granted in accordance with Section 4 of this administrative regulation.

Section 2. Supervisory Contract. (1) Prior to beginning a course of supervision for the purpose of meeting licensure requirements a marriage and family therapist associate shall contract with an approved supervisor in writing.

(2) The approved supervisor shall enter into a "Plan of Supervision" [enters into a plan of supervised activities] for Clinical Marriage and Family Therapy Experience" with a person who meets the criteria for becoming [definition of] a marriage and family therapist associate.

(3) The approved supervisor shall be responsible [assumes responsibility] for the marriage and family therapist associate's development and the welfare of the clients served by the marriage and family therapist associate.

(4) If a new supervisory contract is entered into with a different supervisor, approval shall be obtained from the board.

Section 3. Contract Terms. The supervisory contract between the marriage and family therapist associate and the approved supervisor shall contain the following terms:

(1) The name of the marriage and family therapist associate;

(2) The name and license number of the approved supervisor of record;

(3) The name and license number of other approved supervisors;

(4) The agency, institution, or organization where the experience will be received;

(5) A detailed description of the nature of the practice including the type of:

(a) Clients to be seen;

(b) Therapies and treatment modalities which shall be used including the prospective length of treatment; and

(c) Problems or conditions which shall be treated;

(6) The nature, duration, and frequency of the supervision, including the:

(a) Number of hours of supervision per week;

(b) Amount of group and individual supervision; and

(c) Methodology for transmission of case information;

(7) The conditions or procedures for termination of the supervision; and

(8) A statement that:

(a) The approved supervisor of record understands that he shall be held accountable to the board for the care given to the marriage and family therapist associate's clients; and

(b) The approved supervisor of record and other supervisors meet the criteria established in existing administrative regulation.

Section 4. Contract Renewal and Extension. (1) Upon approval of the board, a supervisory contract shall be issued for a term of three (3) years.

(2) At the conclusion of the original three (3) year term, the marriage and family therapist associate may request that a supervisory contract be renewed for a period of one (1) year.

(3) If a marriage and family therapist associate is unable to complete the requirements of the contract and wishes to retain his permit, he shall request a one (1) year extension.

(4) There shall not be a limit on the number of extensions that may be granted a marriage and family therapist associate.

Section 5. Clinical Supervision. (1) Clinical supervision shall:

- (a) Be equally distributed throughout the qualifying period;
- (b) Be clearly distinguishable from psychotherapy, didactic enrichment or training activities; and
- (c) Focus on raw data from the supervisee's current clinical work made available to the supervisor.

(2) The supervision process shall focus on:

- (a) Accurate diagnosis of client problems leading to proficiency in applying professionally recognized nomenclature and developing a plan for treatment as set forth in the Diagnostic and Statistical Manual of Mental Disorders;
- (b) Development of treatment skills appropriate to the therapeutic process;
- (c) Development of sensitivity to context and issues relating specifically to the family or individual being counseled;
- (d) Acknowledgment of an awareness of the use of the professional self of the therapist in the process of therapy;
- (e) Increased theoretical and applied knowledge for the therapist;
- (f) Acquisition of a greater depth of knowledge and range of techniques in the provision of marriage and family therapy; and
- (g) Awareness of ethical issues in practice, in order to safeguard and enhance the quality of care available to marriage and family therapy clients.

(3) Examples of clinical supervision may include:

- (a) Supervision behind a one (1) way mirror;
 - (b) Video either in individual or group supervision; and
 - (c) Therapy and supervision involving supervisors and supervisees.
- (4) Oral and written reports shall not constitute more than fifty (50) percent of clinical supervision.
- (5) Clinical supervision via interactive video shall not exceed fifty (50) hours.
- (6) Groups of up to six (6) persons, behind a one (1) way mirror, may receive credit for group supervision if an approved supervisor is present and students are actively participating in the session. Up to two (2) students seeing a client on the other side of the one (1) way mirror may concurrently receive client contact and individual supervision hours if the approved supervisor is actively supervising the session.

(7) In a therapy session involving a supervisor and supervisee:

- (a) An approved supervisor and not more than two (2) supervisees, the roll of the approved supervisor as a supervisor or cotherapist shall be clearly defined prior to beginning a therapy session. The supervisees may receive credit for client contact hours and supervision hours.
- (8) An individual supervisee may present a videotape in group supervision with an approved supervisor. The individual supervisee may receive group supervision hours if not more than five (5) additional students are present. The additional students may also receive group supervision credit if they are actively involved in the process.

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(8) An individual supervisee may present a videotape in group supervision with an approved supervisor. The individual supervisee may receive group supervision hours if not more than five (5) additional students are present. The additional students may also receive group supervision credit if they are actively involved in the process.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Licensure as a Marriage and Family Therapist or Marriage and Family Therapist Associate", (6/17/99 Edition), Board of Marriage and Family Therapists; and

(b) "Plan of Supervision for Clinical Marriage & Family Therapy Experience", (6/17/99 Edition), Board of Marriage and Family Therapists.

(2) This material may be inspected, copied, or obtained at the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Upon approval by the board, the supervisory contract shall be issued for three (3) years. Following review said supervisory contract may be renewed upon request by the marriage and family therapist-associate for a term of one (1) year. A person not completing the requirements of the contract may apply to the board for a one (1) year extension.

Section 5. Incorporation by Reference. (1) Plan of Supervision for Clinical Marriage and Family Therapy Experience, first edition is

incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

JOHN P. SOHAN, Chair

DIANE SCHULER FLEMING, Assistant Attorney General

APPROVED BY AGENCY: June 17, 1999

FILED WITH LRC: June 17, 1999 at 2 p.m.

FINANCE AND ADMINISTRATION CABINET
Division of Occupations and Professions
Kentucky Board of Licensure of Marriage and Family Therapists
(As Amended at ARRS, September 14, 1999)

201 KAR 32:041. Coursework in psychopathology.

RELATES TO: KRS 335.307, 335.330, 335.340(2) [335.320]

STATUTORY AUTHORITY: KRS 335.320(9), 335.340(2) [335.330]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.330 requires the board to establish the coursework requirements for marriage and family therapists.

Section 1. Coursework in psychopathology for marriage and family therapists certified prior to January 1, 1999. On the date of the second annual license renewal, all licensed marriage and family therapists who were certified prior to January 1, 1999, shall provide documentation or verification of experience or education in psychopathology to the board by filing an "Application for Licensure as a Marriage and Family Therapist or Marriage and Family Therapist Associate". This requirement may be met by any of the following:

(1) Coursework in psychopathology. One (1) graduate level class in psychopathology shall be required; [This means one (1) graduate-level class in psychopathology;]

(2) Supervised experience with a focus on diagnosis. Four (4) full years of full-time clinical experience in marriage and family therapy shall be required. The supervised experience shall be demonstrated by filing a letter with the board indicating the nature of:

(a) How the clinical experience relates to psychopathology; or

(b) Use of the Diagnostic and Statistical Manual of Mental Disorders; or [This is defined as four (4) years full-time clinical experience in marriage and family therapy;

(a) The supervised experience shall be demonstrated by filing a letter with the board indicating the nature of how the clinical experience relates to psychopathology or use of the Diagnostic and Statistical Manual of Mental Disorders; or]

(3) Completion of equivalent continuing education units relating to psychopathology. Fifteen (15) hours of continuing education units specifically relating to diagnosis using:

(a) The Diagnostic and Statistical Manual of Mental Disorders; or

(b) Psychopathology. [This shall be defined as fifteen (15) hours of continuing education units specifically relating to diagnosis via the Diagnostic and Statistical Manual of Mental Disorders or psychopathology.]

Section 2. (1) The following material is incorporated by reference:

(a) "Application for Licensure as a Marriage and Family Therapist or Marriage and Family Therapist Associate", (6/17/99 Edition), Board of Marriage and Family Therapists; and

(b) "Diagnostic and Statistical Manual of Mental Disorders", (9/99).

(2) This material may be inspected, copied, or obtained at the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Incorporation by Reference: (1) Application for

Licensure as a Marriage and Family Therapist or Marriage and Family Therapist Associate, first edition is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

JOHN P. SOHAN, Chair

DIANE SCHULER FLEMING, Assistant Attorney General

APPROVED BY AGENCY: June 17, 1999

FILED WITH LRC: June 17, 1999 at 2 p.m.

FINANCE AND ADMINISTRATION CABINET

Division of Occupations and Professions

Kentucky Board of Licensure of Marriage and Family Therapists (As Amended at ARRS, September 14, 1999)

201 KAR 32:045. Examination.

RELATES TO: KRS 335.320, 335.332(1)

STATUTORY AUTHORITY: KRS 335.320(9), 335.330

NECESSITY, CONFORMITY, AND FUNCTION: KRS 335.330 requires the board to administer a test for licensure for marriage and family therapists.

Section 1. General Requirements. (1) The board shall publish pertinent instructions and establish the examination schedule which shall include the:

- (a) Place;
- (b) Time; and
- (c) Final date by which the board shall have received the applicant's materials.

(2)(a) An applicant for examination shall:

1. Submit a complete "Application for Licensure as a Marriage and Family Therapist or Marriage and Family Therapist Associate" [application]; and

2. Pay the application fee, as required by Section 1 of 200 KAR 32:025 [applicable fee].

(b) Once the application has been approved by the board, the applicant shall be scheduled to take the examination at the next regularly scheduled date.

(3) The examination shall be deferred until the next scheduled date, without forfeiture of the examination fee, if the applicant fails to appear for the examination because of:

(a) Illness of an immediate family member;

(b) Death of a family member; or

(c) Similar unforeseen emergency. [If an applicant fails to appear for the scheduled examination and presents a valid reason in writing for missing the examination, including illness or death in the immediate family, the examination shall be deferred until the next scheduled date without forfeiture of the examination fee.]

(4) If an applicant fails to appear for an examination without one (1) of the reasons described in subsection (3) of this section:

(a) The application shall be terminated on the date of the examination;

(b) Licensure shall be denied on the basis of failure of the examination by default; and

(c) The applicant shall:

1. Forfeit all application fees;

2. Be required to resubmit an application to the board; and

3. Take the examination at the next regularly scheduled date. [If an applicant fails to appear for or to complete the examination without a valid reason:

(a) The applicant shall forfeit all fees paid; and

(b) Resubmit the application to the board, requesting to be scheduled to take the examination at the next regularly scheduled date;

(5) If an applicant fails to appear for or to complete the examination without presenting a valid reason in writing, including illness or death in the immediate family:

(a) The application shall be terminated on the date of the exami-

nation; and

(b) The applicant shall be denied licensure on the basis of failure of the examination by default.

Section 2. Examination for Licensure. (1) An applicant for licensure shall submit to a written examination in accordance with subsection (2) of this section.

(2) The board shall contract with a testing agency that tests on the requirements in KRS 335.330(1) and (2) and 335.340(2). The test shall be administered to an applicant upon completion of the requirements of KRS 335.330(1) and (2) and 335.340(2). [nationally recognized testing agency approved by the board. The test shall be administered upon completion of the requirements set forth in KRS 335.320, at regularly scheduled times set by the board.]

(3) If an applicant for licensure fails the objective examination, the candidate shall, with payment of the required fee, be rescheduled to take the examination at its next regularly scheduled date.

(4) The candidate may [shall] continue to function as a marriage and family therapist associate under the supervision of the board-approved supervisor until:

(a) The examination is successfully completed;

(b) The supervisory contract is terminated; or

(c) The candidate ceases to practice as a marriage and family therapist associate and notifies the board in writing.

Section 3. Incorporation by Reference. (1) "Application for Licensure as a Marriage and Family Therapist or Marriage and Family Therapist Associate", (6/17/99 Edition), Board of Marriage and Family Therapists, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN P. SOHAN, Chair

DIANE SCHULER FLEMING, Assistant Attorney General

APPROVED BY AGENCY: June 15, 1999

FILED WITH LRC: June 15, 1999 at noon

GENERAL GOVERNMENT CABINET

Kentucky Board of Licensure of Marriage and Family Therapists (As Amended at ARRS, September 14, 1999)

201 KAR 32:050. Code of ethics.

RELATES TO: KRS 335.320(7), 335.348 [(5)]

STATUTORY AUTHORITY: KRS 335.320[(5);] (7), (9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.320(5) requires the board to promulgate a code of ethics for licensed [certified] marriage and family therapists and marriage and family therapist associates. This administrative regulation establishes the required code of ethics.

Section 1. Responsibility to Clients. (1) A marriage and family therapist or a marriage and family therapist associate 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 marriage and family therapist or marriage and family therapist associate shall not:

(a) [Discriminate against or refuse professional service to anyone on the basis of race, gender, religion, national origin, or sexual orientation;

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

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

1. Impair professional judgment;

2. Incur a risk of exploitation of the client; or

3. Otherwise violate a provision of this administrative regulation.

If a dual relationship cannot be avoided, and does not impair pro-

professional judgment, incur a risk of exploitation of the client, or otherwise violate a provision of this administrative regulation, a therapist or therapist associate 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 therapy;

(d) [(e)] Use his professional relationship with a client to further his own interests;

(e) [(f)] Continue therapeutic relationships unless it is reasonably clear that the client is benefiting from the relationship;

(f) [(g)] Fail to assist a person in obtaining other therapeutic services if the therapist or therapist associate 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 therapy 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 investigations and ethical proceedings; or

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

Section 2. Confidentiality. (1) A therapist or therapist associate shall respect and guard the confidences of each individual client.

(2) Marriage and family therapists and marriage and family therapist associates shall not disclose a client confidence except:

(a) As mandated, or permitted by law;

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

(c) If the therapist or therapist associate is a defendant in a civil, criminal, or disciplinary action arising from the therapy, 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 therapy, unless a waiver is executed by each family member receiving therapy, who is legally competent to execute a waiver, a therapist or therapist associate shall not disclose information received from any family member.

(2) A marriage and family therapist or marriage and family therapist associate may use client or clinical materials in teaching, writing, and public presentations if:

(a) A written waiver has been obtained in accordance with subsection (1)(d) of this section; or

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

(3) A marriage and family therapist or marriage and family therapist associate shall store or dispose of client records so as to maintain confidentiality.

Section 3. Professional Competence and Integrity. A marriage and family therapist or marriage and family therapist associate shall maintain standards of professional competence and integrity and shall be subject to disciplinary action:

(1)(a) Upon conviction of a felony, or a misdemeanor related to his practice as a marriage and family therapist or marriage and family therapist associate.

(b) Conviction shall include conviction based on:

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

2. The suspension or deferral of a sentence.

(2) If his license or certificate is subject to disciplinary action by another state's regulatory agency that the board determines violates applicable Kentucky state law or administrative regulation;

(3) Upon a showing of impairment due to mental incapacity or the abuse of alcohol or other substances which negatively impact the practice of marriage and family therapy;

(4) If he misrepresented or concealed a material fact in obtaining or seeking reinstatement of a license or certificate;

(5) If he has refused to comply with an order issued by the board;

or

(6) He has failed to cooperate with the board by not:

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

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

or

(c) Properly responding to subpoenas issued by the board.

Section 4. Responsibility to a Student or Supervisee. (1) A marriage and family therapist or marriage and family therapist associate shall not exploit the trust and dependency of a student or supervisee.

(2) A marriage and family therapist or marriage and family therapist associate 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 therapist or therapist associate 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 therapist or therapist associate shall take appropriate professional precautions to ensure judgment is not impaired and no exploitation occurs.

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

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

(3) A marriage and family therapist or marriage and family therapist associate 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 marriage and family therapist or marriage and family therapist associate 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 therapist or therapist associate 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 educational or training 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 marriage and family therapist or marriage and family therapist associate shall make financial arrangements with a client, third party payor, or supervisee that are reasonably understandable and conform to accepted professional practices.

(2) A marriage and family therapist or marriage and family therapist associate 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; or

(d) Represent facts truthfully to clients, third party payors, and supervisees regarding services rendered.

Section 6. Advertising. A marriage and family therapist shall:

(1) Accurately represent his education, training, and experience relevant to his practice of marriage and family therapy;

(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.

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

(a) Contains a material misrepresentation of fact;

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

(c) Is intended to or is likely to create an unjustified expectation.

Section 7. A marriage or [and] family therapist associate [associates] may have business cards and letterhead if it is clearly stated that he is an associate. He shall not [they are associates. They cannot] present himself [themselves as] or imply that he is [they are] licensed to practice as a marriage and family therapist.

JOHN P. SOHAN, Chair

DIANE SCHULER FLEMING, Assistant Attorney General

APPROVED BY AGENCY: June 15, 1999

FILED WITH LRC: June 15, 1999 at noon

**FINANCE AND ADMINISTRATION CABINET
Division of Occupations and Professions
Kentucky Board of Licensure of Marriage and Family Therapists
(As Amended at ARRS, September 14, 1999)**

201 KAR 32:060. Continuing education requirements.

RELATES TO: KRS 335.340(7) [(1)(b)]

STATUTORY AUTHORITY: KRS 335.320(9) [(7)], 335.340(7) [(1)(b)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.340(1)(b) authorizes the board to promulgate an administrative regulation requiring marriage and family therapists to complete continuing education requirements as a condition of renewal of their certification. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. [Definitions. As used in this administrative regulation, unless the context otherwise requires:

(1) "Approved" means recognized by the Kentucky Board of Licensure [Certification] of Marriage and Family Therapists;

(2) "Continuing education hour" means fifty (50) clock minutes of participating in continuing educational experiences;

(3) "Program" means an organized learning experience planned and evaluated to meet behavioral objectives; programs may be presented in one (1) session or in a series;

(4) "Academic courses offered by an accredited post-secondary institution" means:

(a) A marriage and family therapy course, designated by a marriage and family therapy course title or content, beyond the undergraduate level; or

(b) An academic course, relevant to marriage and family therapy, beyond the undergraduate level. General education courses, either electives or designated to meet degree requirements, shall not be acceptable. Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equals fifteen (15) continuing education hours;

(5) "Relevant" means having content applicable to the practice of marriage and family therapy as determined by the board;

(6) "Provider" means an organization approved by the Kentucky Board of Licensure [Certification] for Marriage and Family Therapists for providing continuing education programs;

(7) "Successful completion" means that the licensee [certificate holder] has satisfactorily met the specific requirements of the program and the licensee [certificate holder] has earned the continuing education hours;

Section 2. [Accrual of Continuing Education Hours; Computation of Accrual. (1) A minimum of fifteen (15) [forty-five (45)] continuing education hours shall be accrued by each licensee [person holding certification] during the one (1) [three (3)] year licensure [certification] period for renewal, except that those persons holding certification which is due to be renewed by May 1, 1998, shall obtain fifteen (15) continuing education hours for this renewal period only. All persons holding certification shall obtain forty-five (45) continuing education hours for each renewal thereafter.

(2) The certification period shall be May 1 through April 30 of the third calendar year.]

(2) [(3)] All hours shall be in or related to the field of marriage and family therapy.

Section 2. [3.] Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the mandatory license [certificate] shall be directly related to the professional growth and development of marriage and family therapy practitioners. They may be earned by completing any of the following educational activities:

(1) Programs not requiring board review and approval. Programs from the following sources shall be deemed to be relevant to the practice of marriage and family therapy and shall be approved without further review by the board:

(a) Programs provided by the American Association for Marriage And Family Therapy (AAMFT) and its state affiliates;

(b) Academic courses as set forth in Section 1 of this administrative regulation; and

(c) Continuing education programs offered by Commission on Accreditation for Marriage and Family Therapy Education accredited institutions.

(2) Programs requiring board review and approval. Programs from the following sources shall be reviewed and determined to be relevant and therefore subsequently approved by the board:

(a) Relevant programs, including home study courses and in-service training provided by other organizations, educational institutions, or other service providers approved by the board;

(b) Relevant programs or academic courses presented by the licensee [certificate holder]. Presenters of relevant programs or academic courses may earn full continuing education credit for each contact hour of instruction, not to exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of the same course;

(c) Relevant publications in a professionally recognized or juried publication. Credit shall not be granted except [may be granted only] for those publications that were published within the one (1) [three (3)] year period immediately preceding the renewal date. A licensee [certificate holder] shall earn one-half (1/2) of the continuing education hours required for a relevant publication. More than one (1) publication shall not [Only one (1) publication may] be counted during each renewal period; and

(d) Related areas not specifically a part of the field of marriage and family therapy may be approved for up to two (2) [five (5)] continuing education hours out of the fifteen (15) [forty-five (45)] required if the board believes the related areas may serve to enhance the licensee's [certificate holder's] ability to practice.

Section 3. [4.] Procedures for Preapproval of Continuing Education Sponsors and Programs. (1) Any entity seeking to obtain approval of a continuing education program prior to its offering shall apply to the board at least sixty (60) days in advance of the commencement of the program, stating the:

- (a) Type of learning activity;
- (b) Subject matter;
- (c) Names and qualifications of the instructors; and
- (d) Number of continuing education hours offered.

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

- (a) Is an organized program of learning;
- (b) Pertains to subject matters which integrally relate to the practice of marriage and family therapy;
- (c) Contributes to the professional competency of the licensee [certificate holder]; and
- (d) Is conducted by individuals who have educational training or experience acceptable to the board.

Section 4. [5.] Responsibilities and Reporting Requirements of Licensees [Certificate Holders]. A licensee [certificate holder] shall be responsible for obtaining required continuing education hours. He shall identify his own continuing education needs, take the initiative in seeking continuing professional education activities to meet these needs, and seek ways to integrate new knowledge, skills and attitudes. Each person holding licensure [certification] shall:

- (1) Select approved activities by which to earn continuing educa-

tion hours;

(2) Submit to the board when applicable a request for approval for continuing education activities not approved by the board as set forth in Section 4 of this administrative regulation;

(3) Maintain records of continuing education hours. Each licensee [person holding certification] shall maintain, for a period of one (1) year [three (3) years] from the date of renewal, all documentation verifying successful completion of continuing education hours. During each licensure [certification] renewal period, up to fifteen (15) percent of all licensees [certificate holders] shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education hours for the current renewal period. Verification of continuing education hours shall not otherwise be reported to the board;

(4) Document attendance and participation in a continuing education activity in the form of official documents including transcripts, certificates, affidavits signed by instructors, receipts for fees paid to the sponsor, or less formal evidence including written summaries of experiences that are not otherwise formally or officially documented in any way. The type of documentation required shall vary depending on the specific activity submitted to the board for approval; and

(5) Fully comply with the provisions of this administrative regulation. Failure to comply shall constitute a violation of KRS 335.340(7) [(4)(b)] and may result in the refusal to renew, suspension, or revocation of the licensure [certification].

Section 5. [6:] Carry-over of Continuing Education Hours, Prohibited. There shall not be a carry-over of continuing education hours earned in excess of those required under Section 2 of this administrative regulation into the immediately following licensure [certification] renewal period.

Section 6. [7:] Board to Approve Continuing Education Hours; Appeal when Approval Denied. In the event of denial, in whole or part, of any application for approval of continuing education hours, the licensee [person holding certification] shall have the right to request reconsideration by the board of its decisions. The request shall be in writing and shall be received by the board within thirty (30) days after the date of the board's decision denying approval of continuing education hours.

Section 7. [8:] Waiver or Extensions of Continuing Education. (1) The board may, in individual cases involving medical disability, illness, or undue hardship as determined by the board, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill the same or make the required reports.

(2) A written request for waiver or extension of time involving medical disability or illness shall be submitted by the licensee [person holding certification] and shall be accompanied by a verifying document signed by a licensed physician.

(3) Waivers of the minimum continuing education requirements or extensions of time within which to fulfill the continuing education requirements may be granted by the board for a period of time not to exceed one (1) calendar year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the licensee [person holding certification] shall reapply for the waiver or extension.

JOHN P. SOHAN, Chair
DIANE SCHULER FLEMING, Assistant Attorney General
APPROVED BY AGENCY: June 17, 1999
FILED WITH LRC: June 17, 1999 at 2 p.m.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Certification for Professional Counselors
(As Amended at ARRS, September 14, 1999)**

201 KAR 36:060. Qualifying experience under supervision.

RELATES TO: KRS 335.500(4), 335.505(4), 335.525(1)(e)
STATUTORY AUTHORITY: KRS 335.515(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.505(4) allows a student intern or trainee in professional counseling to use the title of "professional counselor intern" or "student in training" if his activities are performed under the supervision or direction of an approved supervisor and the activities are a part of a supervised program of study. KRS 335.525(1)(e) [(d)] provides that an applicant for a professional counselor certificate must have acquired 2000 hours of experience in the practice of counseling under the general supervision of an approved supervisor. This administrative regulation establishes the requirements relating to supervision and the requirements for experience under supervision.

Section 1. Definitions. (1) "[The] Practice of counseling" means professional counseling services within the scope of Section 2 of this administrative regulation and which involve the application of mental health and development principals, methods or procedures, including assessment, evaluation, diagnosis, and treatment of emotional disorders or mental illnesses, to assist individuals to achieve more effective personal, social, educational, or career development and adjustment.

(2) "Supervision" means the educational process of utilizing a partnership between a supervisor and a supervisee aimed at enhancing the professional development of the supervisee in providing professional counseling services.

Section 2. Requirements for the Practice of Professional Counseling. (1) The practice of professional counseling shall be based on knowledge of interpersonal, cognitive, cognitive behavioral, psychodynamics, human relations, crisis intervention, psychopathology, group dynamics, and effective methods and strategies necessary to help the client achieve mental, vocational, emotional, physical, social, moral, and spiritual development and adjustment throughout the client's life span.

(2) A practitioner of professional counseling shall possess and utilize numerous skills, including skills necessary to apply professional counseling services relative to the following areas:

- (a) The helping relationship, including counseling theory and practice;
- (b) Human growth and development;
- (c) Lifestyle and career development;
- (d) Group dynamics, process, counseling, and consulting;
- (e) Assessment, appraisal, and testing of individuals;
- (f) Social and cultural foundation, including multicultural issues;
- (g) Principles of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior;
- (h) Research and evaluation; and
- (i) Professional orientation and ethics.

Section 3. Supervision. (1) A supervisor shall be a properly credentialed member of one (1) of the professions identified in KRS 335.500(4) who:

- (a) Provides supervision to a person obtaining the experience required under KRS 335.525(1)(e);
- (b) Does not have:
 - 1. An unresolved citation filed against him by the board that licenses or certifies that profession;
 - 2. A suspended or probated license or certificate;
 - 3. An order from the board under which he is licensed or certified prohibiting him from providing supervision; or
 - 4. A previous or existing dual relationship or other personal relationship with a supervisee; and
- (c) Has been in the practice of the profession listed in KRS 335.500(4) under which they qualify as an approved supervisor for three (3) years following licensure or certification in that profession.

(2) Notwithstanding the requirement of subsection (1)(c) of this section, a supervisor whose credential is that of a certified professional counselor shall not be required to have held a certificate for three (3) years until after January 1, 2001.

(3) A supervisor of record shall assume responsibility for the practice of the supervisee. A supervisor shall not serve as a supervisor of record for more than six (6) persons obtaining experience for certification or licensure at the same time.

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Section 4. Supervisory Agreement. A supervisee shall enter into a supervisory agreement with an approved supervisor. The supervisory agreement required by this section shall contain:

- (1) The name and address of the supervisee.
- (2) The name, address, license or certification number, and number of years of practice of the supervisor of record.
- (3) The name, address, license or certification number, and number of years of practice of other supervisors.
- (4) The agency, institution, or organization where the experience will be received.
- (5) A detailed description of the nature of the practice including the type of:
 - (a) Clients which shall be seen;
 - (b) Therapies and treatment modalities which shall be used including the prospective length of treatment; and
 - (c) Problems which shall be treated.
- (6) The nature, duration, and frequency of the supervision, including the:
 - (a) Number of hours of supervision per week;
 - (b) Number of hours of individual supervision; and
 - (c) Methodology for transmission of case information.
- (7) The conditions or procedures for termination of the supervision.
- (8) A statement that:
 - (a) The supervisor of record understands that he shall be held accountable to the board for the care given to the supervisee's clients; and
 - (b) The supervisor of record and other supervisors meet the criteria established in Section 3(1) and (2) of this administrative regulation.
- (9) The supervisory agreement shall be signed by the supervisor.

Section 5. Experience Under Supervision. Experience under supervision shall consist of:

- (1) Direct responsibility for a specific individual or group of clients; and
- (2) Broad exposure and opportunity for skill enhancement with a variety of developmental issues, dysfunctions, diagnoses, acuity levels and population groups.

Section 6. Supervision Requirements. Supervision shall relate specifically to the qualifying experience and shall focus on:

- (1) The accurate diagnosis of a client problem leading to proficiency in applying professionally recognized clinical nomenclature;
- (2) The development and modification of the treatment plan;
- (3) The development of treatment skills suitable to each phase of the therapeutic process;
- (4) Ethical problems in the practice of professional counseling; and
- (5) The development and use of the professional self in the therapeutic process.

Section 7. Evaluation by Board. The period of supervised experience required by KRS 335.525(1)(e) shall be evaluated by the board according to one (1) of the following methods at the option of the candidate:

- (1) Preapproved evaluation. The candidate shall submit the supervisory contract required by Section 4 of this administrative regulation for the experience prior to beginning to accrue the required experience. This contract shall be evaluated by the board and shall be approved or disapproved within ninety (90) days of its submission.
- (2) Postexperience evaluation for persons who obtained their experience in another state. A candidate who obtained his experience in another state shall submit his application along with appropriate documentation of his hours of supervision. The documentation shall also:
 - (a) Provide information that verifies that the requirements for the license or certificate of the supervisor from the state in which the license or certificate was held are substantially equivalent to the requirements for that license or certificate in Kentucky; and
 - (b) Provide information that verifies that the supervisor is in good

standing with the certifying or licensing state.

NANCY L. BLACK, Director
JAMES J. GRAWE, Assistant Attorney General
APPROVED BY AGENCY: June 14, 1999
FILED WITH LRC: June 15, 1999 at 10 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (As Amended at ARRS, July 13, 1999 and As Amended at IJC on Agriculture and Natural Resources, September 8, 1999)

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

RELATES TO: KRS 224.01-010, 224.10-100, 224.10-105, 224.40-100, 224.40-110, 224.40-120, 224.40-305, 224.40-310, 224.40-315, 224.40-320, 224.40-325, 224.40-330, 224.40-340, 224.40-605, 224.40-650, 224.43-010, 224.43-020, 224.43-070, 224.43-310, 224.43-315, 224.43-330, 224.43-340, 224.43-345, 224.43-350, 224.70-100, 224.70-110, 224.99-010, 224.99-020 [224.01-224.10, 224.40, 224.43, 224.70, 224.99]

STATUTORY AUTHORITY: KRS 224.10-100(19)(c), (24), 224.40-100, [224.40-120,] 224.40-305, [224.43-330]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(19)(c), (24) and 224.40-305 authorize the cabinet to promulgate [Chapter 224 requires the cabinet to adopt] [rules and] administrative regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires that persons engaging in the management, processing, and disposal of waste obtain a permit. [This chapter establishes the permitting standards for solid waste sites or facilities, the standards applicable to all solid waste sites or facilities, and the standards for certification of operators. An overview of the permit program is found in [Section 1 of] 401 KAR 47:080.] This administrative regulation establishes requirements for registered permits-by-rule and the standards for the certification program.

Section 1. Issuance of Registered Permit-by-rule. (1) Before accepting waste [beginning operation], the [Any] owner or operator of a solid waste site or facility specified in 401 KAR 47:080, Section 2(6) [of 401 KAR 47:080 in existence as of the effective date of this administrative regulation] shall notify the cabinet by submitting a registration [before October 1, 1990 on a form prescribed by the cabinet]. For solid waste sites or facilities other than medical waste transfer stations, the registration shall become effective five (5) business days after the cabinet receives it unless the cabinet denies the registration within that time. For medical waste transfer stations, the registration shall become effective thirty (30) days after the cabinet receives it unless the cabinet denies the registration within that time. The cabinet shall hold a public hearing in accordance with 401 KAR 47:140, Section 10, prior to accepting or denying the registration upon the request of any individual. [The registration shall become effective five (5) business days after the cabinet receives it unless the cabinet denies the registration within that time.] The owner or operator of [Then the facility shall be deemed to have] a registered permit-by-rule facility shall comply [if the owner or operator complies] with the environmental performance standards in 401 KAR 30:031 in order for the registered permit-by-rule to remain effective [47:030].

(2) The registration for a registered permit-by-rule facility shall be submitted to the cabinet on one (1) of the following registration forms [which are incorporated by reference in Section 5 of this administrative regulation]:

- (a) DEP 7059; Solid Waste Transfer Station, Convenience Center, and Recycling Center;
- (b) DEP 7059-A; Solid Waste Composting Facility;
- (c) DEP 7059-E; Class I Solid Waste Landfarm;
- (d) DEP 7059-H; Less-than-one-acre Construction/Demolition Debris (CDD) Landfill; or
- (e) DEP 7059-J; Solid Waste Incinerator.

(3) A registration that is determined to be administratively incomplete may be denied within five (5) business days after receiving the registration. Thereafter, if [When] the cabinet determines that a [upon examination or reexamination of the] registration [that it] fails to include all of the [required] information required [by Section 4 of this administrative regulation], the cabinet shall notify the operator that the registration is deficient, [and that] The owner or operator shall submit the requested information within thirty (30) calendar [ten (10) business] days of the date [receipt] of the notice of deficiency. The cabinet's review shall be conducted in accordance with the requirements of 401 KAR 47:025. [The owner or operator shall be subject to enforcement procedures for not submitting the requested information in a timely fashion. Failure to complete the form in a timely fashion is not grounds to revoke a registered permit-by-rule.]

[(3) A registered permit-by-rule is not available [Subsection (1) of this section shall not apply] to a [any] facility which has been previously denied a permit or to a [any] facility whose authority to operate under 401 KAR Chapters 47 through 48 and KRS Chapter 224 has been previously terminated.]

(4) Prior to submission of the registration, the owner or operator shall prepare a groundwater protection plan in accordance with 401 KAR 5:037.

(5) The owner or operator shall publish a notice two (2) weeks prior to submission of the registration in a daily or weekly newspaper of general circulation where the proposed facility is located. Public notices shall be of a size to include not less than two (2) column widths for advertising and shall be in a display format. The public notice shall contain the following:

- (a) Name and address of the owner or operator;
- (b) The type of facility;
- (c) A brief description of the business to be conducted; and
- (d) Name and address of the facility.

Section 2. Operating Requirements for [Operation Under [During] a] Registered Permit-by-rule Facilities. (1) The owner or operator of a facility operating under a registered permit-by-rule, except as provided in Section 3 of this administrative regulation, shall not:

- (a) Store, treat or dispose of solid waste not specified in the registration [form]; or
- (b) Exceed the design capacities specified in the registration [form].

(2) The owner or operator of a facility operating under a registered permit-by-rule shall comply with the environmental performance standards in 401 KAR 30:031 [47:030].

(3) The owner or operator of a registered permit-by-rule facility shall keep records as provided in this section [of the amount, sources and types of [municipal] solid waste received and other information as required by the cabinet].

(a) The owner or operator of a less-than-one (1) acre construction/demolition debris landfill, or solid waste incinerator [and] shall report quarterly pursuant to KRS 224.43-330. In addition, the owner or operator shall submit DEP 7046, Annual Waste Quantity Report, [a [quarterly] summary of this information] to the cabinet annually and upon closure of the facility. [DEP 7046, Annual Waste Quantity Report, is incorporated by reference in Section 5 of this administrative regulation.] [The summary must be submitted no later than January 31 for the preceding calendar year.] [The quarterly report shall be on a form approved by the cabinet.]

(b) The owner or operator of a composting facility shall report quarterly pursuant to KRS 224.43-330. In addition, the owner or operator shall submit DEP 7108, Annual Report for a Solid Waste Composting Facility, to the cabinet annually and upon closure of the facility. [DEP 7108, Annual Report for a Solid Waste Composting Facility, is incorporated by reference in Section 5 of this administrative regulation.]

(c) The owner or operator of a landfarming facility shall report quarterly pursuant to KRS 224.43-330. In addition, the owner or operator shall submit DEP 7064, Annual Report for a Class I Solid Waste Landfarm, to the cabinet annually and upon closure of the facility. [DEP 7064, Annual Report for a Class I Solid Waste Landfarm, is incorporated by reference in Section 5 of this administrative regulation.]

(d) The owner or operator of a registered permit-by-rule con-

venience center, transfer station or commercial recycling center shall document records on DEP 7046, Annual Waste Quantity Report [incorporated by reference in Section 5 of this administrative regulation]. Records shall be kept on site and available for inspection for three (3) years.

(4) The owner or operator of a [Convenience centers, transfer stations, solid waste incinerators, and commercial recyclers shall additionally submit a report to the cabinet annually, no later than January 31st for the previous year. The report shall identify the sources and quantities of waste handled. Additionally,] solid waste incinerator [incinerators] shall conduct the Toxicity Characteristic Leaching Procedure (TCLP) test described in 401 KAR 31:030, Section 5, before the initial disposal of any ash and whenever the characteristics of the waste accepted by the incinerator significantly change. The owner or operator shall keep a record of the current TCLP laboratory analysis report required by this section available for inspection by the cabinet for three (3) years. The owner or operator of a solid waste incinerator shall report the volume of ash generated to the cabinet annually and upon closure of the facility. The report shall be submitted no later than January 31 for the preceding calendar year, [report volume of ash and the results of weekly extraction procedure tests on the ash.]

Section 3. Changes to a Registered Permit-by-rule. A revised registration shall be submitted as follows:

(1) Solid wastes not previously identified in the registration may be stored, treated, or disposed at a facility operating under a registered permit-by-rule if the owner or operator submits a revised registration to the cabinet prior to that [such a] change.

(2) The owner or operator of a facility operating under a registered permit-by-rule shall submit a revised registration to the cabinet prior to increasing [increases in] the design capacity of processes used at a facility.

(3) The owner or operator of a facility operating under a registered permit-by-rule shall submit a revised registration to the cabinet [at least five (5) business days] prior to changing [changes in] the processes for the storage, treatment or disposal of solid waste, using [or use of] additional processes, or changing the owner or operator. The revised registration shall become effective five (5) business days after the cabinet receives it, unless the cabinet denies the registration within that time.

[(4) The owner or operator shall submit a revised registration prior to changes in owners or operators.

(5) Changes listed in subsections (1) through (4) of this section may be implemented prior to cabinet acknowledgment of receipt of the revised registration.]

Section 4. The cabinet may revoke a registered permit-by-rule for the following causes:

(1) Noncompliance by the owner or operator with a condition of the registration;

(2) The owners, operator's, or key personnel's failure during the registration process to disclose all information required by the cabinet;

(3) The owner's, operator's, or key personnel's misrepresentation of any information required by the cabinet at any time;

(4) The cabinet's determination that the operation endangers human health, safety, or the environment;

(5) The owner's, operator's or key personnel's [facility's] violation of any requirement of KRS Chapter 224 or the administrative regulations promulgated pursuant thereto; or

(6) A change to the registered-permit-by-rule that was made without complying with Section 3 of this administrative regulation.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) DEP 7059: "Solid Waste Transfer Station, Convenience Center, and Recycling Center" (June 1999);

(b) DEP 7059-A: "Solid Waste Composting Facility" (June 1999);

(c) DEP 7059-E: "Class I Solid Waste Landfarm" (June 1999);

(d) DEP 7059-H: "Less-than-one-acre Construction/Demolition Debris" (June 1999);

(e) DEP 7059-J: "Solid Waste Incinerator" (June 1999);

(f) DEP 7064; "Annual Report for a Class I Solid Waste Landfarm" (June 1999);

(g) DEP 7108; "Annual Report for a Solid Waste Composting Facility" (June 1999); and

(h) DEP 7046; "Annual Waste Quantity Report" (May 1999).

(2) This material may be inspected, copied, or obtained at the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or at any of the division's field offices Monday through Friday, 8 a.m. to 4:30 p.m.: 1508 Weston, Bowling Green, Kentucky 42104; 102 Burkesville Street, Columbia, Kentucky, 42728; 8020 Ewing Boulevard, Suite 110, Florence, Kentucky, 41042; 233 Birch Street, Hazard, Kentucky 41701; Regional State Office Building, 85 State Police Road, Room 345, London, Kentucky 40741; 9116 Leesgate Road, Louisville, Kentucky 40222-4925; Madisonville State Office Building, 625 Hospital Drive, Madisonville, Kentucky 42431; 200 Christy Creek Road, Suite 2, Morehead, Kentucky 40351; 4500 Clarks River Road, Paducah, Kentucky, 42003. [Contents of the Registration [Form] for a Registered Permit-by-rule. The registration [contents of a form prescribed by the cabinet] for a registered permit-by-rule shall contain:

(1) A description of the management, processing, or disposal activities;

(2) The name and mailing address of the facility;

(3) The location of the waste site or facility; and

(4) The type of waste managed at the facility, with an estimate of the quantity, measured in tons, and sources of the [such] wastes to be managed annually;

(5) [and] A general description of the methods of management for each waste;

(6) The disclosure statement required by KRS 224.40-330(2); and

(7) for a less than one (1) acre construction/demolition debris landfill, the bond required by KRS 224.40-120.]

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: June 10, 1999

FILED WITH LRC: June 10, 1999 at 4 p.m.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, July 13, 1999 and
As Amended at IJC on Agriculture and
Natural Resources, September 8, 1999)**

401 KAR 48:320. Operating requirements for less than one (1) acre construction/demolition debris landfills.

RELATES TO: KRS 224.01-010, 224.10-100, 224.10-105, 224.40-100, 224.40-110, 224.40-120, 224.40-305, 224.40-310, 224.40-315, 224.40-320, 224.40-325, 224.40-330, 224.40-340, 224.40-605, 224.40-650, 224.43-010, 224.43-020, 224.43-070, 224.43-310, 224.43-315, 224.43-330, 224.43-340, 224.43-345, 224.43-350, 224.70-100, 224.70-110, 224.99-010, 224.99-020 [224.01, 224.10, 224.40, 224.43, 224.70, 224.99]

STATUTORY AUTHORITY: KRS 224.10-100(19)(c), (24), 224.40-100, 224.40-120, 224.40-305, 224.40-330, 224.40-605; 224.50-760]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(19)(c), (24), 224.40-120, 224.40-305, 224.40-330, and 224.40-605 authorize the cabinet to promulgate [Chapter 224 requires the cabinet to adopt] administrative regulations for the management, processing and disposal of wastes. KRS 224.40-305 requires that persons engaging in the management, processing and disposal of waste obtain a permit. [This chapter establishes the minimum technical standards for solid waste sites or facilities. An overview of the permit program is found in 401 KAR 47:080, Section 1.] This administrative regulation establishes the technical requirements for less than one (1) acre construction/demolition debris landfills.

Section 1. Applicability. This administration regulation applies to

owners and operators of less than one (1) acre construction/demolition debris landfills. The owner or operator of a less than one (1) acre construction/demolition debris landfill shall operate the facility in accordance with the requirements of this administrative regulation.

Section 2. Requirement to Obtain a Registered Permit-by-rule. The owner or operator of a less than one (1) acre construction/demolition debris landfill shall not begin construction or accept [disposal of] waste until the registered permit-by-rule for the facility has become effective as specified in 401 KAR 47:110.

Section 3. Construction Requirements. The owner or operator of a less than one (1) acre construction/demolition debris landfill located inside a wellhead protection area, as described in defined in 401 KAR 5:002, Section 1, [5:037] shall construct and maintain a [the following] liner and leachate collection system [systems].

(1) The liner shall:

(a) [(1)] Be constructed of soil:

1. With a minimum thickness of twelve (12) inches; and

2. That includes [- In addition, the soil shall include] a low permeability soil component with a minimum of twelve (12) contiguous inches of 1 x 10⁻⁷ centimeters per second maximum permeable material, or its equivalent; and

(b) [- The liner shall] Cover the bottom and sidewalls of the facility, with the bottom liner [shall be] sloped toward a leachate collection system that complies with subsection (3) of this section.

(2) A [Contain a minimum of twelve (12) inches of soil compacted to ninety (90) percent of standard proctor, or a layer of equivalent performance. The soils shall be placed in six (6) inch thick lifts. An] professional engineer, licensed [registered] in Kentucky pursuant to KRS [Chapter] 322.040, shall oversee the design and installation of the liner, including moisture and density tests, and shall certify that the liner meets the compaction requirements. The certification shall be submitted to the cabinet within ten (10) days of completion of the liner. [- and]

(3) The leachate collection system shall:

(a) Have [(2) Contain a leachate collection system with] a minimum of a twelve (12) inch layer of gravel, or a layer of equivalent performance, and a toe-drain; and

(b) [- The leachate shall] Be discharged into a collection tank with a minimum capacity of 1000 [2000] gallons [capacity].

(4) A professional engineer licensed [registered] in Kentucky, pursuant to KRS [Chapter] 322.040, shall oversee the design and installation of the leachate collection system, and shall certify that the collection tank meets the capacity requirement. The certification shall be submitted to the cabinet within ten (10) days of completion of the liner.

Section 4. Operating Requirements. (1) The owner or operator of a less than one (1) acre construction/demolition debris landfill shall comply with the following operating requirements:

(a) [(1) Comply with] The environmental performance standards of 401 KAR 30:031;

(b) [(2) Comply with] The siting requirements of 401 KAR 48:050, Sections 1, 2, and 3;

(c) The [(3) There is a] liner and a leachate collection system as specified in Section 3 of this administrative regulation, if the landfill is to be located in a wellhead protection area;

(d) [(4) Comply with] The groundwater protection plan requirements of 401 KAR 5:037;

(e) [(5) Comply with] The [disposal] requirements of KRS 224.40-120;

(f) [(6) Comply with] The operator certification requirements established pursuant to [of] KRS 224.40-605; and

(g) [(7) Comply with] The annual report requirement of 401 KAR 47:110, Section 2(3).

(2) The owner or operator of a less than one (1) acre construction/demolition debris landfill shall:

(a) Dispose only of construction/demolition waste or construction material as defined in 401 KAR 48:005, Section 1(36) and (37);

(b) Not dispose of electrical fixtures containing hazardous liq-

uids, such as fluorescent light ballasts or transformers;

- ~~[(f)] Not dispose of:~~
 - ~~(a) Asbestos-containing materials;~~
 - ~~(b) Petroleum-contaminated soil;~~
 - ~~(c) Tires;~~
 - ~~(d) Appliances;~~
 - ~~(e) Furniture;~~
 - ~~(f) Light fixtures;~~
 - ~~(g) Electrical devices;~~
 - ~~(h) Buckets or other containers (unless processed to prevent the entrapment of water);~~
 - ~~(i) Cardboard;~~
 - ~~(j) Paper;~~
 - ~~(k) Wood generated during demolition that has been chipped or otherwise processed; or~~
 - ~~(l) Any other nonconstruction/demolition debris material unless approved by the cabinet;~~
- ~~(c) [(9)] Properly dispose of any non-construction/demolition debris landfill waste at a properly permitted disposal facility;~~
- ~~(d) During operation [(10)] clearly delineate the horizontal boundary [of the less-than-one (1) acre site] with slats, stakes or other types of easily identifiable permanent markers to show [such] that the constructed boundary is within the permitted boundary;~~
- ~~(e) [(11)] Install silt fencing, hay bales, or other appropriate best management practices to prevent sediment from leaving any area disturbed by construction, including stockpiled soil and borrow pit areas. The sediment controls shall be kept in good operating order;~~
- ~~(f) [(12)] Only accept waste from sources listed in the registration and approved by the cabinet. Wastes may be added by submitting a revised registration pursuant to 401 KAR 47:110, Section 3(3);~~
- ~~(g) [(13)] Place the waste in layers, two (2) feet [feet] thick[;] or smaller, [lifts] and compact each layer thereafter [weekly];~~
- ~~(h) [(14)] Cover each ten (10) foot lift [the waste] with a minimum of six (6) inches compacted soil [once a week];~~
- ~~(i) [(15)] Maintain a buffer zone of 750 yards from any other less than one (1) acre [the] construction/demolition debris landfill permitted [waste] boundary [and any other waste site or facility, including but not limited to another construction/demolition debris landfill]; [and]~~
- ~~(j) Remove [(16) Be responsible for removing] landfill debris, mud and waste from off-site roadways; and~~
- (k) The maximum capacity of a less than one (1) acre construction and demolition debris landfill shall not exceed 40,000 cubic yards of waste.**

Section 5. Closure Requirements. The owner or operator of a less than one (1) acre construction/demolition debris landfill shall close the facility as follows:

- (1) The landfill shall be covered with a soil cap, two (2) feet thick, and the entire disturbed area shall be vegetated within thirty (30) days of ceasing to accept waste. **The cabinet may approve an alternative cover of equivalent performance proposed by the owner or operator.**
 - (a) The vegetation shall consist of:
 - 1. A minimum of two (2) legumes;
 - 2. One (1) annual grass; and
 - 3. One (1) perennial grass, in sufficient poundage to provide at least ninety (90) percent ground coverage for the disturbed area.
 - (b) The grass seed shall be covered with at least one and one-half (1.5) tons of straw mulch or an alternative that delivers equivalent performance per acre.
 - (c) The straw mulch or its alternative shall be stabilized with netting on slopes that exceed fifteen (15) percent.
 - (d) The final cap shall have a slope of between five (5) percent and twenty-five (25) percent upon completion of the final grading.
- (2) The [facility] owner or operator of a less than one (1) acre construction/demolition debris landfill shall record a notice, with the property deed, on which the less than one (1) acre construction/demolition debris landfill is located. The notice shall notify, in perpetuity, any potential purchaser of the property of the landfill's [facility's] location and dates of operation, the nature of the waste disposed [at the facility], and impose a restriction against any [future] disturbance of the cap. The notice shall be recorded in accordance

with KRS Chapter 382 and proof of recording shall be submitted to the cabinet prior to the cabinet's approval of closure.

(3) The [facility] owner or operator of a less than one (1) acre construction/demolition debris landfill shall, upon completion of closure of the facility, contact the cabinet for a closure inspection and release of the bond, described in 401 KAR 48:310.

(4) Closure shall be completed no later than thirty (30) days after last receipt of waste.

Section 6. Corrective Action Requirements. If the cabinet determines that a threat to human health, safety[;] or the environment exists, the owner or operator of a less than one (1) acre construction/demolition debris landfill [the facility] shall conduct corrective action in accordance with 401 KAR 48:300, Section 8. The owner or operator shall certify to the cabinet that corrective action has been completed in accordance with this section. The cabinet shall determine that corrective action has been completed before releasing the bond.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: June 10, 1999

FILED WITH LRC: June 10, 1999 at 4 p.m.

**PUBLIC PROTECTION AND REGULATION CABINET
Office of the Petroleum Storage Tank
Environmental Assurance Fund
(As Amended at ARRS, September 14, 1999)**

415 KAR 1:080. Claims procedures.

RELATES TO: KRS 224.60-100, 224.60-105(1), (2), (4), 224.60-110, 224.60-115, 224.60-120(5), 224.60-130(2), (4), 224.60-135, 224.60-140(2), (3), (5)-(15), (17), (18), 224.60-142, 224.60-155, 224.99-010(4), (9), 224.99-020, 224.99-030, 40 CFR Parts 280, 281, 42 USC 6991a-e, g [224.60-110, 224.60-115, 224.60-120(5), 224.60-130, 224.60-140, 40 CFR Parts [Part] 280, 281]

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

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

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

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

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

(b) A release requiring corrective action from an eligible facility has occurred and has been reported to the cabinet. The necessity for corrective action shall be demonstrated by analytical sample results. **If the performance of corrective action is not necessary for closure, the facility shall not be** [closure can be issued by the cabinet without the performance of corrective action, the facility is not] eligible for reimbursement of corrective actions costs from the fund [participation].

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

- 1. [fund may] Approve the Application for Assistance; [and]
- 2. Establish the amount to be obligated; and

3. Determine [by] the appropriate account.

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

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

(4)(a) The office shall amend an approved Application for Assistance to provide an additional obligation of funds to guarantee payment of the cost of corrective action, if the office determines the action is necessary to guarantee payment of eligible cost and to comply with 401 KAR Chapter 42, and if the applicant:

1. Submits a written request and supporting documents explaining the need for additional corrective action, and setting forth the following unit costs, in compliance with 415 KAR 1:110, for:

- a. Personnel;
- b. Sampling and laboratory testing;
- c. Excavation;
- d. Haulage;
- e. Treatment or disposal of contaminated soil or water; and
- f. Other expenses necessary to comply with 401 KAR Chapter 42; and

2. Provides, within thirty (30) days of a request received by certified mail, additional information or documentation requested by the office, unless both parties agree in writing, within the thirty (30) day period, to an extension of time.

(b) The office shall deny the claim for an additional obligation if the applicant fails to provide the requested information.

(c) Payment shall not exceed the amount obligated, in writing, by the office.

(d) Payment shall not be made for the cost of additional corrective action incurred prior to approval. [eligible corrective actions costs if:

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

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

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

(d) The office notifies the eligible applicant in writing that an additional obligation of funds has been approved. Supporting documentation shall fully explain the need for the additional corrective action and set forth the unit costs, in compliance with the requirements of 415 KAR 1:110, for the performance of the additional corrective action including, but not limited to:

1. The costs of personnel;
2. Sampling;
3. Laboratory testing;
4. Excavation;
5. Haulage;
6. Treatment or disposal of contaminated soil or water;
7. Other expenses necessary to comply with the requirements of 401 KAR Chapter 42.

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

(f) Payment shall not exceed the amount obligated by the office, and the office shall not reimburse any additional corrective action costs incurred prior to approval. [The fund may amend the approved Application for Assistance upon application by the eligible owner or operator, upon a demonstration that the amendment is necessary to

guarantee payment of eligible costs of corrective action and that the additional costs are necessary to comply with the written directions and administrative regulations of the cabinet. Payment shall not exceed the amount obligated by the fund;]

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

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

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

(a) Original invoices for [all] costs for which payment is sought;

(b) A copy of the contract executed by the owner or operator and the person contracting to perform the corrective action;

(c) Documentation that the release has been reported to the cabinet; and

(d) Laboratory analysis substantiating the necessity of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) If the applicant fails to correct the deficiency or to supply the additional information required by the office [fund] staff, that portion of the claim shall be denied.

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

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

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

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

Section 3. Contracts. (1) An owner or operator contracting for the performance of corrective action, including permanent closure, change-in-service, release investigation, site check, or site investigation, shall obtain a contract from a certified contractor or contracting company to be eligible for reimbursement or payment from the fund. The contract shall:

(a) Be obtained prior to commencing the activity, except emergency response measures as directed by the cabinet; and

(b) [-The contract shall] Set forth the unit costs, in compliance with the requirements of 415 KAR 1:110, for the performance of the activity, including the cost of:

1. Personnel;

2. Sampling;

3. Excavation;

4. Treatment of disposal of contamination; and

5. Other expenses necessary to comply with 401 KAR Chapter 42. [-but not limited to, the costs of personnel, sampling, excavation, treatment or disposal of contamination, and other necessary expenses to comply with the provisions of 401 KAR Chapter 42.]

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

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

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

(a) For a corporation, by:

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

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

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

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

(c) For a municipality, state or federal agency, by:

1. A principal;

2. [by either a principle,] Executive officer; or

3. Ranking elected official.

(2) A Claim Request or Application for Assistance shall also be signed by:

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

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

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

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision, that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based upon my inquiry of those individuals immediately responsible for obtaining the information, I believe that this submitted information, is true, accurate, and complete. I certify that all costs are necessary and were actually incurred in the performance of corrective action. I further certify, that, if not the owner or operator, I am authorized by the owner or operator as an agent to make this certification, or I am the person certified under 415 KAR Chapter 1 and my (our) certification is in good standing.

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

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

(2) The claim [claims] shall be reviewed to determine if [whether]:

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

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

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

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

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

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

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

(3) A reimbursement request shall identify the beginning and ending dates for the time interval submitted in the claim. Costs [All cost] incurred during the specified interval shall be submitted with the claim, except the cost submitted for reimbursement under Section 2(2) or (3) of this administrative regulation.

(4) A claim for reimbursement shall be submitted:

(a) Within two (2) years of the effective date of this administrative regulation; or

(b) Two (2) years after issuance of a no further action letter by the cabinet.

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

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

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

(c) A request for final payment, or for one (1) time payment in full, shall be accompanied by a closure letter issued by the cabinet, [; or]

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

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

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

(1) Eligible costs shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Loss of business, income or profits;

(e) An attorney fee [Attorneys-fees] related to:

1. [Any] Judicial or administrative litigation;

2. Consultation on [regulatory] administrative regulations;

3. Consultation on office [fund] administrative regulations;

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

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

(f) Decreased property values for the facility;

(g) Facility improvements;

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

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

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

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

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

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

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

(o) Contractor markup expense [expenses] for a normally expected overhead item or [items-and] in-stock material [materials];

(p) Contractor markup expense [expenses] for personnel cost [costs];

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

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

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

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

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

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

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

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

(y) Other [Additional] costs relating to compliance with a local program operating under KRS 224.60-105(4), to the extent that those costs are required to comply with corrective action standards more stringent than required by the cabinet; and

(z) [Any] Other service or cost determined by the office to be an unreasonable or unnecessary [not be a reasonable and necessary] cost of corrective action.

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

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

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

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

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

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

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

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

(e) This provision shall not apply to an emergency removal ~~[removals]~~ ordered by the cabinet.

(4)(a) An owner or operator shall:

1. Provide an office inspector full access to an area or well for the collection of samples;

2. Split samples obtained by the facility with the office, if the inspector requires splitting;

3. Resample an area or well for which the result of analytical testing obtained by the office differs significantly from the result obtained by the facility; and

4. Have the burden of proving the validity of his result, if a discrepancy remains after resampling.

(b) The office shall not reimburse the cost of resampling.

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

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

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

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

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

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

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

2. If the bids required by subparagraph 1 of this paragraph [three (3) bids] cannot be obtained, the owner shall provide written documentation of the manufacturers' or suppliers' decline to bid. At least [A minimum of] two (2) letters of declination shall be provided for each bid not submitted;

3. A cost benefit analysis comparing purchase against [substantiating purchase vs.] rental of the equipment;

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

5. The cost of shipping, installation, training and start-up, stated separately from the cost of equipment. [costs. These costs shall be separated from the actual equipment costs.]

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

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

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

4. The owner or operator shall be responsible for [All] unscheduled maintenance costs covered by the new equipment warranty [supplied by the equipment supplier or manufacturer are the responsibility of the owner or operator].

(c)1. An [if the] owner or operator who chooses to begin remediation prior to acceptance of the corrective action plan shall submit [.] three (3) bids [must be submitted] to the office prior to the purchase of the equipment.

2. [however.] The cost of the equipment shall [will] not be reimbursable until [such time as] the cabinet accepts the corrective action plan.

3. A bid shall [The bids will] remain on file at the office until the corrective action plan is accepted.

4. When the plan is accepted [At that time], the owner or operator may request reimbursement for the purchase by submission [submittal] of a completed Capital Equipment Purchase or Rental form.

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

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

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

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

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4. A description of the equipment, including ~~[pertinent]~~ specifications necessary to compare the proposed equipment with a bid for ~~[the bids for the]~~ new equipment;

5. The remaining economic life of the used equipment;

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

7. The cost of shipping, installation, training and start-up, stated separately from the cost of equipment. ~~[costs. These costs shall be separated from the actual equipment costs.]~~

(b) Reimbursement for the purchase of used or reconditioned equipment shall be the cost of purchase plus fifteen (15) percent markup less the anticipated salvage value, and shall be limited to:

1. For used equipment, sixty-five (65) percent of the cost of the most economical new system bid submitted to the office; and

2. For reconditioned equipment, eighty (80) percent of the cost of the most economical new system bid submitted to the office.

(d) Reimbursement shall not be made for unscheduled maintenance or component replacement occurring during the greater of:

1. The period of limited warranty specified by the supplier or manufacturer; or

2. 180 days.

(5) An owner or operator may request rental of remediation equipment if the cost of rental does not exceed the cost of purchase.

(a) The fund shall:

1. Reimburse for actual active usage of rented remediation equipment; and

2. Not reimburse for idle equipment maintained at the facility for the convenience of the contractual parties.

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

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

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

2. ~~[(b)]~~ If the bids required by subparagraph 1 of this paragraph ~~[three (3) bids]~~ cannot be obtained, the owner shall ~~[must]~~ provide written documentation of the manufacturer or supplier's decline to bid. At least ~~[A minimum of]~~ two (2) letters of declination must be provided for each bid not submitted; and

3. The cost of shipping, installation, training, and start up, stated separately from the cost of equipment.

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

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

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

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

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

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

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

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

RONALD B. MCCLOUD, Secretary

ROBERT E. NICKEL, Executive Director

DAVID B. WICKER, ESQ., Staff Counsel

APPROVED BY AGENCY: June 23, 1999

FILED WITH LRC: June 30, 1999 at 10 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Office of the Petroleum Storage Tank
Environmental Assurance Fund
(As Amended at ARRS, September 14, 1999)

415 KAR 1:120. Hearings.

RELATES TO: KRS Chapter 13B, 224.60 ~~[224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280]~~

STATUTORY AUTHORITY: KRS ~~[224.60-120,]~~ 224.60-130(2)(f) NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(2)(f) requires the Office of the Petroleum Storage Tank Environmental Assurance Fund to hear complaints brought regarding the payment of claims from the fund, in accordance with KRS Chapter 13B. This administrative regulation establishes hearing procedures to be followed in the hearing of those complaints.

Section 1. Postdetermination Actions. A person aggrieved by a final, adverse determination regarding eligibility for fund participation or a claim for payment may request:

(1) Reconsideration, under Section 2 of this administrative regulation; or

(2) A formal hearing, pursuant to KRS Chapter 13B, under Section 3 of this administrative regulation.

Section 2. Reconsideration. (1) A request for reconsideration shall be:

(a) In writing;

(b) Received by the office within thirty (30) days from the date the person has notice, or could reasonably have had notice, of the adverse determination.

(2) The request shall include:

(a) A statement of the grounds for reconsideration; and

(b) Supporting documents; and

(c) Other evidence not previously considered.

(3) The office shall reevaluate the initial application or claim previously denied, if the evidence accompanying the request warrants reconsideration.

(4) The office shall not reconsider a matter more than once.

Section 3. Formal Administrative Hearings. (1) A person aggrieved by a final, adverse determination regarding eligibility for fund participation or a claim for payment may petition the office for a formal hearing in accordance with KRS Chapter 13B.

(a) A petition shall be:

1. In writing;

2. Signed by the petitioner; and

3. Received by the office within thirty (30) days from the

date the petitioner has notice, or could reasonably have had notice, of the adverse determination regarding reconsideration.

(b) The petition shall include:

1. On the first page, the name and address of each party to the action;

2. A short, plain statement of the facts upon which the petition is based;

3. A request for relief, including a formal hearing; and

4. The petitioner's name, address, and telephone number.

(c) A doubt as to whether a writing constitutes a petition for formal hearing shall be resolved in favor of the filing party.

(2) Pursuant to KRS 13B.050, the office shall:

(a) Notify the petitioner, in accordance with KRS 13B.050(4), that a hearing will not be held; or

(b) Notify the petitioner, in writing, of a prehearing conference date;

(c) Serve on each party listed on the face of the petition:

1. A copy of the notice of prehearing; and

2. A copy of the petition.

(3) If the hearing request is granted, the office shall:

(a) Within ten (10) days of the filing of the petition, designate a hearing officer in accordance with KRS 13B.030;

(b) Within thirty (30) days of the filing of the petition, file a:

1. Motion

a. For a more definite statement;

b. For judgment on the pleadings;

c. To dismiss; or

d. For summary disposition; or

2. A written answer, that shall include:

a. An admission or denial in short, plain terms, of each allegation contained in the petition; or

b. A statement that the information regarding an allegation is not known; and

c. A claim against another party, if the claim arises from the same transaction or event.

(c) A motion designated in paragraph (b)1 of this subsection shall toll the time to file an answer until five (5) days after the hearing officer rules on the motion.

(d) A party against whom a claim is asserted in an answer shall respond within five (5) days after receipt of the answer asserting the claim.

(4) The office shall take no further action with respect to an administrative hearing, except as a party litigant, as long as the matter is assigned to a hearing officer.

(5) If a hearing officer is recused, the secretary shall designate another hearing officer, in accordance with KRS 13B.030.

Section 4. Venue of Formal Hearing. An administrative hearing shall be conducted at the facilities of the office, unless the hearing officer determines that it would place an undue hardship on a party. In determining venue, the hearing officer shall consider:

(1) The requirements of law;

(2) The convenience of the parties;

(3) The convenience of the witnesses; and

(4) The character and location of the evidence.

Section 5. Consolidation and Severance. (1) A hearing officer, on motion of a party or on his own initiative, shall consolidate cases assigned to his docket if the cases:

(a) Concern common questions of law or fact; or

(b) Involve the same issues or witnesses; and

(c) Consolidation will promote the orderly, prompt, and fair conduct of the hearing.

(2) A hearing officer, on motion of a party or on his own initiative, shall sever consolidated cases for separate administrative hearing when it appears that severance will promote the orderly, prompt, and fair conduct of the hearing.

Section 6. Motion Practice. (1) Motion for a more definite statement.

(a) If a pleading is so vague or ambiguous that a party cannot reasonably respond, the responding party may move for a

more definite statement. The motion shall:

1. State the alleged defects in detail;

2. State the information desired; and

3. Explain how the desired information cannot be understood from the pleading.

(b) The hearing officer may, on his own initiative, order a party to file a more definite statement of his allegations, claims, defenses, or relief requested.

(c) If a motion for a more definite statement is granted, the subject party shall comply by filing an amended pleading within ten (10) days of the order.

(d) If an amended pleading is not timely filed, the hearing officer may strike the deficient pleading or take other action as specified in KRS 13B.080(6).

(2) Motion for recommendation on the pleadings.

(a) A party may move for a recommendation on the pleadings:

1. After the time for filing a responsive pleading has passed; and

2. Sufficiently in advance of the hearing date as to preclude delay.

(b) If the motion includes matters not treated in the pleadings, it shall be deemed a motion for summary disposition and treated in accordance with subsection (3) of this section.

(3) Motion for summary disposition.

(a) After the commencement of an administrative hearing, a party may move for summary disposition in his favor.

(b) Factual allegations in a motion for summary disposition shall be supported by:

1. Affidavit; or

2. Citation to the record.

(c) If the hearing officer determines that there is no dispute as to issues of material fact and that the moving party is entitled to summary disposition as a matter of law, he shall:

1. Grant the motion; and

2. Make a conforming recommended order.

(d) If the hearing officer determines that there is no dispute as to some issues of material fact, and other issues remain in dispute, he shall:

1. Grant summary disposition in part;

2. Set forth the facts not in dispute; and

3. Order further proceedings as required to resolve the dispute.

Section 7. Final Order in Formal Hearing. (1) The secretary shall take jurisdiction of the matter at the time the hearing officer issues a recommended order pursuant to KRS 13B.110.

(2) If an issue remains unresolved, the secretary may remand the matter to the hearing officer for further action.

(3) The secretary shall make a final determination in accordance with KRS 13B.120. [Definitions. (1) "Administrative hearing" means a formal adjudicatory proceeding conducted by the agency on the record to adjudicate the legal rights, duties, privileges or immunities of a named person at which each party is given the opportunity, after proper notice, to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence.

(2) "Administrative action" means the formal administrative adjudicatory proceeding before the agency from the filing of the pleading commencing the formal administrative proceedings until the time for all administrative appeals has run regarding the claims made in the commencing document.

(3) "The agency" means the Office of the Petroleum Storage Tank Environmental Assurance Fund.

(4) "Docket coordinator" means the person responsible for receiving and filing pleadings in administrative hearings. The docket coordinator shall be located at the office of the Office of the Petroleum Storage Tank Environmental Assurance Fund at 911 Leawood Drive, Frankfort, Kentucky 40601.

(5) "Hearing officer" is defined in KRS 13B.010(7).

(6) The "notice" means the notice of hearing required by KRS 13B.050.

(7) "Party" is defined in KRS 13B.010(3).

(8) "Person" means any individual, corporate entity, state govern-

mental agency, or unit of local, state or federal government, and shall include any "party" as defined in these administrative regulations.

(9) "Petition for hearing" means any written request by a person other than the agency for an administrative hearing before the agency, including any document which by law or administrative regulation commences an adjudicatory administrative proceeding, that is filed in accordance with these administrative regulations.

(10) "Petitioner" means any person requesting an administrative hearing to which these administrative regulations apply.

(11) "Pleading" means the petition for hearing or notice of hearing and complaint, the answer, and any other responsive pleading ordered by a hearing officer or authorized by law or administrative regulation.

(12) "Record" is defined in KRS 13B.130.

(13) "Preponderance of evidence" means substantial evidence of sufficient weight to establish that a factual allegation is more likely true than not.

(14) "Responsive pleading" means the answer or any document required or authorized by law, administrative regulation, or order of a hearing officer to be filed in response to a pleading.

(15) "Substantial evidence" means evidence that taken alone or in the light of all the evidence has sufficient probative value to induce conviction in the minds of reasonable persons.

Section 2. Reconsideration. Any person not previously heard in connection with a determination of the Office of Petroleum Storage Tank Environmental Assurance Fund or the secretary denying eligibility for participation in the fund or payment of any portion of a claim, who considers himself aggrieved by such determination may request in writing that the determination be reconsidered. The writing shall set forth the grounds for the request and shall be accompanied by any documentation or other competent evidence related to the disputed issue that was not previously considered by the staff. The right to request a reconsideration of the determination shall be limited to a period of thirty (30) days after the applicant has had actual notice, or could have reasonably had notice, of the office's [fund's] action. The request for a reconsideration must be received by the office, in writing, prior to the expiration of the thirty (30) day period. The staff shall evaluate the documents and other competent evidence after receipt of the request. The office [fund] shall reevaluate the claim if the documentation or evidence accompanying the request for reconsideration warrants reconsideration of a prior recommendation on the issue. If the reconsideration by the staff or the secretary fails to resolve the applicant's concerns the applicant may request a hearing on the determination pursuant to Section 3 of this administrative regulation.

Section 3. Commencement of Hearing. (1) Petition for hearing: Any person not previously heard in connection with a determination of the Office of Petroleum Storage Tank Environmental Assurance Fund or the secretary denying eligibility for participation in the fund or payment of any portion of a claim, who considers himself aggrieved by such determination may request a formal hearing in writing. The petition for hearing shall be in writing signed by the filing party, and shall contain a short and plain statement of the facts upon which the petition is based, a request for relief, including a hearing, and the filing party's name, address and phone number. The right to request a hearing shall be limited to a period of thirty (30) days after the applicant has had actual notice, or could have reasonably had notice, of the Office of Petroleum Storage Tank Environmental Assurance Fund's action. The request for a hearing must be received by the office, in writing, prior to the expiration of the thirty (30) day period. The petition for hearing shall indicate on its face the name and address of each party to be served by the agency. Any doubts about whether a document constitutes a petition for hearing shall be resolved in favor of the filing party. Within fifteen (15) days of the filing of a petition, the agency shall issue a notice of hearing conforming to KRS 13B.050, and shall serve the notice and a copy of the petition on each person set forth on the face of the petition.

(2) Service of notice and complaint and petition. The agency shall serve the notice, complaint and copy of the petition by certified mail or personal delivery as set forth in Section 9 of this administrative regulation. If served by mail, the agency shall enter the date of mailing in the record and shall file the return receipt or returned envelope in the

record when it is received by the agency.

(3) Answer:

(a) The agency shall file an answer to the allegations in that pleading within thirty (30) days of the service of the pleading.

(b) The answer shall specifically admit or deny in short and plain terms each and every allegation contained in the pleading and shall set forth all claims against other parties which arise out of the same transaction or occurrence that is the subject matter of the claims in the pleading and which fall within the agency's jurisdiction. If the answering party is unable to admit or deny an allegation in the pleading, it shall so state in his answer and this shall have effect of a denial. The answer shall be in writing, and shall include the agency's address and telephone number. Parties against whom claims are directed in an answer shall answer such claims within five (5) days after service of the answer.

(c) Filing after motion. Filing of a motion for more definite statement, motion for judgment on the pleadings, motion to dismiss or a motion for summary disposition shall toll the time to file a responsive pleading until five (5) days after the hearing officer rules on such motion.

(4) Notice of determination not to conduct hearing. Within five (5) days of the commencement of an administrative action, the agency shall notify the person commencing the action, in writing, of any determination by the agency not to conduct a hearing. The notice under this section shall give the factual, legal, and policy grounds for the agency's determination, and shall inform the petitioner of any right to appeal. Mere recitation of statutory or regulatory standards is not a sufficient summary of the grounds for the agency's action.

Section 4. Affirmative Defenses. (1) Every defense in law or fact to a claim for relief in any pleading shall be asserted in the responsive pleading thereto, if one is required.

(2) Any matter constituting an avoidance or affirmative defense in an administrative action shall be set forth in a responsive pleading. Failure to plead an affirmative defense in a responsive pleading may constitute a waiver of that defense.

(3) The following defenses may at the option of the pleading party be asserted by motion before making a responsive pleading:

(a) Lack of jurisdiction over the person;

(b) Lack of jurisdiction over the subject matter;

(c) Improper venue;

(d) Insufficiency of process;

(e) Insufficiency of service of process;

(f) Failure to state a claim upon which relief can be granted; and

(g) Failure to join a required party. Failure to plead any of the defenses listed in this subsection in a responsive pleading shall not constitute a waiver of that defense.

Section 5. Right of Counsel. (1) Any person who appears before the agency at any stage in a formal administrative hearing shall have the right, at their own expense, to be represented or advised by legal counsel. Nothing in these administrative regulations shall be construed to allow or permit representation of a person by a nonattorney; however, individuals may represent themselves without representation by counsel.

(2) Any attorney representing a party before the agency must file a written notice of entry of appearance in each case before he may practice in that case before the agency. Filing of a notice of entry of appearance shall constitute agreement by the attorney to be bound by the provisions of this section.

(3) An attorney of record in an administrative action before the agency shall request permission to withdraw as counsel for a party in writing, with an affidavit from the moving attorney setting forth the grounds for withdrawal, certifying that the request to withdraw has been served upon the attorney's client, and an explanation why the withdrawal will not have a material adverse effect on the interests of the attorney's client.

(4) An attorney shall not withdraw from representing a person in an administrative action before the agency without permission of the hearing officer before whom he is practicing. Within ten (10) days of an administrative hearing, an attorney of record shall not be permitted to withdraw from an administrative action absent a compelling reason shown upon a written motion filed in the record.

(5) Intentional or repeated failure or refusal of an attorney to obey any of the requirements of this section shall be grounds for recommendation to the secretary that the attorney be barred from practice before the agency.

Section 6. Burden of Proof. (1) The party proposing the agency take action or grant a benefit shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion to show the propriety of the agency action or entitlement to the benefit sought.

(2) The party asserting an affirmative defense shall have the burden of going forward and the ultimate burden of persuasion to establish that defense.

(3) The ultimate burden of persuasion in all administrative actions shall be met by a preponderance of substantial evidence in the record.

(4) Unless otherwise ordered by the hearing officer, the party with the burden of proof shall present its evidence first at a formal administrative hearing, followed by the opposing party. If new matters are raised in the presentation of the opposing party's evidence, the hearing officer shall afford the party with the burden of proof the opportunity to present rebuttal evidence. The hearing officer, may in his discretion, order the proof in any manner which will promote the orderly and prompt conduct of the hearing.

Section 7. Assignment and Duties of Hearing Officers. The agency shall designate a hearing officer for a formal administrative action in any manner consistent with KRS 13B.030 within ten (10) days of the commencement of the administrative action.

(1) If the agency elects to designate a hearing officer from the Division of Administrative Hearings in the Attorney General's Office under KRS 13B.030, it shall make that request in writing to the division within ten (10) days of the commencement of the administrative action.

(2) Assignment of a hearing officer from the Division of Administrative Hearings of the Office of the Attorney General shall be made according to the administrative regulations governing the conduct of the Division of Administrative Hearings of the Office of the Attorney General.

(3) A request for or assignment of a hearing officer under KRS 13B.030(2) shall be a designation of a hearing officer under these administrative regulations and a delegation to the hearing officer under KRS 13B.030(1) of all powers conferred on an agency relating to the conduct of the administrative action. The hearing officer shall have the authority to take any procedural action authorized by KRS 224.60-130; Chapter 13B, or these administrative regulations, including, but not limited to the authority to:

- (a) Administer oaths and affirmations;
- (b) Issue subpoenas for witnesses and production of documents, or things;
- (c) Regulate discovery;
- (d) Rule on procedural requests;
- (e) Hold prehearing conferences;
- (f) Regulate the course of, and maintain order in the administrative hearing;
- (g) Rule on evidentiary matters and admit in or exclude evidence from the record;
- (h) Examine witnesses;
- (i) Require the parties to submit legal memoranda, and proposed findings of fact and conclusions of law;
- (j) Make proposed findings of fact, conclusions of law and recommended orders for the secretary; and
- (k) Take any action consistent with law to promote the orderly and prompt conduct of the administrative action.

(4) The agency shall take no further action with respect to an administrative action, except as a party litigant, as long as the administrative action is assigned to a hearing officer.

Section 8. Hearing Officer Conduct. (1) Conflict of interest.

(a) At any time during an administrative action an assigned hearing officer's continued service would violate the standard set forth in KRS 13B.040(2)(a) or a canon of judicial ethics, that hearing officer shall disqualify himself and enter a written order withdrawing from an administrative action.

(b) At any point during an administrative action a party may move the hearing officer to recuse from an administrative action. The motion to recuse shall be in writing filed in the record and shall be supported by an affidavit setting forth specific facts which demonstrate one or more of the grounds for recusal set forth in KRS 13B.040(2)(b).

(c) Within ten (10) days of recusal of a hearing officer, the secretary shall request or assign another hearing officer by written order according to this administrative regulation.

(2) Ex parte contact.

(a) Unless otherwise allowed by KRS 13B.100, there shall be no ex parte contact between a hearing officer assigned to an administrative action, or any person working under the hearing officer's supervision, and any person with a direct or indirect interest in the outcome to that administrative action concerning the merits of the administrative action assigned to the hearing officer.

(b) This administrative regulation shall not prohibit ex parte contact with staff on purely procedural matters not at issue in the case. This section shall not prohibit communications with staff regarding the status of a case.

(c) Upon receiving an ex parte contact prohibited by this section, the hearing officer shall take every action required under KRS 13B.100, shall cause the parties to be notified of the contact, and shall inform the other parties to the action of their right to move for a recusal.

(d) The hearing officer may impose appropriate sanctions on a person who knowingly makes a prohibited ex parte contact, including, but not limited to deeming the person to have defaulted, striking all or part of that person's pleadings, claims, or defenses, denying any pending motions by the party, issuing a show cause order requiring the person to show why the hearing officer should not sanction the person, or taking such other actions as are appropriate.

Section 9. Service. (1) Unless the hearing officer otherwise orders, every order, every pleading subsequent to the document commencing the administrative action, every paper relating to discovery required to be served upon a party and every written motion, summons, notice, appearance, demand, and similar paper filed in the record shall be served upon each party to an administrative action.

(2) Service may be made by personal delivery of or by mailing a copy of the paper to the party served.

(a) Service by certified mail. Service may be accomplished by certified mail by placing a copy of the paper to be served in an envelope, addressing the envelope to the person to be served at his last known address, affixing adequate postage to and mailing the sealed envelope by certified mail, return receipt requested. Service by certified mail under this section is complete upon mailing. The agency shall immediately upon receipt mark all return receipts and returned mail served under this paragraph with the date the agency receives the receipt or the mail. The United States mail return receipt or returned mail shall be proof of the date of acceptance or refusal to claim a paper served by mail. The certificate of service required by subsection (5) of this section for papers to be filed in the record shall be evidence of the date of service. The proper address for the purposes of service by mail shall be the last known address of the person to be served. If the person to be served is a licensee or permittee of the agency, then the proper address for service of process shall include that person's last address of record in the agency's files.

(b) Service by regular mail. Service may be accomplished by regular mail in the same manner as for certified mail. Service by regular mail is effective upon mailing. The certificate of service required by subsection (5) of this section for papers to be filed in the record shall be evidence of the date of service.

(c) Service by personal delivery. Papers may be served by personal delivery by any person over eighteen (18) years of age authorized by law or administrative regulation to deliver them in person. Delivery within this administrative regulation means handing it to the party, or leaving it at the party's business address with the person in charge thereof, or, leaving it at the party's residence with a person eighteen (18) years of age or older residing therein. The person serving the papers in person shall fill out a certificate of service indicating the date and manner of service and whether service was offered and accepted or refused. The serving person shall return the endorsed certificate of service to the agency, which shall immediately file it in the

record:

(3) Service on attorney. Whenever under these administrative regulations service is required or permitted to be made upon a party represented by an attorney of record in the administrative action, service may be made upon the attorney in the same manner as upon the represented party.

(4) Who is responsible for service. Unless the hearing officer orders otherwise, the person filing papers shall be responsible for serving those papers.

(5) Certificate of service. Whenever any pleading or other paper is served under these administrative regulations, the serving party shall file proof of the date and manner the filed paper was served upon the other parties to the administrative action. Proof of service shall be by a certificate signed by the person who served the paper, or by any other proof satisfactory to the hearing officer. The certificate of service shall identify by name the persons served.

Section 10. Filing of Papers. (1) Papers required to be filed. All papers after the petition required to be served upon a party shall be filed with the agency either before service or within a reasonable time thereafter.

(2) Method of filing. Pleadings and other papers shall be filed with the agency when they are received and endorsed by the agency. The agency shall endorse the date of receipt on every paper filed in an action immediately upon receipt.

(3) Facsimile filings. Papers may be filed with the agency by telefacsimile machine at the telefacsimile telephone number listed for the agency on the summons. Parties filing by telefacsimile machine shall include a certificate that the paper is being filed by fax and the original paper is being filed by mail and shall immediately after faxing such a paper mail the original paper to the agency. The filing date of a paper sent by facsimile shall be the date the agency receives the original, unless the original is received within five (5) business days of the facsimile, in which case the filing date shall be the date the agency received the facsimile.

(4) Signature required. All papers filed in an administrative action must be signed by the filing person. The signature of the filing person or his authorized representative constitutes a certificate that the signing person has read the paper and that to the best of his knowledge, information and belief formed after reasonable inquiry, it is not interposed for any improper purpose. If a paper is signed in violation of this subsection, the hearing officer may strike the paper from the record, deem the party to have failed to file the paper and take any action allowed as a consequence of such failure, strike all or part of any pleading, claim or defense asserted in the filing, or bar an attorney violating this subsection from future participation in that administrative action, and recommend that the secretary bar that attorney from appearing in future administrative actions before the agency.

Section 11. Venue. Administrative hearings shall be conducted at the office of the agency, unless the hearing officer rules that this would place an undue hardship on one of the parties. In determining venue, the hearing officer shall consider the requirements of law, the convenience of the parties, the witnesses and the evidence.

Section 12. Time Computation. (1) Computation. In computing any period of time prescribed or allowed by order of the hearing officer or by administrative regulation, the day of the act, event or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday. Unless otherwise directed by the hearing officer, when the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computation.

(2) Enlargement. When by administrative regulation or by order of the hearing officer an act is required or allowed to be done by a specified time, the hearing officer may, before the specified time expires order the period enlarged or, may upon motion made after the specified period expires, permit the act to be done where the failure to act was the result of excusable neglect. The hearing officer may not enlarge a time frame established by statute.

(3) Additional time after service by mail. Whenever a party has the right or is required to do some act or take some proceeding within a period prescribed by order of the hearing officer or by administrative regulation after the service of a notice or other paper upon the party by mail, three (3) days shall be added to the prescribed period. This provision shall not apply to the service of administrative summons, notices and petitions by mail.

Section 13. Amended and Supplemental Pleadings. (1) Amendments. A party may amend his pleading once as a matter of course at any time before a responsive pleading is served, or if the pleading is one (1) to which no responsive pleading is permitted, he may so amend it at any time within five (5) days after it is served. Otherwise, a party may amend his pleading only by leave of the hearing officer or by written consent of the adverse party filed in the record. Leave to amend shall be freely given to achieve just, timely and inexpensive determinations of matters before the agency.

(2) Response to amended pleading. A party shall file a response to an amended pleading within the time remaining for response to the original pleading or within five (5) days after service of the amended pleading, whichever period may be longer, unless the hearing officer orders otherwise.

(3) Relation back of amendments. Whenever the claim or defense asserted in an amended pleading arises out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment shall relate back to the date of filing of the original pleading.

(4) Supplemental pleadings. The hearing officer may upon his own initiative or upon motion of a party permit a party to file a supplemental pleading which sets forth transactions, occurrences or events which have happened since the date of a prior pleading. The hearing officer shall allow such supplemental filings upon reasonable notice and upon such terms as are just, and shall grant the adverse party leave to file a responsive pleading to the supplemented pleading.

Section 14. Prehearing Conferences and Orders. (1) General provisions. A hearing officer, upon the motion of any party, or upon the hearing officer's own initiative, may hold a prehearing conference in any administrative action assigned to him to consider any matter set forth in KRS 13B.070(1).

(2) Telephonic prehearing conferences. Prehearing conferences may be held by telephone upon agreement of all persons concerned. The persons to be involved in the telephonic conference shall place the conference call to the hearing officer.

(3) Prehearing conferences to be recorded. Any prehearing conference in which the hearing officer will hear or rule on motions, objections, or hear argument on or make intermediate rulings shall be recorded and made part of the record.

(4) Settlement conferences. A hearing officer may order a settlement conference to facilitate settlement discussions. The hearing officer assigned to the administrative action shall not be present during the course of a settlement conference in that administrative action. No statements or admissions made at the settlement conference for the purpose of settlement negotiations shall be admitted in evidence at a formal administrative hearing nor be used by the hearing officer in making any report and recommendation to the secretary. To facilitate the settlement conference, the hearing officer may order:

(a) That expedited discovery be had before the settlement conference;

(b) That the parties or their representatives appear at the settlement conference with settlement authority;

(c) That any parties produce witnesses, documents or other discovery at the settlement conference.

(5) Prehearing conference orders. The hearing officer shall file a prehearing conference order in compliance with KRS 13B.070(2) after each prehearing conference which sets forth the date, place and attendees of the prehearing conference and sets out any rulings made by the hearing officer at the prehearing conference.

Section 15. Consolidation and Severance. (1) Consolidation. A hearing officer, on motion of a party or on his own, may consolidate any cases assigned to his docket upon a finding by the hearing officer that the cases concern common questions of law or fact, or have an

identity of issues or witnesses, and that consolidation is appropriate according to reasonable administrative practice.

(2) Severance. A hearing officer in his own discretion or on motion of a party, may sever consolidated cases or claims in an administrative action for a separate administrative hearing.

Section 16. Subpoenas. (1) Issuance. Upon motion of a party, the hearing officer may issue subpoenas requiring the attendance and testimony of witnesses and the production of any tangible items in the possession or under the control of witnesses.

(2) Motion for subpoena. A motion for issuance of a subpoena shall be in writing, filed with the agency at least five (5) days before the hearing. The motion shall set forth the need for the subpoena and shall specify the name and address of the person to be subpoenaed, and the name, address and phone number of the party requesting a subpoena. If the subpoena requests the production of tangible items, the motion shall describe those items with particularity. Attached to the motion, the party requesting the subpoena shall attach completed subpoenas on forms provided by the agency.

(3) Quashing subpoenas. Any person subject to a subpoena may, before the time for compliance set forth in the subpoena, move the hearing officer to quash the subpoena on the grounds that it was not lawfully issued, is unreasonably broad in scope, or requires production of evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds or violates an evidentiary privilege recognized in the courts of this Commonwealth. The hearing officer shall rule expeditiously on any motion to quash.

Section 17. Motion Practice. (1) General provisions:

(a) All requests for relief from a hearing officer shall be in the form of a motion. Unless otherwise provided by law or administrative regulation, a person may move at any time during an administrative action, orally or in writing for any relief within the authority and jurisdiction of the hearing officer.

(b) Motions and responses. All motions filed with the agency going to the merits of an administrative action shall state the grounds and supporting authority for the motion and the precise relief requested. Any party properly served with a motion may, within fifteen (15) days of the date of service of a motion, file a response stating grounds and supporting authorities for opposing the motion. No motion or response longer than twenty-five (25) pages in length shall be filed without prior leave of a hearing officer.

(c) Format of written motions. All written motions filed under this section shall be on eight and one-half (8 1/2) inches by eleven (11) inches paper stock, shall be signed by the filing person and shall include the name, address, telephone number and telefax number of each person filing the motion. Motions shall not be side-bound or top bound with a binding that interferes with the inclusion of the papers or pleadings in the agency files, unless permitted by the hearing officer. All printed or typed motions shall be in type no smaller than ten (10) point nor closer than twelve (12) pitch. All written motions filed with the agency which are longer than fifteen (15) pages in length shall contain an introduction, a table of contents and authorities, an argument and a conclusion section in which the filing person asks for specific relief. Failure to comply with the requirements of this subsection may be grounds for denying a motion.

(d) Argument on motions. Any party making a motion may move for oral argument before the hearing officer on that motion. If the hearing officer grants oral argument on the motion, he shall record the oral argument and make the recording part of the record.

(2) Motion for more definite statement.

(a) If a pleading is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the responding party may move for a more definite statement before filing a responsive pleading. The motion for more definite statement shall detail the defects complained of and shall set forth the details desired and explain how the details desired cannot be reasonably understood from the pleading. A hearing officer may on his own initiative require a party to file in the record a more definite statement of his allegations, claims, defenses and requested relief.

(b) If the hearing officer grants a motion for a more definite statement, the nonmoving party shall file an amended pleading setting forth the claims in the original pleading more definitely within ten (10) days

of the hearing officer's order, or within such time as the hearing officer may order. If the nonmoving party does not timely file an amended pleading, the hearing officer may, upon motion, strike the pleading to which the motion was directed or make such order as the hearing officer deems just.

(3) Motion for recommendation on the pleadings. After the time for filing any responsive pleading has passed, but within such time as not to delay a formal administrative hearing, any party may move for a recommendation on the pleadings. If, on such motion, matters outside the pleadings are presented to the hearing officer, the hearing officer shall treat and determine the motion as one for summary disposition.

(4) Motion for summary disposition.

(a) Time and form of filing. At any time after an administrative action commences, a party may move for summary disposition of a claim in his favor. In moving for summary disposition, the moving party shall support any factual allegations with affidavits or citations to deposition testimony, answers to interrogatories, responses to requests to admit, documents or with other citations to the record.

(b) Standard. The hearing officer may grant a motion for summary disposition and recommend the secretary rule in the moving party's favor if the hearing officer finds that there is no genuine dispute as to any issue of material fact and the moving party is entitled to a summary disposition as a matter of law.

(c) Partial summary disposition. If the hearing officer grants a motion for summary disposition in part, the hearing officer shall, as part of his order granting summary disposition in part, set forth all facts that are not genuinely disputed. These facts shall be established for the purpose of any subsequent proceedings in the administrative action. Following a partial summary disposition, the hearing officer shall order such further proceedings as are appropriate.

Section 18. Directed Disposition. (1) Time and standard. At the close of the presentation of evidence by a party at an administrative hearing, an opposing party may move the hearing officer for a directed disposition to the secretary, stating the specific grounds therefor on the record. In ruling on the motion for directed disposition, the hearing officer shall consider all of the evidence in the record presented by the nonmoving party and shall draw all inferences therefrom in favor of the nonmoving party. If, after so considering the evidence, the hearing officer determines there is not substantial evidence appearing in the record upon which the secretary could grant the nonmoving party relief, the hearing officer shall grant the moving party's motion and shall recommend that the secretary deny the nonmoving party's request for relief.

(2) Motion for directed disposition not a waiver. A motion for a directed disposition is not a waiver of the right to an administrative hearing. A party who moves for a directed disposition at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having to reserve the right to do so and to the same extent as if the motion had not been made.

Section 19. Evidence. (1) General. The hearing officer shall admit evidence in the record in accordance with KRS 13B.090 and reasonable administrative practice.

(2) Separation of witnesses; cumulative testimony. The hearing officer may on his own motion or motion of a party, separate the witnesses while testimony is being offered, and may limit cumulative testimony by any witness.

(3) Proffers of proof. Upon the exclusion of evidence offered for the record, the hearing officer may allow proffers of the excluded proof to be placed in the official record in any expeditious manner, including but not limited to allowing such evidence in the form of testimony, affidavits, summaries, excerpts or documents. Proffers of proof shall be placed in the record outside the presence of the hearing panel, if any, and shall not be considered part of the record for the purpose of rendering a recommended order.

(4) Documentary evidence. The hearing officer may admit documentary evidence in the record in the form of a copy or excerpt if the original document is not available. Any party to the proceeding shall have the right to compare the copy or excerpt with the original prior to the copy or excerpt being admitted in to the record.

Section 20. Recording Proceedings; Transcripts; Exhibits. (1)

Recording of proceedings. All testimony, proffers of proof, oral motions, objections and rulings thereon in an administrative action shall be recorded verbatim stenographically, electromechanically or by other means:

(2) Proceedings conducted by electronic means. Upon the filing of a signed written agreement of the parties, any administrative hearing may be conducted in whole or in part by telephone, television or other electronic means in accordance with KRS 13B.080(7). If any part of a hearing is conducted by electronic means for which there is a charge, each party shall bear a pro rata portion of the cost of conducting the proceedings electronically, or shall bear such costs as the hearing officer deems just. Any part of a hearing conducted by electronic means shall be recorded stenographically or by electromechanical means or by other means. Any electromechanical record of a hearing conducted by electronic means shall be filed in the record.

(3) Transcript of proceeding. A hearing officer may, in his discretion, order a transcript be made of all or a portion of any recording of an administrative action assigned to that hearing officer. The agency shall bear the cost of a transcript ordered by the hearing officer.

(4) Use of transcript. No party may cite to, quote or otherwise rely upon a transcript of a proceeding in any paper filed in the record, unless a complete copy of that transcript is also in the record. Any party may file a transcript cited, quoted or relied upon at the same time that party files the paper referring to the transcript. Failure to file a transcript as required by this subsection shall be grounds for denying a motion, or striking from the record all or part of a motion, memorandum, pleading or other paper violating this subsection.

(5) Exhibits. Following the close of the formal administrative hearing, the agency shall retain the record, including all exhibits introduced at the administrative hearing, for at least five (5) years. After five (5) years, or the time for all appeals has expired or the final appeal has been decided, the agency shall notify the parties to the administrative action that they must retrieve their exhibits by a date certain. If the parties do not retrieve their exhibits by the date set by the agency, the agency may dispose of the exhibits pursuant to the agency's records retention procedures.

Section 21. Default. (1) Default on failure to comply with order. If a party fails to timely comply with an order of a hearing officer or a requirement of these administrative regulations, the hearing officer shall file an order directing the noncomplying party to show cause why the hearing officer should not deem that party to have waived his right to an administrative hearing and why the hearing officer should not immediately recommend the secretary enter an order adverse to the party. If the noncomplying party does not satisfy the show cause order as required, the hearing officer may recommend the secretary enter a final order in conformity with the relief requested by the opposing party in the administrative action.

(2) Default on failure to appear at hearing. If a party fails to appear at a formal administrative hearing, the hearing officer may deem that party to have waived his right to a formal administrative hearing and may immediately recommend the secretary enter a final order in conformity with the relief requested in the appropriate pleadings, or may proceed without the defaulting party.

(3) Default recommendation limits. Upon a party's failure to timely comply with a hearing officer's order, the hearing officer may recommend the secretary grant any relief to which the opposing party is entitled. Upon a party's failure to appear at a formal administrative hearing, the hearing officer shall recommend the secretary grant the relief requested in the appropriate pleading.

(4) Default set aside on good cause shown. A hearing officer may, before the time for filing exceptions with the secretary has run, set aside a recommendation by default under this section for good cause shown.

Section 22. Posthearing Procedures; Exceptions; Jurisdiction. (1) Posthearing memoranda. At the conclusion of an administrative hearing, the hearing officer may, within his discretion, order the parties to submit post-hearing memoranda or draft recommended orders for the secretary. If the hearing officer orders such filings, he may allow response times for each side. The hearing officer may in his discretion hear oral argument on posthearing filings. The record of the formal administrative hearing shall not close until after the time has run for all

post-hearing filings.

(2) Posthearing order. As soon as practicable after the conclusion of the administrative hearing, the hearing officer shall file an order that memorializes the time, place and duration of the hearing of the administrative action and recites appearances by counsel and parties. The hearing officer shall order at the close of the hearing whether the hearing will be transcribed, and shall set this forth in the posthearing order. The posthearing order shall set a date for the final close of the record.

(3) Transmission of official record. Within five (5) days after the posthearing order is filed, or the transcript of the hearing is received by the agency if a hearing officer orders a transcript, the agency shall compile the official record, as defined in KRS 13B.130, and shall transmit a dated, certified copy of the record to the hearing officer. The hearing officer shall file a recommended order within sixty (60) days of the record's certified date.

(4) Exceptions. Any party filing exceptions to a hearing officer's recommended order as provided for in KRS 13B.110(4) shall file with their exceptions a draft final order for the secretary. The excepting party's draft final order shall set out the relief the party requests in its exceptions. The party filing exceptions shall serve a copy on the hearing officer.

(5) Jurisdiction. The hearing officer shall retain jurisdiction over the administrative action until the time for filing exceptions under KRS 13B.110(4) has run. After that time, the administrative action shall be submitted to and within the sole jurisdiction of the secretary.

(6) The hearing officer shall within thirty (30) days of the closing of the hearing record, make a report and a recommended order to the secretary. The recommended order shall contain the appropriate findings of fact and conclusions of law. If the secretary finds upon written request of the hearing officer that additional time is needed, then the secretary may grant a reasonable extension. The hearing officer shall serve a copy of his report and recommended order upon all parties. The parties may file within fourteen (14) days of service of the hearing officer's report and recommended order exceptions to the recommended order. The secretary may remand the matter to the hearing officer for further deliberation, adopt the report and recommended order of the hearing officer, or refuse to adopt the report and recommended order of the hearing officer and issue its own written order based on the record as a whole.

(7) After completion of the hearing and filing of exceptions, the secretary shall notify the applicant in writing, certified mail with return receipt requested, of the final decision. If any extension of time is granted by the secretary for a hearing officer to complete his report, the secretary shall notify all parties at the time of the granting of the extension.

(8) The secretary shall not grant extensions of time to the hearing officer for more than thirty (30) days for any one (1) extension, and no more than two (2) such extensions shall be granted.

(9) A final order of the secretary shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the secretary and the facts and law upon which the decision is based.

Section 23. Appeal Rights. Any person aggrieved by the secretary's final order shall have recourse to the Franklin Circuit Court.]

LAURA M. DOUGLAS, Secretary
ROBERT E. NICKEL, Executive Director
DAVID B. WICKER, ESQ., Staff Counsel

APPROVED BY AGENCY: October 14, 1998
FILED WITH LRC: October 15, 1998 at 8 a.m.

EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board (As Amended at ARRS, September 14, 1999)

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, 704 KAR 20:245, 704 KAR 20:250, 704 KAR 20:270, 704 KAR 20:285, 704 KAR 20:350, 704 KAR 20:360, and 704 KAR 20:370.

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RELATES TO: KRS 13B.120(2)(f), 161.020, 161.028, 161.030, 161.115

STATUTORY AUTHORITY: KRS 13B.120, 161.020, 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: 704 KAR 20:065, 704 KAR 20:085, 704 KAR 20:090, 704 KAR 20:110, 704 KAR 20:150, 704 KAR 20:240, 704 KAR 20:245, 704 KAR 20:250, 704 KAR 20:270, 704 KAR 20:350, 704 KAR 20:360, and 704 KAR 20:370 are no longer required because the Education Professional Standards Board has adopted and promulgated new administrative regulations governing the certification of teachers in these fields. The administrative regulations to be repealed govern teacher certification options which are no longer available. 704 KAR 20:285 is no longer required because KRS 161.115, Deletion of certificate, certificate endorsement, or subject specialization from official certification record at holder's option; restoration of deleted areas of certification, prescribes the detailed processes necessary for these actions; therefore, the administrative regulation formerly governing these same processes is redundant and no longer necessary.

Section 1. 704 KAR 20:065, Standard high school certificate, is hereby repealed.

Section 2. 704 KAR 20:085, Standard elementary certificate, is hereby repealed.

Section 3. 704 KAR 20:090, Provisional elementary certificate, is hereby repealed.

Section 4. 704 KAR 20:110, Business administrators, is hereby repealed.

Section 5. 704 KAR 20:150, Standard certification for school media librarian, is hereby repealed.

Section 6. 704 KAR 20:240, Speech and communication disorders; teacher's provisional certificate, is hereby repealed.

Section 7. 704 KAR 20:245, Provisional certificate for teachers of exceptional children - trainable mentally handicapped, is hereby repealed.

Section 8. 704 KAR 20:250, Severely/profoundly handicapped; [teacher's provisional certificate;] teaching endorsement, is hereby repealed.

Section 9. 704 KAR 20:270, Standard certificate for teachers of exceptional children, is hereby repealed.

Section 10. 704 KAR 20:285, Deletion of certification information, is hereby repealed.

Section 11. 704 KAR 20:350, Standard certificate for teaching in the middle grades 5-8, is hereby repealed.

Section 12. 704 KAR 20:360, Standard certificate for teaching in the early elementary grades K-4, is hereby repealed.

Section 13. 704 KAR 20:370, Standard certificate for teaching music[;] grades K-12, is hereby repealed.

TIM DEDMAN, Chair

MARCIA SEILER, Attorney

APPROVED BY AGENCY: June 30, 1999

FILED WITH LRC: July 6, 1999 at 1 p.m.

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board
(As Amended at ARRS, September 14, 1999)

704 KAR 20:021. Planned Fifth-year Program.

RELATES TO: KRS 157.390(1)(a), (b), 161.020, 161.028(1)(a),

(c), (k), 161.030(1), (2)

STATUTORY AUTHORITY: KRS 161.028(1)(a), (c), (k), 161.030(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(a), (c), (k) and 161.030(1), (2) vests authority for the issuance and renewal of certification for all school personnel in the Education Professional Standards Board. This administrative regulation establishes the standards for the Fifth-year Program for certificate renewal.

Section 1. (1) The standards required for the renewal of a teaching certificate shall require completion of:

(a) The continuing education alternative plan as defined in 704 KAR 20:022; or

(b) Plan I or Plan II described in this administrative regulation and in keeping with one (1) or more of the following purposes:

1. To improve the professional competency for the position covered by the initial teaching certificate;

2. To extend the scope of professional competency to a certification area not covered by the initial certificate; or

3. To obtain preparation-certification required for professional advancement to a higher position.

(2) Upon application by the candidate, the teacher education institution shall verify the completion of the Fifth-year Program to the Division of Certification.

Section 2. (1) Plan I Fifth-year Program shall require the completion of a master's degree from a college or university which meets the standards established by the Education Professional Standards Board in 704 KAR Chapter 20:

(a) In a professional education specialty for which certification is issued;

(b) In an academic subject for which teacher certification is issued; or

(c) In professional education with emphasis in an academic subject for which certification is issued.

(2) The master's degree shall be consistent with the experienced teacher standards established by the Education Professional Standards Board in 704 KAR 20:730 [Section 4 of this administrative regulation] or with standards established by the Education Professional Standards Board in 704 KAR Chapter 20 for a particular professional education specialty.

Section 3. Plan II Fifth-year Program shall require thirty-two (32) semester hours of graduate level coursework earned beyond the bachelor's degree and the four (4) year program of teacher preparation in accordance with the following guidelines:

(1) The Fifth-year Program shall be planned individually with each candidate by a teacher education institution approved for offering graduate programs of teacher preparation.

(2) The Fifth-year Program shall be a major component of the candidate's professional growth plan and shall be consistent with the experienced teacher standards established by the Education Professional Standards Board in 704 KAR 20:730 [Section 4 of this administrative regulation] or with standards established by the Education Professional Standards Board in 704 KAR Chapter 20 for a professional education specialty.

(3) The Fifth-year Program shall relate to the initial classroom teaching certificate or to an additional classroom teaching certificate.

(4) The grade point standing for the thirty-two (32) semester hour program shall not be less than is required at the planning institution for a teacher education graduate.

(5) Professional development in lieu of up to twelve (12) semester hours of the college credit shall be approved as part of Plan II Fifth-year Program if requested by the applicant using the following guidelines:

(a) Twenty-four (24) clock hours of professional development shall equal one (1) semester hour;

(b) The candidate shall seek and obtain prior approval of the institution for the professional development activities;

(c) The application for approval shall identify the specific professional development activities, and the action plan to achieve one (1) or more goals of the professional growth plan identified in subsection (2)

of this section;

(d) Upon completion of the professional development activities, the candidate shall submit to the institution a report of the activities which shall include an evaluation of the experiences and a follow-up plan for implementing the professional development; and

(e) The institution shall keep a record of the professional development completed by each candidate for the Fifth-year Program.

Section 4. New Teacher Standards. An approved preparation program for initial certification to be completed at the master's degree level shall be consistent with the new teacher standards as established in 704 KAR 20:730 [20:670].

[Section 5. Experienced Teacher Standards. A fifth-year program plan other than a plan in a professional education specialty for which the Education Professional Standards Board has established specific standards in 704 KAR Chapter 20 shall be consistent with the following experienced teacher standards:

(1) Experienced Teacher Standard I. Demonstrates professional leadership. The teacher provides professional leadership within the school, community, and education profession to improve student learning and well-being.

(2) Experienced Teacher Standard II. Demonstrates knowledge of content. The teacher demonstrates content knowledge within own area of certification and application to other areas, content areas, and certification areas.

(3) Experienced Teacher Standard III. Designs and plans instruction. The teacher designs and plans instruction that develops student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.

(4) Experienced Teacher Standard IV. Creates and maintains learning climate. The teacher creates a learning climate that supports the development of student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.

(5) Experienced Teacher Standard V. Implements and manages instruction. The teacher introduces, implements, and manages instruction that develops student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.

(6) Experienced Teacher Standard VI. Assesses and communicates learning results. The teacher assesses learning and communicates results to students and others with respect to student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.

(7) Experienced Teacher Standard VII. Reflects and evaluates teaching and learning. The teacher reflects on and evaluates teaching and learning.

(8) Experienced Teacher Standard VIII. Collaborates with colleagues, parents, and others. The teacher collaborates with colleagues, parents, and other agencies to design, implement, and support learning programs that develop student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.

(9) Experienced Teacher Standard IX. Engages in professional development. The teacher evaluates own overall performance in relation to Kentucky's learner goals as established in KRS 158.6451 and implements a professional development plan.]

TIM DEDMAN, Chair

MARCIA SEILER, Attorney

APPROVED BY AGENCY: June 30, 1999

FILED WITH LRC: July 6, 1999 at 1 p.m.

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board
(As Amended at ARRS, September 14, 1999)

704 KAR 20:305. Written examination prerequisites for teacher certification.

RELATES TO: KRS 161.028(1)(a), (k) [(+)(a), (k)], 161.030(3), (4) [(3), (4)]

STATUTORY AUTHORITY: KRS 161.028(1)(a), (k) [(+)(a), (k)], 161.030(3), (4) [(3), (4)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.030(3) [(3)] requires that a new teacher, including an out-of-state teacher with less than two (2) years experience, successfully complete appropriate assessments prior to initial certification in Kentucky. KRS 161.030(3) and (4) requires [(3) and (4)] [require] the Education Professional Standards Board to select the tests, determine the passing scores, establish a reasonable fee for the assessments, and establish a procedure for a person to repeat a test and be informed of his strengths and weaknesses in each area. This administrative regulation establishes the written examination prerequisites for teacher certification, including the required tests, the minimum acceptable level of achievement on each test, the fee for each test, and the procedure for retaking the test.

Section 1. A teacher applicant for certification shall successfully complete the appropriate written tests identified in this administrative regulation prior to initial Kentucky certification. A score on a test completed more than five (5) years prior to application for certification shall not be acceptable.

Section 2. Until January 14, 2000 [1999] these specialty tests and passing scores shall be required of each new teacher applicant and a teacher seeking an additional certificate as identified in this section.

(1) An applicant for interdisciplinary early childhood education, birth to primary, certification shall take an Education Professional Standards Board test for interdisciplinary early childhood, with a passing score of 150.

(2) An applicant for elementary certification shall take Elementary Education: Curriculum and Instruction (10011) with a passing score of 143.

(3) An applicant for middle school certification shall [take Education in the Elementary School Test (20010) with a passing score of 510 through the effective date of this administrative regulation. After that date, an applicant shall] take two (2) middle school specialty tests based on the applicant's specialty with no passing scores as identified in this subsection:

- (a) Middle School Mathematics (0069) - no passing score;
- (b) Middle School Science (0439) - no passing score;
- (c) Middle School English (0049) - no passing score;
- (d) Middle School Social Studies (0089) - no passing score.

(4) An applicant for certification for teacher of exceptional children in communication disorders, learning behavior disorders, hearing or visual impaired, or moderate and severe disabilities shall take each specialty test based on the applicant's specialty with the corresponding passing score as identified in this subsection:

- (a) Communication disorders:

1. Application for Core Principal Across Categories of Disabilities (10352) - 127; and

2. Speech Language Pathology (10330) - 450;

- (b) Learning behavior disorder:

1. Application of Core Principles Across Categories of Disabilities (10352) - 127; and

2. Teaching Student with Behavioral Disorders/Emotional Disturbances (20371) - 147; [or]

- (c) Moderate and severe disabilities:

1. Application of Core Principles Across Categories of Disabilities (10352) - 127; and

2. Teaching Students with Mental Retardation (20321) - 139;

[(5) An applicant for certification for teacher of exceptional children with hearing disorders and visual disorders shall take Special Education test (10350) with a passing score of 500 through the effective date of this administrative regulation. After that date, an applicant shall take

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specialty tests based on the applicant's specialty with a corresponding passing score as identified in this subsection:]

(d) [(a)] Hearing impaired:

1. Application for Core Principal Across Categories of Disabilities (10352) - 127; and

2. Education of Deaf and Hard of Hearing Students (0271) - 156;

(e) [(b)] Visually impaired:

1. Application for Core Principal Across Categories of Disabilities (10352) - 127; and

2. Teaching Students with Visual Impairments (0280) - no passing score.

(5) [(6)] An applicant for certification at the secondary level shall take each specialty test corresponding to the teaching area or major with the passing score identified in this subsection. An applicant whose teaching specialty is in a major for which no appropriate specialty test is available shall take the specialty test corresponding to the minor teaching specialty.

(a) Biology:

1. Biology: Content Knowledge Part 1 (20231) - 139; and

2. Biology: Content Essays (30233) - 139;

(b) Chemistry:

1. General Science: Content Knowledge Part 2 (10432) - 150; and

2. Either:

a. Chemistry: Content Knowledge (20241) - 144; or

b. Physics: Content Knowledge (10261) - 141;

(c) Dramatics:

1. English Language and Literature: Content Knowledge (10041) - 138; and

2. English Language, Literature and Composition Essays (20042) - 135;

(d) Dramatics-speech:

1. English Language and Literature: Content Knowledge (10041) - 138; and

2. English Language, Literature and Composition Essays (20042) - 135;

(e) English:

1. English Language and Literature: Content Knowledge (10041) - 138; and

2. English Language, Literature and Composition Essays (20042) - 135;

(f) History:

1. Social Studies: Content Knowledge (10081) - 146; and

2. Social Studies: Interpretation of Materials (20083) - 150;

(g) History - political science:

1. Social Studies: Content Knowledge (10081) - 146; and

2. Social Studies: Interpretation of Materials (20083) - 150;

(h) Mathematics:

1. Mathematics: Content Knowledge (10061) - 141; and

2. Mathematics: Proofs, Models, and Problems (20063) - 141;

(i) Mathematics - physical science: select from either:

1. Mathematics Test (10060) 500; or

2. Chemistry, Physics, and General Science Test (10070) - 510;

(j) Physics:

1. General Science: Content Knowledge, Part 2 (10432) - 150; and

2. Either:

a. Chemistry: Content Knowledge (20241) - 144; or

b. Physics: Content Knowledge (10261) - 141;

(k) Physical science:

1. General Science: Content Knowledge Part 2 (10432) - 150; and

2. Either:

a. Chemistry: Content Knowledge (20241) - 144; or

b. Physics: Content Knowledge (10261) - 141;

(l) Political science:

1. Social Studies: Content Knowledge (10081) - 146; and

2. Social Studies: Interpretation of Materials (20083) - 150;

(m) Science: select from either:

1. Biology and General Science Test (10030) - 550; or

2. Chemistry, Physics and General Science Test (10070) - 510;

(n) Speech:

1. English Language and Literature: Content Knowledge (10041) - 138; and

2. English Language, Literature and Composition Essays (20042)

- no passing score.

(6) [(7) Except as provided in subsection (8) of this section:] An applicant for certification in all grades in the following specialty areas shall take the specialty test or tests with the passing score as identified in this subsection.

(a) Art:

1. Content Knowledge (10133) - 139; and

2. Art Making (20131) - 154 [no-passing score];

(b) French:

1. French: Content Knowledge (10173) - 144; and

2. French: Productive Language Skills (20171) - 151 [no-passing score];

(c) German: German: Content Knowledge (20181) - 143;

(d) Health: Health Education (10550) - 550;

(e) Latin: Latin (0600) - 530;

(f) Music:

1. Music: Content Knowledge (10113) - 137; and

2. Music: Concepts and Processes (30111) - 140 [no-passing score];

(g) Physical education:

1. Physical education: Content Knowledge (10091) - 152; and

2. Physical education: Movement Forms-Analysis and Design (30092) - 135;

(h) Spanish:

1. Spanish Content Knowledge (10191) - 145; and

2. Spanish: Productive Language Skills (20192) - 156;

(i) School media librarian: Library Media Specialists (10310) - 590.

[(8) After the effective date of this administrative regulation, tests designated with no passing scores in subsection (7) of this section shall have the following passing scores:

(a) Art Making (20131) - 154;

(b) French: Productive Language Skills (20171) - 151;

(c) Music: Concepts and Processes (30111) - 140;

(7) [(9)] An applicant for certification to teach in grades five (5) through twelve (12) with one (1) or more of the following specializations shall take the specialty tests with the passing scores as identified in this subsection:

(a) Agriculture: Agriculture (10700) - 530;

(b) Business and Marketing Education - Business Education (10100) - 570;

(c) Comprehensive Business - Business Education (10100) - 570;

(d) Distributive Education - Business Education - 570;

(e) Family and Consumer Sciences - Home Economics Education (10120) - 540;

(f) Industrial Education - Technology Education (10050) - 570.

(8) [(10)] An applicant who holds one (1) of the certificates listed in this section shall qualify for additional certification in English as a second language by completing Teaching English as a Second Language (0360) - 550.

[(11) Specialty tests for an applicant who successfully completes a new test identified in subsections (3)(a) through (d), (5)(a) and (b), (7), and (10) of this section prior to October 1, 1998, shall be accepted for the issuance of the corresponding certification. Specialty tests required prior to October 1, 1998, shall be accepted for the issuance of the corresponding certification for a teacher applicant who successfully completed the tests prior to this date and apply for certification no later than September 30, 1999.]

Section 3. After January 14, 2000 [1999] these specialty tests and passing scores shall be required of each new teacher applicant and a teacher seeking an additional certificate as identified in this section.

(1) An applicant for interdisciplinary early childhood education, birth to primary, certification shall take an Education Professional Standards Board test for interdisciplinary early childhood, with a passing score of 150.

(2) An applicant for elementary certification shall take Elementary Education: Curriculum and Instruction (10011) with a passing score of 163.

(3) An applicant for middle school certification shall take two (2) middle school specialty tests based on the applicant's specialty with passing scores as identified in this subsection:

(a) Middle School Mathematics (0069) - 143;

(b) Middle School Science (0439) - 139;
 (c) Middle School English (0049) - 153;
 (d) Middle School Social Studies (0089) - 144.
 (4) An applicant for certification for teacher of exceptional children in Communication Disorders, Learning Behavior Disorders, Hearing or Visual Impaired, or Moderate and Severe Disabilities shall take each specialty test based on the applicant's specialty with the corresponding passing score as identified in this subsection:
 (a) Communication disorders:
 1. Application for Core Principles Across Categories of Disabilities (10352) - 146; and
 2. Speech Language Pathology (10330) - 600;
 (b) Learning behavior disorders:
 1. Application of Core Principles Across Categories of Disabilities (10352) - 146; and
 2. Teaching Student with Behavioral Disorders/Emotional Disturbances (20371) - 157;
 (c) Moderate and severe disabilities:
 1. Application of Core Principles Across Categories of Disabilities (10352) - 146; and
 2. Teaching Students with Mental Retardation (20321) - 146;
 (d) Hearing Impaired:
 1. Application for Core Principles Across Categories of Disabilities (10352) - 146; and
 2. Education of Deaf and Hard of Hearing Students (0271) - 167;
 (e) Visually Impaired:
 1. Application for Core Principles Across Categories of disabilities (10352) - 146; and
 2. Teaching Students with Visual Impairments (0280) - 658.
 (5) An applicant for certification at the secondary level shall take each specialty test corresponding to the teaching area or major with the passing score identified in this subsection. An applicant whose teaching specialty is in a major for which no appropriate specialty test is available shall take the specialty test corresponding to the minor teaching specialty.
 (a) Biology:
 1. Biology: Content Knowledge Part 1 (20231) - 156; and
 2. Biology: Content Essays (30233) - 141;
 (b) Chemistry:
 1. General Science: Content Knowledge Part 2 (10432) - 150;
 and
 2. Either:
 a. Chemistry: Content Knowledge (20241) - 144; or
 b. Physics: Content Knowledge (10261) - 141;
 (c) Dramatics:
 1. English Language and Literature: Content Knowledge (10041) - 160; and
 2. English Language, Literature and Composition Essays (20042) - 154;
 (d) Dramatics-speech:
 1. English Language and Literature: Content Knowledge (10041) - 160; and
 2. English Language, Literature and Composition Essays (20042) - 154;
 (e) English:
 1. English Language and Literature: Content Knowledge (10041) - 160; and
 2. English Language, Literature and Composition Essays (20042) - 154;
 (f) History:
 1. Social Studies: Content Knowledge (10081) - 151; and
 2. Social Studies: Interpretation of Materials (20083) - 155;
 (g) History - political science:
 1. Social Studies: Content Knowledge (10081) - 151; and
 2. Social Studies: Interpretation of Materials (20083) - 155;
 (h) Mathematics:
 1. Mathematics: Content Knowledge (10061) - 141; and
 2. Mathematics: Proofs, Models, and Problems (20063) - 141;
 (i) Mathematics - physical science: select from either:
 1. Mathematics Test (10060) - 500; or
 2. Chemistry, Physics, and General Science Test (10070) - 510;
 (j) Physics:
 1. General Science: Content Knowledge, Part 2 (10432) - 150;

and
 2. Either:
 a. Chemistry: Content Knowledge (20241) - 144; or
 b. Physics: Content Knowledge (10261) - 141;
 (k) Physical science:
 1. General Science: Content Knowledge Part 2 (10432) - 150;
 and
 2. Either:
 a. Chemistry: Content Knowledge (20241) - 144; or
 b. Physics: Content Knowledge (10261) - 141;
 (l) Political science:
 1. Social Studies: Content Knowledge (10081) - 151; and
 2. Social Studies: Interpretation of Materials (20083) - 155;
 (m) Science: select from either:
 1. Biology and General Science Test (10030) - 550; or
 2. Chemistry, Physics and General Science Test (10070) - 510;
 (n) Speech:
 1. English Language and Literature: Content Knowledge (10041) - 160; and
 2. English Language, Literature and Composition Essays (20042) - 154.
 (6) An applicant for certification in all grades in the following specialty areas shall take the specialty test or tests with the passing score as identified in this subsection.
 (a) Art:
 1. Content Knowledge (10133) - 154; and
 2. Art Making (20131) - 154;
 (b) French:
 1. French: Content Knowledge (10173) - 159; and
 2. French: Productive Language Skills (20171) - 167;
 (c) German: German: Content Knowledge (20181) - 157;
 (d) Health: Health Education (10550) - 623;
 (e) Latin: Latin (0600) - 630;
 (f) Music:
 1. Music: Content Knowledge (10113) - 150; and
 2. Music: Concepts and Processes (30111) - 146;
 (g) Physical Education:
 1. Physical Education: Content Knowledge (10091) - 152; and
 2. Physical Education: Movement Forms-Analysis and Design (30092) - 151;
 (h) Spanish:
 1. Spanish Content Knowledge (10191) - 160; and
 2. Spanish: Productive Language Skills (20192) - 158;
 (i) School Media Librarian: Library Media Specialists (10310) - 623.
 (7) An applicant for certification to teach in grades five (5) through twelve (12) with one (1) or more of the following specializations shall take the specialty tests with the passing scores as identified in this subsection:
 (a) Agriculture: Agriculture (10700) - 530;
 (b) Business and Marketing Education - Business Education (10100) - 584;
 (c) Comprehensive Business - Business Education (10100) - 584;
 (d) Distributive Education - Business Education - 584;
 (e) Family and Consumer Sciences - Home Economics Education (10120) - 570;
 (f) Industrial Education - Technology Education (10050) - 600.
 (8) An applicant who holds one (1) of the certificates listed in this section shall qualify for additional certification in English as a Second Language by completing Teaching English as a Second Language (0360) - 620.

Section 4. (1) An applicant for initial certification **shall [may]** take the Praxis II: Subject Assessments and Specialty Area Tests on a date established by:

(a) The Educational Testing Service for national administration; or
 (b) ~~[on a date established by]~~ The Education Professional Standards Board for special administration.

(2) An applicant shall authorize test results to be forwarded by the Educational Testing Service to the Kentucky Department of Education and to the appropriate teacher preparation institution.

(3) Public announcement of testing dates and locations shall be

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issued sufficiently in advance of testing dates to permit advance registration as required by the Educational Testing Service. An applicant shall seek information regarding the dates and location of the tests and make application for the appropriate examination prior to the deadline established and sufficiently in advance of anticipated employment to permit test results to be received by the Department of Education and processed in the normal certification cycle.

Section 5. [4.] An applicant shall pay the appropriate examination fee for each relevant test required to be taken, to the Educational Testing Service, publisher of the National Teacher Examinations, unless a lesser fee has been negotiated by the Department of Education. The fee for a specialty test developed by the Department of Education shall be equivalent to the current fee for the test administered by the Educational Testing Service.

Section 6. [5.] An applicant who fail to achieve at least the minimum score on the specialty examination appropriate to the teaching field may retake the test or tests during one (1) of the scheduled test administrations.

Section 7. [6.] The Education Professional Standards Board shall collect data and conduct analyses of the score and institutional reports provided by the Educational Testing Service to determine the impact of these tests and permit a review of this administrative regulation on an annual or biennial basis.

TIM DEDMAN, Chair
MARCIA SEILER, Attorney
APPROVED BY AGENCY: June 30, 1999
FILED WITH LRC: July 6, 1999 at 1 p.m.

EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board (As Amended at ARRS, September 14, 1999)

704 KAR 20:670. Kentucky teaching certificates.

RELATES TO: KRS 158.6451, 161.020, 161.028(1)(a), (b), (c), 161.030

STATUTORY AUTHORITY: KRS 161.028(1)(a), (b), (c), 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires that a teacher and other professional school personnel hold a certificate of legal qualifications for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. [Additionally,] KRS 161.028(1)(b) [;] requires a teacher education institution be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes the Kentucky certification to be issued for classroom teaching positions [and the new teacher standards for preparation and certification].

Section 1. Definitions. (1) "Approved program of preparation" means a program which has been approved by the Education Professional Standards Board for a specific certification or which has been approved for certification by the state education agency of another state.

(2) "Assessments" means the tests of knowledge and skills authorized by KRS 161.030.

(3) "Beginning teacher internship" means one (1) year of supervision, assistance, and assessment required by KRS 161.030.

(4) "Experienced teacher standards" means the standards established in 704 KAR 20:730 [20:021] that identify what an effective experienced teacher shall know and do.

(5) [~~"New teacher standards for preparation and certification"~~] means the standards that describe what a first-year teacher shall know and be able to do in an authentic teaching situation.

(6) "Professional teaching certificate" means the document issued to an individual upon successful completion of the beginning teacher internship and to an applicant for whom the testing and intern-

ship requirement is waived under KRS 161.030 based on preparation and experience completed outside Kentucky.

(6) [(7)] "Provisional [Provision] teaching certificate" means the document issued to an individual for the duration of the beginning teacher internship program.

(7) [(8)] "Statement of eligibility" means the document issued to an applicant upon completion of an approved program of preparation and successful completion of the assessments.

Section 2. Certificate Issuance. (1) A statement of eligibility for a provisional teaching certificate shall be issued to an applicant who has successfully completed:

(a) 1. A bachelor's degree; or

2. As required by Section 4(2)(g)5 [(7)(e)] and (2)(h)5 [(8)(e)] of this administrative regulation, a master's degree;

(b) An approved program of preparation; and

(c) The assessments corresponding to the certificate identified in Section 4 of this administrative regulation for which application is being made.

(2) Upon confirmation of employment in an assignment for the grade level and specialization identified on a valid statement of eligibility, a Provisional Teaching Certificate shall be issued for the duration of the beginning teacher internship established under KRS 161.030.

(3) Upon successful completion of the internship, a Professional Teaching Certificate shall be issued, valid for a four (4) year period.

Section 3. Certificate Renewal. (1) The renewal shall require completion of a fifth-year program of preparation which is consistent with:

(a) The experienced teacher standards established in 704 KAR 20:730 [20:021]; or

(b) The standards adopted by the Education Professional Standards Board for a particular professional education specialty and established in an applicable administrative regulation.

(2) The first five (5) year renewal shall require:

(a) Completion of a minimum of fifteen (15) semester hours of graduate credit applicable to the fifth-year program as defined in 704 KAR 20:021 by September 1 of the year of expiration; or

(b) Completion of the professional development plan defined in 704 KAR 20:022, Section 4(2).

(3) The second five (5) year renewal shall require:

(a) Completion of the fifth-year program as defined in 704 KAR 20:021 by September 1 of the year of expiration; or

(b) Completion of the professional development plan defined in 704 KAR 20:022, Section 4(1).

(4) Each subsequent five (5) year renewal shall require:

(a) Completion of three (3) years of successful teaching experience with continuing growth as documented in a portfolio; or

(b) Completion of at least six (6) semester hours of graduate credit related to the profession of teaching by September 1 of the year of expiration.

Section 4. Grade Levels and Specializations. (1) Preparation for a certificate shall ensure that a teacher:

(a) Has the knowledge and skills for the instruction of all children including an intellectually gifted and talented child or a child with a disability;

(b) Is proficient in the:

1. Use of technology; and

2. [in the] Instruction for multiage and multiability grouping; and

(c) Has the knowledge and skills to implement the goals for the schools of the Commonwealth specified in KRS 158.6451.

(2) A teaching certificate shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

(a) [(1)] Interdisciplinary early childhood education, birth to primary, 704 KAR 20:084;

(b) [(2)] Elementary school: primary through grade five (5) to include preparation in the academic disciplines taught in the elementary school;

(c) 1. [(3)(a)] Middle school: grades five (5) through nine (9) with two (2) middle school teaching fields to be selected from:

a. [1.] English and communications;

b. [2.] Mathematics;

c. [3.] Science; or

d. [(4)] Social studies;

2. **A candidate who chooses** [(b) Candidates who choose] to simultaneously prepare for teaching in the middle school and for teaching exceptional children as provided in **paragraph (g) of this subsection** [(7) of this section] shall be required to complete one (1) middle school teaching field;

(d) [(4)] Secondary school: grades eight (8) through twelve (12) with one (1) or more of the following specializations:

1. [(a)] English;
2. [(b)] Mathematics;
3. [(c)] Social studies;
4. [(d)] Biological science; or
5. [(e)] Physical science;

(e) [(5)] Grades five (5) through twelve (12) with one (1) or more of the following specializations:

1. [(a)] Agriculture;
2. [(b)] Business and marketing education;
3. [(c)] Family consumer science; or
4. [(d)] Industrial technology;

(f) [(6)] All grade levels with one (1) or more of the following specialties:

1. [(a)] Art;
2. [(b)] A foreign language;
3. [(c)] Health;
4. [(d)] Physical education;
5. [(e)] Music; or
6. [(f)] School media librarian;

(g) [(7)] Grades primary through twelve (12) for teaching exceptional children and for collaborating with teachers to design and deliver programs for preprimary children, for one (1) or more of the following disabilities:

1. [(a)] Learning and behavior disorders;
2. [(b)] Moderate and severe disabilities, 704 KAR 20:251;
3. [(c)] Teacher of deaf and hard of hearing;
4. [(d)] Visually impaired; or
5. [(e)] Communication disorders, valid at all grade levels for the instruction of exceptional children and youth with communication disorders, and requires a master's degree in communication;

(h) [(8)] Endorsements to certificates identified in **paragraphs (a) through (g) of this subsection** [subsections (1) through (7) of this section], valid for all grade levels, for the following:

1. [(a)] Computer science;
2. [(b)] English as second language;
3. [(c)] Gifted education;
4. [(d)] Driver education; or
5. [(e)] Reading and writing and requires a master's degree in reading.

Section 5. Additional Certification. A candidate who holds a certificate valid for classroom teaching shall qualify for additional certification upon:

(1) The recommendation of an approved institution of higher education, which shall include consideration of the performance standards; and

(2) The successful completion of each required Education Professional Standards Board assessment applicable to the additional certification being sought.

Section 6. [New Teacher Standards for Preparation and Certification. The approved program of preparation for each certification shall be designed to address the student academic expectations as provided by 703 KAR 4:060; to meet the content standards provided by 704 KAR 20:696; to prepare a candidate to teach children, including a child from a culturally diverse background, and manage tasks identified in the following teacher performance standards:

(1) New Teacher Standard I, designs and plans instruction. The teacher designs and plans instruction and learning climates that develop student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(2) New Teacher Standard II, creates and maintains learning climates. The teacher creates a learning climate that supports the development of student abilities to use communication skills, apply core

concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(3) New Teacher Standard III, implements and manages instruction. The teacher introduces, implements, and manages instruction that develops student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(4) New Teacher Standard IV, assesses and communicates learning results. The teacher assesses learning and communicates results to students and others with respect to student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(5) New Teacher Standard V, reflects and evaluates teaching and learning. The teacher reflects on and evaluates specific teaching and learning situations and programs;

(6) New Teacher Standard VI, collaborates with colleagues, parents, and others. The teacher collaborates with colleagues, parents, and other community agencies to design, implement, and support learning programs that develop student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(7) New Teacher Standard VII, engages in professional development. The teacher evaluates his overall performance with respect to modeling and teaching Kentucky's learning goals established in KRS 158.6451, refines the skills and processes necessary, and implements a professional development plan; and

(8) New Teacher Standard VIII, content knowledge. The teacher demonstrates a current and sufficient academic knowledge of certified content areas to develop student knowledge and performance in those areas:

Section 7. Effective Dates. (1) The provisions for the issuance of a teaching certificate for each grade level and for each specialization identified in this administrative regulation shall become effective for all students admitted to the specific program of preparation beginning January 1, 1998.

(2) A candidate admitted prior to January 1, 1998, under one (1) or more of the following administrative regulations shall complete the program by September 1, 2000: 704 KAR 20:057, 20:070, 20:080, 20:095, 20:105, 20:115, 20:135, 20:145, 20:146, 20:159, 20:160, 20:161, 20:175, 20:180, 20:229, 20:230, 20:235, 20:255, 20:275, 20:280, 20:290, 20:340, 20:500, 20:520, and 20:570.

(3) A candidate who fails to complete the program by September 1, 2000, and does not apply for the certification by January 1, 2001 shall be required to qualify for the certification identified in this administrative regulation.

(4) A candidate admitted to an advanced level preparation program prior to September 1, 1998, shall:

(a) Complete the program by September 1, 2003; and

(b) Apply for the certification by January 1, 2004.

(5) The Education Professional Standards Board shall communicate to the Kentucky a college or university approved for these programs the effective date for admission to each new program identified in this administrative regulation and the date by which a candidate shall complete the former program. Colleges and universities shall take adequate steps to inform a candidate in the program regarding the deadline dates.

TIM DEDMAN, Chair

MARCIA SEILER, Attorney

APPROVED BY AGENCY: June 30, 1999

FILED WITH LRC: July 6, 1999 at 1 p.m.

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board
(As Amended at ARRS, September 14, 1999)

704 KAR 20:730. Standards for certified school personnel.

RELATES TO: KRS 161.020, 161.028(1)(a), 161.030,

161.048(1)(d), 161.095, 161.120

STATUTORY AUTHORITY: KRS 161.020, 161.028(1)(a), 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(a) requires the Education Professional Standards Board establish standards for obtaining and maintaining a teaching certificate. This administrative regulation establishes [contains] the standards required for [adopted by the board that] certified school personnel to obtain or maintain [must achieve to gain and sustain] certification.

Section 1. Successful completion of the standards established in Section 2 of this administrative regulation shall be indicated using the criteria established in:

(1) New Teacher Standards for Preparation and Certification; or

(2) Experienced Teacher Standards for Preparation and Certification.

Section 2. New Teacher Standards for Preparation and Certification. The new teacher standards established in this section shall be used in the evaluation and assessment of a teacher for initial certification and for the accreditation of teacher preparation programs, which [The approved program of preparation for each certification] shall be designed to:

(1) Address the student academic expectations as provided by 703 KAR 4:060;

(2) [to] Meet the content standards provided by 704 KAR 20:696;

(3) [to] Prepare a candidate to teach children, including a child from a culturally diverse background; and

(4) Manage tasks identified in the new [following] teacher performance standards:

(a) [(+)] New Teacher Standard I, designs and plans instruction. The teacher designs and plans instruction and learning climates that develop student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(b) [(2)] New Teacher Standard II, creates and maintains learning climates. The teacher creates a learning climate that supports the development of student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(c) [(3)] New Teacher Standard III, implements and manages instruction. The teacher introduces, implements, and manages instruction that develops student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(d) [(4)] New Teacher Standard IV, assesses and communicates learning results. The teacher assesses learning and communicates results to students and others with respect to student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(e) [(5)] New Teacher Standard V, reflects and evaluates teaching and learning. The teacher reflects on and evaluates specific teaching and learning situations and programs;

(f) [(6)] New Teacher Standard VI, collaborates with colleagues, parents, and others. The teacher collaborates with colleagues, parents, and other community agencies to design, implement, and support learning programs that develop student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(g) [(7)] New Teacher Standard VII, engages in professional development. The teacher evaluates his overall performance with respect to modeling and teaching Kentucky's learning goals established in KRS 158.6451, refines the skills and processes necessary, and implements a professional development plan;

(h) [(8)] New Teacher Standard VIII, content knowledge. The teacher demonstrates a current and sufficient academic knowledge

of certified content areas to develop student knowledge and performance in those areas; and

(i) [(9)] New Teacher Standard IX, demonstrates implementation of technology. The teacher uses technology to support instruction; access and manipulate data; enhance professional growth and productivity; communicate and collaborate with colleagues, parents, and the community; and conduct research.

Section 3. [2:] Experienced Teacher Standards for Preparation and Certification. The experienced teacher standards established in this section shall be used in the accreditation of teacher preparation programs and in the evaluation and assessment of a teacher for certification purposes, other than for a plan in a professional education specialty for which the Education Professional Standards Board has established specific standards in 704 KAR Chapter 20. [A fifth-year program plan other than a plan in a professional education specialty for which the Education Professional Standards Board has established specific standards in 704 KAR Chapter 20 shall be consistent with the following experienced teacher standards:]

(1) Experienced Teacher Standard I, demonstrates professional leadership. The teacher provides professional leadership within the school, community, and education profession to improve student learning and well-being;

(2) Experienced Teacher Standard II, demonstrates knowledge of content. The teacher demonstrates content knowledge within own area of certification and application to other areas, content areas, and certification areas;

(3) Experienced Teacher Standard III, designs and plans instruction. The teacher designs and plans instruction that develops student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(4) Experienced Teacher Standard IV, creates and maintains learning climate. The teacher creates a learning climate that supports the development of student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(5) Experienced Teacher Standard V, implements and manages instruction. The teacher introduces, implements, and manages instruction that develops student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(6) Experienced Teacher Standard VI, assesses and communicates learning results. The teacher assesses learning and communicates results to students and others with respect to student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(7) Experienced Teacher Standard VII, reflects and evaluates teaching and learning. The teacher reflects on and evaluates teaching and learning;

(8) Experienced Teacher Standard VIII, collaborates with colleagues, parents, and others. The teacher collaborates with colleagues, parents, and other agencies to design, implement, and support learning programs that develop student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(9) Experienced Teacher Standard IX, engages in professional development. The teacher evaluates own overall performance in relation to Kentucky's learner goals as established in KRS 158.6451 and implements a professional development plan; and

(10) Experienced Teacher Standard X, demonstrates implementation of technology. The teacher uses technology to support instruction; access and manipulate data; enhance professional growth and productivity; communicate and collaborate with colleagues, parents, and the community; and conduct research.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) New Teacher Standards for Preparation and Certification, November 1994; and

(b) Experienced Teacher Standards for Preparation and Certification, June 1994.

(2) This material may be inspected, copied, or obtained at the Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky 40601.

TIM DEDMAN, Chair
MARCIA SEILER, Attorney

APPROVED BY AGENCY: June 30, 1999

FILED WITH LRC: July 6, 1999 at 1 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
Division of Miner Training, Education and Certification
(As Amended at ARRS, September 14, 1999)

805 KAR 7:010. Definitions for 805 KAR Chapter 7. [Miner training, education and certification.] [Definitions.]

RELATES TO: KRS 351.102, 351.103, 351.105

STATUTORY AUTHORITY: KRS 351.070(13), [13A-100;] 351.106

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.102, 351.103, and 351.106 require a person to be trained before his certification for employment in coal mines. KRS 351.070(3) requires the Department of Mines and Minerals to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 351. This administrative regulation establishes the definitions for 805 KAR Chapter 7. [training of a person before his certification for employment in coal mines and also require the Department of Mines and Minerals, with the Mining Board's approval, to establish training criteria and guidelines. This administrative regulation promulgates definitions of important terms necessary to implement the provisions of those statutes.] [KRS 351.106 empowers the Commissioner of the Department of Mines and Minerals to promulgate such reasonable administrative regulations as are necessary to establish programs for miner training and examination according to the criteria and standards established by the Board of Miner Training, Education, and Certification. This administrative regulation effects the provisions of that statute.]

Section 1. Definitions. [For purposes of this chapter, the following terms shall have the following meanings unless the context demands otherwise:]

(1) ["Board"] means the Mining Board [of Miner Training, Education, and Certification];

(2) ["Certified person"] means a [any] person certified by the commissioner to perform particular work duties in and around a [an underground] coal mine.

[(3) "Commissioner" means the Commissioner of the Department of Mines and Minerals;

(4) "Department" means the Department of Mines and Minerals.]

(2) [(5)] "Experienced surface miner" means a [any] person who has [having] worked a minimum of forty-five (45) [ninety-(90)] working days at a surface mine or on the surface area of an underground mine and has complied with all statutory and regulatory training requirements.

(3) [(6)] "Experienced underground miner" means a person who has worked a minimum of forty-five (45) working days in an underground coal mine and has complied with all statutory and regulatory training requirements.

(4) [(7)] "Hazard training" means [is] instruction in awareness and avoidance of accident or injury from conditions inherent to mining provided by the licensee to visitors exposed to mine hazards.

(5) [(9)] "Inexperienced surface miner" means a [any] trainee miner who has not worked a minimum of forty-five (45) working days at a surface mine or on the surface area of an underground coal mine.

(6) [(8)] "Inexperienced underground miner" means a [any] trainee miner who has not worked a minimum of forty-five (45) working days in an underground coal mine.

(7) [(11)] "Mine-specific training" means [is] the instruction of mining relative to the distinct factors of a particular mine.

(8) [(10)] "Newly employed miner" means a [any] miner, experienced or inexperienced, employed by a licensee to work at a coal mine who has not completed mine specific training requirements.

(9) [(12)] "New work assignment" means a [any] work duty [duties] in which a miner has not completed task training or demonstrated proficiency.

(10) [(13)] "Normal work shift" means the period of time during which the miner is scheduled to work on a regular basis.

(11) [(14)] "Surface coal miner" means a person at a surface mine or on the surface area of an underground mine who is engaged in an activity [the activities] of mining or processing coal.

(12) [(15)] "Task training" means training of miners for new work assignments.

(13) [(16)] "Trainee miner" means a [any] miner who has not worked a minimum of forty-five (45) working days at a coal mine.

(14) [(17)] "Underground coal miner" means:

(a) A person working in an underground mine who is engaged in the extraction and production process including maintenance or service; or

(b) A person employed or contracted by the licensee who is regularly exposed to mining hazards. [any person working in an underground mine and who is engaged in the extraction and production process, including maintenance, service, or other workers employed or contracted by the licensee who are regularly exposed to mining hazards.] [in an underground coal mine.

(6) "Inexperienced miner" means any person not having worked a minimum of ninety (90) days in an underground mine.

(7) "Newly hired miner" means any miner, experienced or inexperienced, who is hired by an operator to work in an underground coal mine.

(8) "New work assignment" means any delegation of work duties in mobile equipment operations, blasting and drilling operations, rail haulage and conveyor system operations, or roof control which a miner is not qualified to perform pursuant to this chapter.

(9) "Operator" means an individual, firm or corporation operating a coal mine or any part thereof.

(10) "Normal work shift" means the equivalent of eight (8) hours.

Section 2. For purposes of this chapter, any person receiving training throughout a normal work shift shall be deemed to have received eight (8) hours of training.]

JOHN L. FRANKLIN, Commissioner, Chairman
RONALD B. MCCLOUD, Secretary
STEPHAN L. TAYLOR, 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 Mines and Minerals
Division of Miner Training, Education and Certification
(As Amended at ARRS, September 14, 1999)

805 KAR 7:020. Training and certification of inexperienced miners.

RELATES TO: KRS 351.102, 351.105

STATUTORY AUTHORITY: KRS [13A-100;] 351.106

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.102 and 351.106 require the Department of Mines and Minerals to establish [promulgate] a program of training for inexperienced miners according to criteria and standards determined by the Mining Board. This administrative regulation establishes a [promulgates that] program of training for inexperienced miners. [KRS 351.106 empowers the Commissioner of the Department of Mines and Minerals to promulgate such reasonable administrative regulations as are necessary to establish a program for miner training and examination according to the criteria and standards established by the Board of Miner Training, Education and Certification. This administrative regulation effects the provisions of that statute.]

Section 1. Training and Certification of Inexperienced Miners. (1) The required trainee miner training shall be documented and include the following information:

- (a) Full name of person trained;
- (b) Miner identification number;
- (c) Type of mining operation;
- (d) Type of training received;
- (e) Date training completed;
- (f) Subjects taught in that training;
- (g) Signature of instructor;
- (h) Signature of miner; and

(i) Date of signatures. The documentation shall be embossed with the instructor's seal and embossed copy shall be provided to the miner. [on a form prescribed by the commissioner of the department and embossed with the instructor's seal and an embossed copy shall be provided to the miner.]

(2)(a) The certificate earned by completing the trainee miner training program [gained by this training] shall be valid for twelve (12) months preceding initial employment at a mine.

(b) If employment is not obtained within twelve (12) months, annual retraining requirements shall [must] be successfully completed each year in order to maintain the trainee miner permit. [A permit as trainee miner shall be issued by the commissioner to any person who has completed a program of education and training that meets all of the requirements of this administrative regulation and consists of a minimum of forty-eight (48) hours or who is enrolled in a certified mine technology program.

(2) This training may be received through the Bureau of Vocational Education, mine company programs, private or public institutions of education or any program certified by the board as meeting the requirements of this administrative regulation.

(3) Upon proof that an inexperienced miner has received the course of instruction set forth in this administrative regulation within twelve (12) months preceding initial employment at a mine, such miner need not repeat the training specified in this administrative regulation.]

Section 2. Training Program. The training program for inexperienced miners shall include[, but not be limited to:] instruction in the following courses:

(1) Introduction to mining;

(2) Self-rescue devices; [-The course shall include instruction in the use, care and maintenance of self-rescue devices. This course shall be given before the inexperienced miner visits, tours or goes underground.

(2) Introduction to mining. The introduction to mining course should include a visit and tour of a mine or portions of a mine which are representative of the entire mine. The method of mining utilized at the mine (that is conventional, continuous, longwall or other) should be observed and explained.]

(3) The statutory rights of miners and their representatives;

(4) Authority and responsibility of supervisors; [-The course shall include review and description of the line of authority of supervisors and the responsibilities of such supervisors, and an introduction to rules and proper procedures for reporting safety hazards.]

(5) [(4)] Entering and leaving a mine [mines], transportation, and communication [communications]; [-The course shall include instruction in the procedures in effect for entering and leaving mines, the check-in and check-out systems in effect at mines, the procedures for riding on and in mine conveyances, the controls in effect for transportation of miners and materials, and the use of mine communication systems, warning signals and directional signs.]

(6) [(5)] Mine map, escapeways, emergency evacuations, barricading; [-The course shall include a review of mine maps, the escapeway systems, the escapes, firefighting and emergency evacuation plans in effect at mines, the location of abandoned and dangerous areas, and an introduction to methods of barricading and the locations of barricading materials.]

(7) [(6)] Roof or ground control and ventilation plans; [-The course shall include an introduction to and instruction on the roof control plans in effect within the mining industry, and procedures for roof and rib control, and introduction to and instruction on the ventilation plans in effect within the mining industry, and the procedures for maintaining and controlling ventilation.]

(8) Health standards;

(9) Clean-up and [(7)] rock dusting;

(10) Hazard recognition;

(11) Electrical hazard;

(12) First aid;

(13) Mine gases and [-The course shall include instruction on the purpose of rock dusting and the rock dusting programs in effect within the mining industry.

(8) First aid. The course of instruction shall consist of a course in first aid methods:

(9) Electrical hazards, moving equipment. The course shall include instruction on recognition and avoidance of electrical hazards, and the procedures for working on and near moving equipment at all locations in mines:

(10) Prevention of accidents. The course shall include instruction on the prevention of all types of accidents including electrical and mechanical:

[(11)] explosives;

(14) Accident prevention; and

(15) Mining and mine safety related issue [Other courses as may be required by commissioner]. [The course shall include review and instruction on the hazards related to explosives and the danger involved when working with and around such explosives:

(12) Health and safety standards. The course shall include the health and safety standards contained in KRS Chapters 351 and 352 and the Federal Mine Safety and Health Act of 1977 (PL 95-164):

(13) The training program shall include all other substantive mine safety law not covered in the above courses that deals with the underground miner, including review and instruction of miners' and operators' statutory rights and obligations with regard to mine safety law.]

JOHN L. FRANKLIN, Commissioner, Chairman

RONALD B. MCCLOUD, Secretary

STEPHAN L. TAYLOR, 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 Mines and Minerals

Division of Miner Training, Education and Certification

(As Amended at ARRS, September 14, 1999)

805 KAR 7:030. Annual retraining.

RELATES TO: KRS 351.105

STATUTORY AUTHORITY: KRS [19A:100:] 351.106

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.102 and 351.106 require the Department of Mines and Minerals to establish [promulgate] an annual miner retraining program according to the criteria and standards determined by the Mining Board. This administrative regulation establishes the [promulgates] requirements and terms of the [that] annual retraining program. [KRS 351.106 empowers the Commissioner of the Department of Mines and Minerals to promulgate such reasonable administrative regulations as are necessary to establish a program for miner training and examination according to the criteria and standards established by the Board of Miner Training, Education and Certification. This administrative regulation effects the provisions of that statute.]

Section 1. (1) A certified miner shall receive a minimum of sixteen (16) hours of annual retraining. Eight (8) hours of the annual retraining shall be:

(a) Administered in a classroom;

(b) Conducted by a Kentucky certified underground mining instructor or Kentucky certified mine foreman; and

(c) Documented and include the following information:

1. Full name of person trained;

2. Miner identification number;

3. Type of mining operation;

4. Type of training received;

5. Date training completed;

6. Subjects taught in that training;

7. Signature of instructor;

8. Signature of miner; and

9. Date of signatures. After completion of his training, the miner shall receive a copy of the training form and be notified that each segment is administered in satisfaction of the annual retraining requirement. [All certified persons shall receive a minimum of sixteen (16) hours of annual retraining, at least eight (8) hours of which shall be administered in a classroom and conducted by a Kentucky certified underground mining instructor. This training shall be documented on a form approved by the commissioner and signed and embossed with the instructor's seal. The balance of such annual retraining may be administered in segments of not less than fifteen (15) minutes; the persons who receive annual retraining in this manner shall be notified that each segment is being administered in satisfaction of the annual retraining requirement. This training shall be documented on a form approved by the commissioner and the person supervising the training shall be a Kentucky certified mine foreman or a certified underground mining instructor and shall sign the form, including his certification number. Upon completion of his sixteen (16) hour annual retraining, the miner immediately shall receive a copy of the training form.]

(2) [The annual retraining set forth in this administrative regulation shall be administered to each certified person in the manner established in Section 2 of this administrative regulation.

(3) [The annual retraining courses [course of annual retraining] shall include [but not be limited to] the following subjects:

(a) Transportation controls and communications systems; [-The course shall include instruction in procedures for riding on and in mine conveyances, the controls in effect for the transportation of miners and material, the use of the mine communication system, warning signals and directional signs.]

(b) Barricading; [-The course shall include instruction and review of the methods of barricading and locations of barricading materials.]

(c) Roof control and ventilation plans; [-The course shall include instruction in and review of the roof control and ventilation plans in effect at the mine, the procedures for roof and rib control, and the procedures for maintaining ventilation and control of ventilation.]

(d) First aid; [-The course shall include instruction and review of first aid methods.]

(e) Electrical hazards and [;] moving equipment; [-The course shall include instruction in the recognition and avoidance of electrical hazards and procedures for working on or [and] near moving equipment throughout the mine.]

(f) Accident prevention; [-The course shall include instruction in and review of the prevention of accidents, both electrical and mechanical.]

(g) Self-rescue devices; [-The course shall include instruction in the use, care and maintenance of self-rescue devices.]

(h) Explosives; [-The course shall include instruction in and review of the hazards related to explosives and procedures for the safe handling and use of explosives.]

(i) Health and safety standards; and [-Instruction shall be given on the health and safety standards set out in KRS Chapters 351 and 352 and in the Federal Mine Safety and Health Act of 1977 [(PL 95-165) as such requirements are related to the tasks and work assignments of each miner].]

(j) [The] Statutory rights of miners and their representatives.

(4) In addition to the minimum of sixteen (16) hours of annual retraining required above for all certified persons, those persons who hold a mine foreman certificate, including mine foremen, assistant mine foremen, fire bosses, and mine superintendents, shall receive an additional four (4) hours of annual retraining which is specifically applicable to the duties and standards of conduct generally exercised by holders of mine foreman certificates. This annual retraining of mine foreman certificate holders shall include, at a minimum, instruction in the following subjects:

(a) Mine accident investigation and reporting techniques.

(b) Identification and avoidance of electrical hazards.

(c) Identification and avoidance of haulage hazards.

(d) Preparation for and response to mine emergencies.

(e) Mine safety law.

(f) Development, implementation, and enforcement of mine plans.

(g) Performance of preshift and on-shift mine examinations.

(h) Techniques in conducting effective safety meetings and miner communications.]

Section 2. A miner shall complete annual retraining within twelve (12) months from the end of the month of his most recent annual retraining requirement. A miner who has had a break in employment as an underground miner shall be eligible to work if he has successfully completed the annual retraining requirements within the last twelve (12) months. [A person [All persons] required to receive annual retraining shall complete that retraining within not more than twelve (12) months from the end of the month in which his [their] most recent annual retraining was completed. Following a break in employment as an underground miner, a miner shall be eligible to work if he has successfully completed the annual retraining requirements within the last twelve (12) months.] [Each instructor administering annual retraining shall, within ten (10) days of administering it, certify to the department, on forms prepared by it, the nature of the retraining administered by him and the names of the persons receiving it. All persons required to receive annual retraining may receive it within less than twelve (12) months from the month of completion certified by an instructor and recorded as such by the department, whereupon those persons shall be required to satisfy their annual retraining requirement within not more than twelve (12) months from the month of completion of all successive annual retraining received by them.]

Section 3. The licensee [operator] shall maintain verification of all miner training and certification [on a form prescribed by the commissioner.] at the mine premises.

(1) The documentation shall include:

(a) The dates the annual training sessions were conducted;

(b) The name of the miner; and

(c) The miner identification number.

(2) Licensees shall maintain documentation of the miners who are no longer employed by the licensee on the mine premises. [The form [annually verify in the form of an affidavit to the department that each certified person in his employ has received the annual retraining required by this administrative regulation. Such affidavit] shall state the dates on which the annual training sessions were conducted and the names and miner identification [corresponding Social Security] numbers of those persons, including persons no longer in the employ of the licensee [operator], receiving the annual retraining]] [- provided, however, that no person shall be required to disclose his Social Security number for purposes of this affidavit. In the event that a person who has received the annual retraining refuses to disclose his Social Security number, the operator shall make a notation to that effect in the affidavit in lieu of stating that person's Social Security number.

Section 4. If a certified person willfully performs duties for which annual retraining is required by this administrative regulation without having received that annual retraining, that person's performance of such duties shall constitute grounds for revocation, suspension, or probation of the certificate, in accordance with KRS 352.390.]

JOHN L. FRANKLIN, Commissioner, Chairman

RONALD B. MCCLOUD, Secretary

STEPHAN L. TAYLOR, 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 Mines and Minerals

Division of Miner Training, Education and Certification

(As Amended at ARRS, September 14, 1999)

805 KAR 7:040. Training of newly employed [hired] miners.

RELATES TO: KRS 351.105

STATUTORY AUTHORITY: KRS 351.102, 351.105, [43A.100; 351.106(1)-(4)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.102

and 351.106 require the Department of Mines and Minerals to establish a miner training program for newly employed miners [~~promulgate a program of miner training, including newly employed miners;~~] according to the criteria and standards determined by the Mining Board. This administrative regulation establishes [~~promulgates~~] a program of training and examination for newly employed miners. [KRS 351.106 provides that the Commissioner of the Department of Mines and Minerals shall promulgate such reasonable administrative regulations as are necessary to establish and implement a program of miner training and examination according to the criteria and standards established by the Board of Miner Training, Education, and Certification pursuant to KRS Chapter 351. This administrative regulation effects the provisions of that statute.]

Section 1. Mine-specific Training for Newly Employed Miners [Training of Newly Employed (Hired) Miners – Mine Specific Training].
(1) Each newly employed inexperienced [hired] miner[; whether experienced or inexperienced;] shall receive a minimum of eight (8) hours training provided by the licensee. The training shall:

(a) Be performed by a Kentucky certified mine foreman or mining instructor.

(b) Apply to the mine where the miner is to be employed. [~~and performed by a person that is a Kentucky certified mine foreman or certified mining instructor, [mine operator] in mine specifics as applied to the particular mine wherein the miner is to be employed.~~]

(2) Each newly employed experienced miner shall receive sufficient training provided by the licensee. The training shall:

(a) Be performed by a Kentucky certified mine foreman or mining instructor.

(b) Apply to the mine where the miner is to be employed. [~~and performed by a person who is a Kentucky certified mine foreman or mining instructor in mine specifics of the particular mine where the miner is to be employed.~~]

(3) The [Such] training shall include instruction in the courses set forth in 805 KAR 7:020, Section 2(2)-(15) [; (3); (4); (5); (6); (7); (8); [and] (9); (10); (11); (12); (13); (14); and (15)], and shall be completed before the newly hired miner can be assigned any work duties.

(4) [(3)] The licensee [operator] shall verify [in the form of an affidavit] to the department documentation containing the following information:

(a) Full name of person trained;

(b) Miner identification number;

(c) Type of mining operation;

(d) Type of training received;

(e) Date training completed;

(f) Verification of eight (8) hours training in mine specifics;

(g) Signature of miner;

(h) Signature of instructor; and

(i) Date of signatures. [~~on a form prescribed by the commissioner that the newly employed [hired] miner has received the eight (8) hours training in mine specifics required by this administrative regulation.~~] The newly employed miner shall receive a copy of this form.

(5) [(4)] Upon proof by a licensee [an operator] that a reemployed [rehired] experienced miner has received the training established [set forth] in this administrative regulation within twelve (12) months preceding reemployment at the mine, the miner shall not be required to repeat the training established in this administrative regulation. [such miner need not repeat the training set forth in this administrative regulation].

JOHN L. FRANKLIN, Commissioner, Chairman
RONALD B. MCCLOUD, Secretary
STEPHAN L. TAYLOR, 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 Mines and Minerals
Division of Miner Training, Education and Certification
(As Amended at ARRS, September 14, 1999)

805 KAR 7:050. Training of miners for new work assignments.

RELATES TO: KRS 351.105

STATUTORY AUTHORITY: KRS 351.102, [13A-100;] 351.106

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.102 and KRS 351.106 require the Department of Mines and Minerals to establish, according to criteria and standards determined by the Mining Board, a miner training program that includes training of miners who receive new work assignments [~~promulgate a program of miner training, including the training of miners at new work assignments, according to criteria and standards determined by the Mining Board.~~] This administrative regulation establishes [~~promulgates~~] a program of training and examination for miners who receive [at] new work assignments. [KRS 351.106 empowers the Commissioner of the Department of Mines and Minerals to promulgate such reasonable administrative regulations as are necessary to establish a program for miner training and examination according to the criteria and standards established by the Board of Miner Training, Education and Certification. This administrative regulation effects the provisions of that statute.]

Section 1. Task Training [of Miners for New Work Assignments].

(1) A miner who receives a new work assignment shall not perform the work duties until he has completed a training program as provided in Section 1(2) of this administrative regulation if his new work assignment requires direct operation of:

(a) Mechanical machinery;

(b) Electrical machinery; or

(c) Equipment in connection with:

1. Mobile equipment operations;

2. Blasting and drilling operations;

3. Haulage and conveyor system operations; or

4. Roof control. [Each miner receiving new work assignments requiring the direct operation of mechanical or electrical machinery or equipment in connection with mobile equipment operations, blasting and drilling operations, [rail] haulage and conveyor system operations, or [and] roof control, shall not perform such work duties until he/she] has completed a program of training as provided as set out in subsection (2) of this section [in this administrative regulation of a minimum of twenty (20) hours as specified in KRS 351.105;]

(2) The [Such minimum of twenty (20) hours] training program for miners who receive [receiving] new work assignments shall include:

(a) Health and safety aspects and safe operating procedures for work tasks, equipment, and machinery;

(b) Supervised practice during nonproduction;

(c) Supervised operation during production;

(d) New or modified machines and equipment; and

(e) Mining and mine safety related issues [Such other courses as may be required by the commissioner]. [be provided as follows: eight (8) hours of observing the operation in which the new work assignment is to be made, eight (8) hours of a combination of instruction and practice in such new work assignment, and four (4) hours in production under supervision.

(3) The training program shall include, but not be limited to, the following:

(a) Safe operation procedures for existing, modified, or new equipment or machines. This training shall include instruction in the safe operating procedures related to the equipment or machine. Instruction shall be given by the immediate supervisor or experienced person in an on-the-job environment, and shall be taught from a safe operating procedures checklist developed specifically for the equipment or machine. A copy of the checklist shall be given to each equipment or machine operator at the time of instruction.

(b) Supervised practice during nonproduction. This training shall include supervised practice in operating equipment or a machine and performing work duties at mines or places where production is not the primary objective. The equipment or machine operator shall practice

the operation of the equipment or machine under direct supervision of the immediate supervisor or experienced person until such time as sufficient practice has been taken place to ensure the operation of the equipment or machine in a safe manner.

(c) Supervised practice during production. This training shall include supervised operation of the machine or equipment and performing work duties under the direct and immediate supervision of an experienced foreman or experienced equipment or machine operator while production is in progress. An equipment or machine operator shall not operate equipment or a machine without direction and immediate supervision until such operator has demonstrated to the satisfaction of the operator of the mine or to the mine foreman that the trainee possesses knowledge of the safe operating procedures for such equipment or machine.

(d) Any person who controls or directs rail haulage operations at a mine shall, before assignment to such duties, receive and complete training in safe haulage procedures related to the haulage system, ventilation system, firefighting procedures, and the emergency evacuation procedures in effect at the mine. This training may be received as part of the training program provided for in paragraphs (a), (b), and (c) of this subsection.]

Section 2. If [When] [At such time as] a miner becomes qualified under the provisions of this administrative regulation to perform a [any] work assignment, he/she shall continue to be [so] qualified [during any calendar year] thereafter if [wherein] the miner demonstrates [demonstrated] safe operating procedures in performance of the work assignment [during the preceding calendar year]. Each licensee shall maintain current documentation [verification] on the mine premises that the miner has demonstrated proficiency in work assignments pursuant to Section 1(1) of this administrative regulation.

Section 3. [Each operator shall annually submit to the department, in the form prescribed by the commissioner, a current list of the miners in his employ, the job assignments for which each miner is qualified and the basis for such qualification. This list shall be submitted to the department during the month of January in each calendar year. A copy of said list shall be posted in a conspicuous place upon the premises of the mine and shall be updated to reflect changes as they occur.

Section 4.] The provisions of this administrative regulation shall not be construed to alter or deprive a [any] person of a [any] right or duty accruing to that person by virtue of a [any] labor-management contract.

JOHN L. FRANKLIN, Commissioner, Chairman
RONALD B. MCCLOUD, Secretary
STEPHAN L. TAYLOR, 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 Mines and Minerals
Division of Miner Training, Education and Certification
(As Amended at ARRS, September 14, 1999)

805 KAR 7:060. Program approval.

RELATES TO: KRS 351.101, 351.102, 351.105
STATUTORY AUTHORITY: KRS [13A-100, 351.020;] 351.106
NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.102 and 351.106 [351.105] provide for the establishment [promulgation] [establishment] of a program of training and education of inexperienced underground coal miners. This administrative regulation establishes the procedure for public and private entities to submit training programs to the Mining Board for approval. [promulgates] [sets forth] the conditions [manner] in which private and public entities [concerns] desiring to train inexperienced miners in accordance with the above-cited statutes may submit those [such] programs for approval by the Mining Board [of Miner Training, Education and Certification].]

Section 1. [No person shall be issued a permit as a trainee miner

unless that person has completed a program of training approved by the board, or that person has received a degree in mining engineering from an accredited institution of higher education or is enrolled in a course of mining technology approved by the board.

Section 2.] A training program [of training] for inexperienced miners shall be approved by the board if the proposed [that] [such] program[, at a minimum,] meets the criteria and objectives of 805 KAR 7:020, and the instructors teaching the program have been [duty] certified by the Kentucky Department of Mines and Minerals and the U.S. Department of Labor, Mine Safety and Health Administration.

Section 2. A person who desires to provide a training program to [for] inexperienced miners shall submit the proposed training program [3. Approval of training programs for inexperienced miners may be obtained by submitting for review such proposed training programs] to the [Department of Mines and Minerals;] Mining Board [of Miner Training, Education and Certification], P.O. Box 2244, Frankfort [680; Lexington], Kentucky 40602-2244, for review. The [40586; which] proposed training program [programs] shall contain[, at a minimum,] the following information:

- (1) The address and location of the training facility to be used [utilized];
- (2) A description of the equipment and facilities to be used [utilized];
- (3) A list of the participating instructors;
- (4) The content areas in the training program for which each instructor shall be responsible;
- (5) The approximate number of students per class;
- (6) The dates on which the training program will be conducted;
- (7) The name and address of the person responsible for the formulation and implementation of the training program;
- (8) An outline of the proposed program showing how it meets the criteria and objectives of 805 KAR 7:020;
- (9) A list of instructional material to be used [utilized] including [(e.g.) films or ;] programmed material and [; etc.]; noting where such material will be used within the instructional sequence; and
- (10) A description of the instructional methods to be used [utilized] throughout the program including [(e.g.) lecture demonstration, personalized instruction and ;] team-teaching[; etc.].

Section 3. [4:] (1) [Any] Approval granted by the board in accordance with the provisions of this administrative regulation shall be conditional upon the practical implementation of the training program in a manner consistent with the criteria and objectives of 805 KAR 7:020.

(2) The department shall have the authority to monitor an [any] approved program without prior notice.

[(3) The board shall revoke its approval of any program that does not meet the criteria and objectives of 805 KAR 7:020 as ascertained by a monitoring of that program by the department.

(4) The board may revoke its approval of any program or part thereof when a monitoring of that program reveals that the instructor has not conducted the program or part thereof in a manner consistent with the criteria and objectives of 805 KAR 7:020.]

JOHN L. FRANKLIN, Commissioner, Chairman
RONALD B. MCCLOUD, Secretary
STEPHAN L. TAYLOR, 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 Mines and Minerals
Division of Miner Training, Education and Certification
(As Amended at ARRS, September 14, 1999)

805 KAR 7:070. [Reporting procedures and] Record maintenance.

RELATES TO: KRS 351.102, 351.105
STATUTORY AUTHORITY: KRS 351.102 [13A-100], 351.105, 351.106

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.102 and 351.106 require the Department of Mines and Minerals to establish [on behalf of the Mining Board, to promulgate] criteria and conditions for a program of miner training and education. This administrative regulation promulgates the requirements for record maintenance necessary to administer the [that] program. [KRS 351.102 requires the Board of Miner Training, Education and Certification to establish criteria and standards for a program of training and education for underground coal miners. This administrative regulation sets forth the reporting procedures and record maintenance necessary to implement and administer such program.]

Section 1. [Reporting Requirements. (1) The operator of each underground coal mine may, at his option, make a monthly report to the department on forms prescribed by the commissioner.

(2) In the event that an operator makes monthly reports to the department in accordance with the provisions of this administrative regulation, then that operator need not make the reports required by 805 KAR 7:030(3), 805 KAR 7:040(3), and 805 KAR 7:050(5).

(3) Each such monthly report shall be mailed to the department no later than fifteen (15) days subsequent to the last day of each month.

(4) A copy of the last monthly report submitted to the department shall be posted in a conspicuous place on the mine premises.

(5) Any operator wishing to make monthly reports to the department in lieu of the reports required by 805 KAR 7:030(3), 805 KAR 7:040(3), and 805 KAR 7:050(5) may do so by giving written notification to the department of his intent to submit monthly reports.

Section 2. Information to be Reported Monthly. (1) Each monthly report shall contain the following information:

(a) Identification of each person who accumulated a total of sixteen (16) hours of annual retraining during that month;

(b) Identification of each newly-hired miner who received eight (8) hours of mine specific training in accordance with 805 KAR 7:040 during that month;

(c) Identification of each experienced miner rehired by the operator during that month who had received the mine specific training set forth in 805 KAR 7:040 within the twelve (12) preceding months;

(d) Identification of each miner who has completed twenty (20) hours of training for a new work assignment during that month as set forth in 805 KAR 7:050, and the particular work assignment for which the training was received; and

(e) Identification of each miner qualified in the preceding calendar year who demonstrated safe operating procedures in the performance of a particular work assignment during that month.

(2) The operator shall report the information required by this administrative regulation as it pertains to each person employed by the operator during the reported month regardless of whether that person is so employed at the time of submission of the monthly report.

(3) If, during any month, none of the events required to be reported occur, the operator need not submit any report for that month.

Section 3. Record Maintenance. [(1)] The licensee [operator] shall maintain at [upon] the mine premises current and accurate records of the following:

(1) [(a)] The dates [on which] annual retraining sessions were conducted and [by the operator,] the persons who received [receiving] the annual retraining on those dates[, and the subjects covered by each annual retraining session];

(2) [(b)] The name of each [miner] newly-employed miner [hired] during the current [prevailing] calendar year, the date on which he/[she] was employed [hired], and the date on which he/[she] received [eight (8) hours of] mine specific training; and

(3) [(c)] The particular work assignments which each miner is qualified to perform pursuant to 805 KAR 7:050[, and the basis for such qualification.

(2) The operator shall maintain upon the mine premises a copy of all monthly reports submitted to the department during the preceding twelve (12) months].

JOHN L. FRANKLIN, Commissioner, Chairman
RONALD B. MCCLOUD, Secretary
STEPHAN L. TAYLOR, 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 Mines and Minerals
Division of Miner Training, Education and Certification
(As Amended at ARRS, September 14, 1999)

805 KAR 7:090. Hazard training.

RELATES TO: KRS 351.106, 352.350

STATUTORY AUTHORITY: KRS [13A:100,] 351.070, 351.105

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.106 requires the Department of Mines and Minerals to establish safety programs for miners and mine sites. This administrative regulation establishes a training program for visitors of a mine site. [KRS 351.106 requires the Department of Mines and Minerals to oversee safety matters at mine sites, and KRS 352.350 allocates the immediate responsibility for safety matters at a mine site to the mine foreman. This administrative regulation promulgates a training program for visitors to mine sites.]

Section 1. Surface **Hazard Training**. (1) Surface hazard training shall be provided by the licensee to visitors exposed to mine surface hazards.

(2) Hazard training shall include:

(a) Hazard recognition and avoidance;

(b) Emergency procedures; and

(c) Mining and mine safety related issues. [Other courses required by the commissioner.]

Section 2. Underground **Hazard Training**. (1) Underground hazard training shall be provided by the licensee or his authorized representative at the mine for visitors exposed to mine hazards in underground mines.

(2) Persons required to take [subject to] hazard training shall be accompanied at all times while underground by an experienced miner employed at the mine.

(3) Hazard training shall include:

(a) Hazard recognition and avoidance;

(b) Emergency and evacuation procedure [procedures];

(c) Use of a self-rescuer and a respiratory device [devices]; and

(d) Mining and mine safety related issues. [Other courses required by the commissioner.]

Section 3. **Documentation**. (1) The training required for a visitor of a surface or underground mine shall be:

(a) Documented; and

(b) Valid for twelve (12) months.

(2) The documentation shall enable the visitor to revisit the mine where he received training. [Training shall be documented. This training shall be valid for a period of twelve (12) months and for only the mine where the hazard training was provided.]

JOHN L. FRANKLIN, Commissioner, Chairman
RONALD B. MCCLOUD, Secretary
STEPHAN L. TAYLOR, 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 Charitable Gaming
(As Amended at ARRS, September 14, 1999)

820 KAR 1:001. Definitions for 820 KAR Chapter 1.

RELATES TO: KRS 238.500 to 238.995

STATUTORY AUTHORITY: KRS 238.515(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(9) authorizes the Department of Charitable Gaming to promulgate administrative regulations to carry out the provisions of the chapter. This

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administrative regulation establishes definitions of terms used throughout 820 KAR Chapter 1.

Section 1. Definitions. (1) "Bet block" means an area which indicates the dollar amount of the wager.

(2) "Card" or "face" means a card or paper containing:

(a) Five (5) rows of five (5) squares with twenty-four (24) pre-printed numbers;

(b) A free center space; and

(c) The letters "B", "I", "N", "G", "O" printed in order over the five (5) columns.

(3) "Cash" means currency, coinage or a negotiable instrument.

(4) "Conditioning" means a restatement of:

(a) How many numbers or combinations of numbers are being selected by the players;

(b) The way in which the numbers are being wagered; and

(c) The corresponding dollar amount wagered.

(5) "Covered" means daubed or smeared with indelible ink.

(6) "Deal" means each separate game or series of charity game tickets with the same serial number.

(7) "Designator" means an item:

(a) Upon which bingo letters and numbers are imprinted; and

(b) Used in the number selection process.

(8) "Disposable paper bingo card" means a nonreusable, paper bingo card:

(a) Bearing preprinted numbers; and

(b) Assembled in a:

1. Multiple card sheet;

2. Single sheet;

3. Pad; or

4. Packet form.

(9) "Draw ticket" means a ticket upon which the numbers randomly selected are marked on a blank ticket as the numbers are selected.

(10) "EPROM" means Erasable Programmable ROM.

(11) "Exception log" means a record documenting a prize payout that has not been authorized by the computer.

(12) "Festival bingo" means bingo:

(a) Conducted at a charity fundraising event; and

(b) For which total cash and fair market value of prizes awarded do not exceed \$5,000.

(13) "Flare" means a piece of paper, cardboard or similar material that bears printed information relating to the:

(a) Number of prizes to be awarded; and

(b) Specific prize amounts in a particular deal of charity game tickets.

(14) "Inside ticket" means a blank Keno ticket:

(a) Constructed with eighty (80) blocks numbered one (1) through eighty (80); and

(b) Containing a bet block.

(15) "Keno" means a numbers game in which:

(a) A participant chooses from one (1) to ten (10) numbers from a pool of eighty (80) numbers; and

(b) The winner and his prize is determined by correctly matching his numbers to the twenty (20) numbers generated in the game.

(16) "Keno equipment" means a:

(a) Electronic selection device;

(b) Random number generator;

(c) Computerized Keno system; or

(d) Integrated system of computer hardware and software that:

1. Generates a player ticket;

2. Records a game outcome;

3. Verifies a winning ticket;

4. Produces a management report; or

5. Performs other internal audit controls of a Keno operation.

(17) "Keno manager" means the person in charge of the operation of the Keno game.

(18) "Multirace ticket" means a single ticket which allows a player to make the same wager on consecutive games.

(19) "Outside ticket" means a computer generated ticket given to the player which reflects certain game and wagering information.

(20) "Perm number" means the number generally printed in the center space of a bingo card that identifies the unique pattern of num-

bers printed on that card.

(21) "PROM" means programmable ROM.

(22) "Quick pick" means a number selection made for the player by a computer.

(23) "RAM" or "random access memory" means the electronic memory that a computer uses to store information.

(24) "Random number generator" means a device:

(a) For generating number values that exhibit characteristics of randomness; and

(b) Composed of:

1. Computer hardware;

2. Computer software; or

3. A combination of computer hardware and software.

(25) "Regrade" means to manually recalculate the prize payout of a winning ticket according to the printed pay schedule.

(26) "ROM" or "read only memory" means:

(a) The electronic component used for storage of nonvolatile information in Keno equipment that provides instructions needed by the computer to begin its operations each time it is turned on;

(b) "PROM"; and

(c) "EPROM".

(27) "Selection device" means a device that:

(a) May be operated:

1. Manually; or

2. Automatically; and

(b) Is used to randomly select bingo numbers.

(28) "Serial number" means a number that is:

(a) Printed by the manufacturer on each card in a set; and

(b) Unique to the set.

(29) "Series number" means the number of unique card faces contained in a set.

(30) "Set" means a specific group of cards from the same product line that:

(a) Are the same:

1. Color; and

2. Border pattern;

(b) Are imprinted with the same serial number; and

(c) May include more than one (1) series of:

1. Cards; or

2. Faces.

(31) "Transaction log" means a record of the same information printed on each outside ticket that is:

(a) Retained in the computer's memory; or

(b) Printed out by the computer.

(32) "Twenty-four (24) hour period" means a twenty-four (24) hour period of time commencing at 12:01 a.m. and ending at 12 midnight.

(33) "Verification book" means a book compiled by the manufacturer of bingo cards that:

(a) Lists the unique patterns of numbers on each card by perm number; and

(b) Is used to verify the authenticity of a winning card.

(34) [(32)] "Way ticket" means a single ticket that permits wagering on a combination of groups of numbers in various ways designated by the player.

(35) [(33)] "Week" means a seven (7) day period beginning on Sunday and ending Saturday.

(36) [(34)] "Year" means calendar year except as used in KRS 238.555(7), 238.545(4), and 238.547(1) [and 500 KAR 11:080, Section 2], when "year" means the licensee's license year.

RONALD B. MCCLOUD, Secretary

RAY FRANKLIN, Commissioner

SCOTT JONES, General Counsel

APPROVED BY AGENCY: June 15, 1999

FILED WITH LRC: June 15, 1999 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Charitable Gaming
(As Amended at ARRS, September 14, 1999)

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) If [Should] a defect in packaging or in the construction of a charity game ticket game is [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) If [Should] the department, in consultation with the manufacturer, determines [determine] that a defect actually exists, and if the department determines [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. A licensed charitable organization, other than the one that initiated the deal, shall not complete play of a deal. [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. A licensed charitable organization, other than the one that initiated the seal card from the deal, shall not complete play of the deal or seal card. [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) An [No] individual involved in any capacity in the conduct of a charitable gaming event at which charity game tickets are sold shall not be permitted to purchase or play charitable game tickets.

(12) A charity game ticket shall not [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. An automated charity game ticket dispenser shall not [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;

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(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) **A charitable gaming organization shall not use the dispenser until 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) **A person shall not put out a** ~~[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) **A licensee shall not** ~~[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) **A charity game ticket deal shall not** ~~[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) **After placement in the dispenser, a charity game ticket shall not** ~~[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, **the** ~~[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.

PUBLIC PROTECTION AND REGULATION CABINET Department of Charitable Gaming (As Amended at ARRS, September 14, 1999)

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.

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 **shall** 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) **Disposable paper bingo cards that have the same series number shall not be sold for use in the same game.** ~~[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) **A player or charitable organization shall not** ~~[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) **A winner shall be** ~~[Winners are]~~ determined when the pre-announced pattern of squares is covered by a player on a card.

(11) **It shall be** ~~[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 **shall be followed** ~~[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 neu-

tral 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 shall not purchase or play [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.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Charitable Gaming
(As Amended at ARRS, September 14, 1999)

820 KAR 1:070. Exempt activities.

RELATES TO: KRS 238.535

STATUTORY AUTHORITY: KRS 238.515(2), (9), 238.535(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: Any organization exempt from licensure requirements under KRS 238.535(1) is to notify the Department of Charitable Gaming in writing of its intent to engage in exempt charitable gaming. This administrative regulation establishes a reporting method and form by which exemption notices are to be filed with and processed by the department.

Section 1. (1) Any charitable organization which otherwise fully qualifies for licensure but claims to be exempt from licensure under KRS 238.535(1) shall submit to the department, thirty (30) days before the exempt charitable gaming activities first occur, a satisfactorily completed form entitled "Notice of Exemption From Charitable Gaming Licensure Requirement", Form CG-Exempt.

(2) The department shall acknowledge receipt of Form CG-Exempt and the charitable organization may present the [such] acknowledgment to licensed distributors or other vendors or entities requiring verification of licensure status as proof that the charitable organization has notified the department of its exempt status.

(3) If [Provided] the gaming activities of the charitable organization remain exempt, no additional exemption notice shall be filed with the department.

(4) The charitable organization shall [promptly] notify the department of any changes in information contained on the Form CG-Exempt within thirty (30) days.

Section 2. Incorporation by Reference. (1) Form CG-Exempt, "Notice of Exemption From Charitable Gaming Licensure Requirement, (6/99 [96])", is hereby incorporated by reference.

(2) This form may be inspected, obtained or copied at the Department of Charitable Gaming, Public Protection and Regulation Cabinet, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, 8 a.m. to 4:30 p.m., Monday through Friday.

RONALD B. MCCLOUD, Secretary
RAY FRANKLIN, Commissioner
SCOTT JONES, General Counsel
APPROVED BY AGENCY: June 15, 1999
FILED WITH LRC: June 15, 1999 at 11 a.m.

CABINET FOR HEALTH SERVICES
Office of Inspector General
(As Amended at ARRS, September 14, 1999)

902 KAR 20:160. Chemical dependency treatment services and facility specifications.

RELATES TO: KRS 202A.241, 216B.010, 216B.015, 216B.030, 216B.105, [to—216B.130;] 216B.990, 311.560(4), 314.011(8), 314.042(8), 320.210(2)

STATUTORY AUTHORITY: KRS 216B.010, 216B.042(1); 216B.105, 314.011(8), 314.042(8), 320.240(14), EO-96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 require [mandate] [that] the Cabinet for Health Services to regulate health facilities and health services. This administrative regulation establishes [provides—the] licensure requirements for the operation, [and] services, and facility specifications of chemical dependency treatment programs. [Executive Order-96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for

Health Services.]

Section 1. Definitions. (1) "Aftercare" means the process of providing continued services [contact] following primary chemical dependency treatment, in order to [which—will] support and increase [the] gains made during [in—the] treatment [process].

(2) "Governing authority" means the individual, agency, partnership or corporation that directs and establishes policy concerning the management and operation of a chemical dependency treatment program, [in which the ultimate responsibility and authority for the operation of the facility is vested.]

(3) "Interdisciplinary team" means a group of at least four (4) professionals including a physician, registered nurse, certified chemical dependency counselor and a person with a master's degree in psychology, social work or counseling.

(4) "Qualified dietician" means:

(a) A person who has a Bachelor of Science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or

(b) A person who has a Masters Degree in nutrition and is a member of ADA or is eligible for registration by ADA; or

(c) A person who has a Bachelor of Science degree in home economics and three (3) years of work experience with a registered dietician.

(5) "Restraint" means a [any] physical or mechanical device used to restrict the movement of the patient or [the movement of] a portion of the patient's body.

Section 2. Scope of Operation and Services. (1) A chemical dependency treatment service shall have [has] a structured inpatient program to provide [which—provides] medical, social, diagnostic and treatment services to persons who suffer from illness related to the misuse or abuse of alcohol and other drugs.

(2) Chemical dependency treatment services shall:

(a) Have [last—generally for] a duration of less than thirty (30) days;

(b) Be [—are] hospital based or freestanding;

(c) Have [with] eight (8) or more patient beds;

(d) Be [and] under the medical direction of a physician; and

(e) Provide [with] continuous nursing services.

Section 3. Administration and Operation. The licensee shall be responsible for compliance with federal, state and local law pertaining to chemical dependency treatment programs.

(1)(a) [(+) Governing authority:

(a) The program shall have a recognized governing authority that has overall responsibility for the management and operation of the program and for compliance with federal, state and local laws and regulations pertaining to its operation.

(b) The governing authority shall appoint a program administrator who shall have a:

1. [has—a] Bachelor's degree in a health or human services field;

2. [or—a] Bachelor's degree in another field supplemented with one (1) year of work experience in the field of chemical dependency; or

3. [who—is—a] High school diploma and [graduate—with] four (4) years [of] experience in the field of chemical dependency.

(b) [(c)] The governing authority shall establish, in writing:

1. Program [develop] goals and objectives; [for—the program] and
2. An [establish—a-written] evaluation plan for annual assessment of [to—assess] the attainment of the [these] goals and objectives. [on—an-annual-basis-]

(2) Program administrator.

(a) The program administrator shall be responsible for the daily management of the facility and shall provide liaison between the governing authority and staff members.

(b) The program administrator shall keep the governing authority [fully] informed of the operations of the facility through periodic reports and attendance at meetings of the governing authority.

(3) Administrative records and reports.

(a) A medication error, drug reaction, accident, or other inci-

dent involving a patient, visitor, or staff member, shall be reported in writing, signed by the program administrator and any witness to the event, and placed in an incident file. [Administrative reports shall be established, maintained and utilized as necessary to guide the operation, measure productivity and reflect the programs of the facility;

(b) A written report of any incident or accident involving a patient (including medication errors and drug reactions), visitor or staff shall be made and signed by the program administrator and any staff member who witnessed the incident. The report shall be placed in an incident file;]

(b) [(c)] Licensure inspection reports, plans of correction and program evaluations shall be available to the public, upon request, at the facility.

(4) Policies.

(a) Administrative policies. The program shall have a written administrative policy to cover each aspect [policies covering all aspects] of the facility's operation, as follows [to include]:

1. A description of the organizational structure, staffing, and allocation of responsibility and accountability;

2. A description of referral linkages with other facilities and providers;

3. A description of the services included in the program;

4. [A policy for] An expense and revenue accounting system following generally accepted accounting procedures;

5. A volunteer program [policy describing the use of volunteers in program activities]; and

6. [A policy for conducting] Program evaluation and quality assurance review.

(b) Patient care policy. A written [policies:] patient care policy [policies] shall be developed [for all aspects of the program] and shall include a description of:

1. Actions to be taken when a patient is [determined to be] lost, unaccounted for, or otherwise absent without authorization [on other unauthorized absence];

2. [A policy which specifies] Provisions for patient visitation and use of telephones;

3. [A policy to specify the] Provision of emergency medical services; and

4. Patient admission and discharge criteria, [policies] including the categories of individuals accepted and not accepted by the program.

(c) Patient rights policy. A [policies. There shall be] written policy [policies designed] to enhance patient [the] dignity [of all] patients] and to protect human [their] rights [as human beings]. The policy [These policies] shall assure that each patient is:

1. [Is] Informed of [all] rules and regulations governing patient conduct and responsibilities, including the [a] procedure for handling grievances;

2. [Is] informed, prior to admission for rehabilitation, of [the] services available [at the facility] and [of] charges for treatment, including [any] charges not covered under Medicare, Medicaid, or other third-party payor [arrangements];

3. [Is] Encouraged and assisted to:

a. Understand and exercise patient rights;

b. [;] Voice grievances; and

c. Recommend changes in policies and services. If a patient so requests, a grievance or recommendation shall be conveyed to that body within the organization with authority to take corrective action. [Upon the patient's request the grievances and recommendations shall be conveyed within a reasonable time to an appropriate decision-making level within the organization which has authority to take corrective action;]

4. Presented with [is afforded] the opportunity to participate in the planning of his treatment;

5. Informed of the right [and] to refuse to participate in experimental research;

6. [5-Is] Assured confidential treatment of records and presented with [is afforded] the opportunity to approve or refuse [their] release of records to any individual not involved in his care, except as required by Kentucky law or third party payment contract; and

7. [6-Is] Treated with consideration, respect, and [full] recognition of personal dignity and individuality, including privacy in treatment and

[in the care of] personal health needs.

(5) Personnel.

(a) The governing authority [licensee] shall establish a personnel policy [policies for the program] which the governing authority shall review and update [be reviewed, revised, approved and updated] on an annual basis.

(b) There shall be a [an individual] personnel record for each person employed by the facility, which shall include the following:

1. Evidence of the results of a tuberculosis test, performed [An employee [All employees] shall have a test for tuberculosis] either prior to or within the first week of employment and annually thereafter;

2. Evidence of education, training, and experience, and [of the individual along with] a copy of [the] current license or certification credentials, if applicable;

3. Evidence that the employee [employees have] received orientation to the facility's written policies within the first week of employment; and

4. Evidence of regular in-service training which corresponds with job duties and includes a list of training and dates completed.

(6) Staffing requirements. The program shall have [adequate] personnel sufficient to meet patient needs [the needs of patients] on a twenty-four (24) hour basis. The number and classification of personnel required shall be based on the number of patients and the individual treatment plans. [If the staff to patient ratio does not meet the needs of the patients, the Division for Licensing and Regulation shall determine and inform the program administrator in writing how many additional personnel are to be added and of what job classification, and shall give the basis for this determination;]

(a) Responsibility for the medical aspect of the program shall reside with a qualified physician, in the post of medical director. The duties of the medical director shall include:

1. Patient admission;

2. Approval of patient treatment plans;

3. Participation in the quality assurance review; and

4. Provision of medical services, personally or by a designated physician, either in-house or on-call, on a twenty-four (24) hour basis. [Medical director. There shall be a medical director who is a physician having responsibility for the medical direction of the program including patient admission [of individuals], approving individual treatment plans and participating in the quality assurance review. The medical director or a physician designated by the medical director shall be available twenty-four (24) hours a day on at least an on-call basis;]

(b) Interdisciplinary team. There shall be an interdisciplinary team responsible for:

1. Developing [the] individual treatment plans;

2. Developing [;] aftercare plans; and

3. Conducting [the] quality assurance reviews.

(c) Treatment director [coordinator]. The program shall have a full time treatment director [whose qualifications are defined in writing and approved by the governing authority. The treatment director shall be] responsible for:

1. Coordinating the interdisciplinary team in developing [the] individual treatment plans;

2. Initiating a periodic review of each patient's treatment plan [for necessary changes];

3. Supervising the [proper] maintenance of patient records; and

4. Coordinating the interdisciplinary team in developing an after-care plan for each patient to provide [which assures] continuity of care.

(d) Nursing services. Nursing services shall be available on a twenty-four (24) hour basis. The program shall have at least one (1) full-time registered nurse. When a registered nurse is not on duty there shall be a licensed practical nurse present who is responsible for the nursing care of patients during her tour of duty. When a licensed practical nurse is on duty, a registered nurse shall be on call.

(e) Medical supervision. A physician, or registered nurse under the direction of a physician, shall supervise implementation of the medical aspects of the treatment plan and all staff directly involved in patient medical care.

(f) In-service training. All personnel shall participate in ongoing in-service training programs relating to their respective job activities. These programs shall include thorough job orientation for new per-

sonnel and regular in-service training programs emphasizing professional competence and the human relationship necessary for effective health care.

(7) Patient records.

(a) An individual record shall be maintained for each patient. Each entry shall be [with entries] signed and dated by the person making the entry.

(b) At the time of admission the following information shall be entered into the patient's record:

1. Name, date of admission, birth date and place, marital status and Social Security number;
2. Person to contact in case of emergency;
3. Next of kin; and
4. Type and place of employment.

(c) The record shall contain documentation of all medical services provided during detoxification and rehabilitation, including the results of physical examinations.

(d) The record shall contain the patient's treatment plan outlining goals and objectives for the individual during treatment. The record shall also contain documentation of how the plan was implemented and of patient progress in meeting the goals and objectives outlined in the treatment plan.

(e) The record shall contain notation of all medication administered, stating the [including] date, time, dosage, and frequency of administration and the name of the person administering each dose.

(f) The record shall contain a discharge summary and a plan for aftercare.

(g) The discharge summary shall be entered in the patient's record within seven (7) days after discharge and shall include:

1. The course and progress of the patient with regard to the individual treatment plan;
2. The General observations of the patient's condition initially, during treatment and at discharge; and
3. The recommendations and arrangements for further treatment including prescribed medications and aftercare.

(h) If the patient is referred to another service provider [providers] after discharge, and if the patient executes a written release, a copy of the discharge summary shall be with the patient's permission [promptly] sent to the provider with the patient's permission.

(i) After a patient's death or discharge the completed record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is longest.

(8) Linkage agreements. The program shall have linkages through written agreements with providers of other levels of care which may be medically indicated to supplement the services available in the program. These linkages shall include a hospital and an emergency medical transportation service in the area.

(9) Quality assurance. ~~[In order to determine the appropriateness and the quality of the services delivered]~~ The service shall have a quality assurance program that includes an effective mechanism [mechanisms] for reviewing and evaluating patient care on a regular basis by the interdisciplinary team.

(10) Medications.

(a) All A prescription or [and] nonprescription medication [medications] administered to a patient [patients] shall be noted in the patient's records [writing] with the date, time and dosage, and signed by the person administering the medication.

(b) All Each prescription medication [medications] shall be plainly labeled with the patient's name, the name of the drug, strength, name of pharmacy, date, physician name, caution statement and directions for use.

(c) A prescription or [Prescription and] nonprescription medication shall not be administered to a [any] patient except on the written order of a physician or other practitioner acting within his statutory scope of practice [advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), or therapeutically-certified optometrists as authorized in KRS 320.240(14)]. A medication [All medications] shall be administered by licensed personnel.

(d) Medication [All medicines] shall be kept in a locked storage area which shall be well lighted and of sufficient size to permit storage without crowding. Medication [Medications] requiring refrigeration shall be kept in a separate locked box in a refrigerator. Medication

[Drugs] for external use shall be stored separately from medication [those] administered by mouth or injection.

(e) A medication error or drug reaction [Medication errors and drug reactions] shall be reported immediately to the medical director and treatment coordinator and an entry shall be made in the patient's record.

(f) An emergency medical kit, with contents approved by a physician, shall be maintained at the facility. It shall be inspected after use or at least monthly to remove deteriorated and outdated drugs and to ensure completeness of content.

(11) Restraints. Requirements for the use of restraints shall be met pursuant to KRS 202A.241 and [the Kentucky mental patients bill of rights,] 908 KAR 3:010(9).

(12) Activities schedule. A daily schedule of program activities shall be posted in the facility.

Section 4. Provision of Services. (1) Detoxification. Medical detoxification services pursuant to the requirements of 902 KAR 20:111 shall be available directly or through another licensed provider, for a patient [patients] who requires [require] detoxification.

(2) Rehabilitation. The program shall provide [at least the following services]:

(a) Medical services as needed, [provided] under the supervision of a physician;

(b) Scheduled individual, group, and family counseling;

(c) Psychological testing and evaluation as needed;

(d) Education of the patient [patients] on the subject of chemical dependency and related lifestyle issues, including nutrition and communication skills;

(e) Recreational activities with facilities and equipment, [shall be available] consistent with the patient's needs and the therapeutic program;

(f) Referral to other rehabilitative or community service agencies providing services not available through the program; and

(g) Aftercare services provided directly or through arrangement with another agency [agencies].

(3) Physical examinations. Within ten (10) days prior to or three (3) days after admission for rehabilitation a patient [all patients] shall have a physical examination with tests ordered by physician.

(4) Psychosocial history. A patient [All patients] shall have a psychosocial history and assessment interview within seventy-two (72) hours after admission for rehabilitation. The following data shall be collected and recorded in the patient record:

(a) History of alcohol and drug use; [entered into the patient record which includes:

(a) Drinking and drug use history;

(b) A determination of current emotional state;

(c) Vocational history;

(d) Familial relationships; and

(e) Educational background.

(5) Treatment plan. The interdisciplinary team, with the participation of the patient, shall develop an individual treatment plan within four (4) days after admission for rehabilitation, based on the patient's medical evaluation and psychosocial history and assessment. The treatment plan shall:

(a) Specify the services required for meeting the patient's needs;

(b) Identify goals necessary for the patient to achieve, maintain or reestablish physical health and adaptive capabilities;

(c) Establish goals with both long-term and short-term objectives and the anticipated time expected to meet these goals; and

(d) Identify the location [locations] and frequency of treatment procedures, including referrals for a [any] required service [services which are] not provided by the program.

(6) The treatment plan shall be reviewed and updated at least weekly for the duration of the inpatient treatment.

(7) The patient's family or significant others shall be involved in the treatment process, if approved by the patient. [Documentation shall be included in the medical record which establishes that] An attempt [was made] to involve family members or significant others shall be reported in the patient's medical record.

(8) Aftercare plan.

(a) Prior to completion of treatment, [There shall be a written individual aftercare plan developed by] the interdisciplinary team, the

patient and, with the patient's permission, the patient's family or significant others shall develop a written aftercare plan [prior to the completion of treatment]. The [individual aftercare] plan shall be designed to establish continued contact for the support of the patient.

(b) The aftercare plan shall include [the] methods and procedures to meet patient needs [whereby the needs of the individual are met by the aftercare personnel] through direct [patient] contact or with assistance from other community human services organizations.

(c) When aftercare services are provided directly, a periodic review and updating of the aftercare plan shall be conducted with the frequency of review determined by the interdisciplinary team, the patient, and with the patient's permission, the patient's family or significant others. If the patient is referred to another agency for aftercare services, follow-up shall be conducted to determine if services are being provided.

Section 5. Compliance with Building Codes, Ordinances and Regulations. (1) Nothing stated herein shall relieve the licensee from compliance with building codes, ordinances, and regulations which are enforced by city, county, or state jurisdictions.

(2) The following [requirements] shall apply [where applicable and as adopted by the respective agency authority]:

(a) Requirements for safety pursuant to the National Fire Protection Association 101, Life Safety Code adopted by the Kentucky Department of Housing, Buildings and Construction;

(b) Requirements for plumbing pursuant to 815 KAR 20:010 through 20:191 [as amended];

(c) Requirements for making buildings and facilities accessible to and usable by persons with disabilities.

(3) The facility shall be [currently] approved by the Fire Marshal's Office before a license or license renewal is granted [licensing and relicensure is granted by the licensure agency].

(4) The facility [All facilities] shall receive [any] necessary approval from appropriate agencies prior to occupancy and licensure.

(5) Physical and sanitary environment.

(a) The [condition of the] physical plant and overall facility environment shall be maintained to protect [in such a manner that] the safety and well-being of patients, personnel and visitors [are assured].

(b) A person shall be designated responsible for services and for the establishment of practices and procedures in each of the following areas:

1. Plant maintenance;

2. Laundry operations, either [(on site or off site; and

3. [and] Housekeeping.

(c) The facility buildings, equipment, and surroundings shall be kept in good repair, neat, clean, free from accumulation [all accumulations] of dirt and rubbish and free from foul, stale or musty odors.

1. An adequate number of housekeeping and maintenance personnel shall be provided.

2. Written housekeeping procedures shall be established for each area [the cleaning of all areas] and copies shall be [made] available to personnel.

3. Equipment and supplies shall be provided for cleaning [of all] surfaces. The [Such] equipment shall be maintained in a safe, sanitary condition.

4. A hazardous cleaning solution, compound, or substance [solutions, compounds, and substances] shall be labeled, stored in an approved container, [containers] and kept separate from nonhazardous [other] cleaning materials.

5. The facility shall be [kept] free from insects, [and] rodents, and their harborage [with harborages for these eliminated].

6. Garbage and trash shall be stored in closed containers in an area [areas] separate from an area [those] used for the preparation or [and] storage of food. The garbage and trash area [and] shall be cleaned regularly and shall be in good repair.

(d) The facility shall have available at all times a quantity of linen essential to the proper care and comfort of residents.

1. Clean linen and clothing shall be stored in clean, dry, dust-free areas designated exclusively for this purpose.

2. Soiled linen and clothing shall be placed in suitable bags or closed containers and stored in a separate area [areas] ventilated to the exterior of the building.

Section 6. Facility Requirements and Special Conditions. (1) Patient rooms. Each patient room shall meet the following requirements:

(a) The maximum room capacity shall be six (6) patients.

(b) The minimum room area, [areas] exclusive of toilet room, closet, locker, wardrobe, or vestibule, [rooms, closets, lockers, wardrobes or vestibules] shall be:

1. 100 square feet for a [in] one (1) bed room; and

2. Eighty (80) square feet per bed for [in] multibed rooms.

(c) Partitions [In multiperson rooms partitioning], cubicle curtains, or placement of furniture shall be used to provide privacy in a multi-person room. [An] Ample closet and drawer space shall be provided for the storage of each patient's personal property.

(d) The placement of a patient [patients] in a multibed room [rooms] shall be appropriate to the age [ages] and program needs of the patient [patients].

(2) Lavatory. In a single or [and] multibed room [rooms] with a private toilet room, the lavatory may be located in the toilet room. If [Where] two (2) or more patients share a common toilet a lavatory shall be provided in each patient room.

(3) Centralized toilet area. If [Where] a centralized toilet area is used, the facility shall provide, [the following] for each gender [sex] on each [every] floor, [:] one (1) toilet for each eight (8) residents or a major fraction thereof. Toilets shall [must] be separated by a permanent partition and at least one (1) toilet for each gender [sex] shall [must] be designed for wheelchair use.

(4) Patient baths. There shall be one (1) shower stall or one (1) bathtub for each fifteen (15) patients not individually served. Each bathtub or shower shall provide space for the private use of the fixture and for dressing.

(5) The patient [Patients] shall be encouraged to take responsibility for maintaining his [their] own living quarters and for other day-to-day housekeeping activities of the program, as appropriate to his [their] clinical status.

(6) Dietary service [services].

(a) The facility shall have a dietary department, organized, directed, and staffed to provide quality food service and optimal nutritional care.

1. The dietary service [department] shall be directed on a full-time basis by an individual who, by education or specialized training and experience, is knowledgeable in food service management.

2. The dietary service shall have at least one (1) qualified dietician to supervise the nutritional aspects of patient care and to approve [all] menus on at least a consultative basis.

3. If [any] food service personnel are assigned a duty [duties] outside the dietary department, a duty [the duties] shall not interfere with the sanitation, safety, or time required for regular dietary assignments.

(b) A menu [Menus] shall be planned, written, and rotated to avoid repetition. Nutritional needs shall be met in accordance with recommended dietary allowances of the Food and Nutrition Board of the National Research Council of the National Academy of Sciences, and in accordance with physician orders.

(c) A meal [Meals] served shall correspond with the posted menu. When a change [changes] in the menu is [are] necessary, substitution shall provide equal nutritive value, and the change [changes] shall be recorded on the menu. A menu [Menus] shall be kept on file for thirty (30) days.

(d) Food shall be prepared by methods that conserve nutritive value, flavor and appearance, and shall be served at the proper temperature.

(e) At least three (3) meals shall be served daily with not more than a fifteen (15) hour span between a substantial evening meal and breakfast. Each meal [Meals] shall be served at a regular time and a nourishing [times with] between-meal or bedtime snack [snacks of nourishing quality] offered.

(f) The facility shall comply with relevant [all applicable] provisions of [KRS 219.011 to KRS 219.081 and] 902 KAR 45:005.

TIMOTHY L. VENNO, Inspector General

JOHN MORSE, Secretary

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APPROVED BY AGENCY: May 10, 1999

FILED WITH LRC: May 11, 1999 at 2 p.m.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Financial Management and Analysis
(As Amended at ARRS, September 14, 1999)

907 KAR 1:019. Pharmacy services.

RELATES TO: KRS 205.520, 205.5631 to 205.5639, 205.6316, 217.015, 311.550, 311.560, 314.011, 315.300, [320.120;] 42 CFR 440.120, 447.331, 447.332, 447.333, 42 USC 1396a, b, c, d, r-8; 1998 Ky. Acts chs. 228, 531; [-320.210]

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 205.5631-205.5639, 205.561 [1998 Ky. Acts chs. 301, 561, 426, sec. 4(3)] [194.050, 42 CFR 440.120, 447.331, 447.332, 447.333, 42 USC 1396a-d, r-8, EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services.] KRS 205.520 authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the provisions relating to pharmacy services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and medically needy.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its agent.

(2) "Drug class" means a designation which indicates the therapeutic properties of a drug.

(3) "Drug file" means the Kentucky Medicaid Program drug file consisting of every drug that may be eligible for reimbursement under the Medicaid Pharmacy Program including a drug [drugs] requiring or [and] not requiring prior authorization. ["Department" means the Department for Medicaid Services or its designee.]

(4) [(2)] "Drug manufacturer" means an entity meeting the definition shown in 42 USC 1396r-8(k)(5):

(3) "FDA" means Food and Drug Administration.

(5) [(4)] "Legend drug" is defined in KRS 217.015.

(6) "Line extension" means a new strength, dosage form, delivery system, or indication of a drug.

(7) "Manufacturer" is defined in KRS 315.126.

(8) "Official Compendia" is defined in KRS 217.015.

(9) "Orphan drug" means a drug or biological means for use in a rare disease or condition, and has been granted orphan drug designation by the Food and Drug Administration. [means a drug which by federal law requires a prescription by an authorized prescriber before it can be dispensed.]

(10) [(5)] [(4)] "Outpatient drug program" means the program of drug services provided directly by a pharmacist to a Medicaid recipient, including both the drug product and dispensing of the drug.

(11) "Termination date" means the last date a drug manufacturer determines a national drug code may be dispensed by a provider.

Section 2. Prescribed Drug [Drugs:] Coverage and Limitations [Provisions] Relating to the Outpatient Drug Program. A drug prescribed by a physician, osteopath, dentist, optometrist, advanced registered nurse practitioner, physician assistant, or podiatrist in accordance with 907 KAR 1:021 shall be provided in accordance with [the coverage and limitations [provisions] specified in] this administrative regulation.

(1) The drug file shall be maintained in an electronic format and shall be accessed through electronic media via the department's fiscal agent and web site, which may be accessed at <http://cfcchs.chr.state.ky.us/medicaid/drugfile.htm>. The prior authorization status shall be specified in an electronic format with the drug file. The drug file shall be updated from a national pharmacy pricing service. A copy of the current drug file shall be filed with the Regulations Compiler and shall be available to the

public in accordance with Section 10(2) of this administrative regulation. A new drug shall be covered as specified in KRS 205.5632 unless the commissioner documents pursuant to KRS 205.5634(3) that the drug poses a significant safety issue or imposes an inappropriate financial burden upon the Medicaid Program.. [Indicator explanatives reflecting prior authorization status are specified in an electronic format with the drug file. The drug file is updated from a contracted pharmacy pricing service. New drugs shall be covered as specified in the Pharmacy Manual Section IV A2:]

(2) The Outpatient Drug Program shall not make payment for:

(a) A drug for which the FDA has issued a [has a FDA issued] "less than effective (LTE)" rating;

(b) A drug which the FDA has determined is "identical, related, or similar to an LTE" drug [is determined to be "identical, related, or similar to" LTE drugs];

(c) A drug, for which the drug manufacturer has not entered into or complied [nor complies] with a rebate agreement in accordance with 42 USC 1396r-8(a);

(d) A drug which has a termination date issued by the drug manufacturer;

(e) Nursing facility items as follows:

1. Ace bandage;

2. Alfalfa oil;

3. Angiocatheter (for IV), anti-embolism hose;

4. Bedding;

5. Beverages;

6. Bran oil;

7. Chlorophyll;

8. Cleansing agents;

9. Colostomy supplies;

10. Cough drops;

11. Dental rinses;

12. Diabetic supplies;

13. Dressings;

14. Food supplements and supplies related to their administration;

15. Formaldehyde;

16. Gargles;

17. Garlic oil;

18. Gelatin;

19. Glutaraldehyde;

20. Hydrogen peroxide;

21. Iodine;

22. Intravenous supplies;

23. Kelp;

24. Keratolytic agents;

25. Lecithin tablets;

26. Levine tube;

27. Liniments;

28. Lipotropic agents;

29. Live yeast;

30. Lozenges;

31. Methylsalicylates;

32. Mineral oil;

33. Miscellaneous supplies;

34. Naso-gastric tube;

35. Oat bran;

36. Pigmenting agents;

37. Placebos;

38. Protection items;

39. Povidone iodine swabs;

40. Rubbing alcohol;

41. Sanitary or personal items;

42. Shark liver oil;

43. Skin lubricant lotions and creams;

44. Soaps;

45. Sulphur;

46. Tannic acid;

47. Vinegar;

48. Wheat bran; or

49. Witch hazel; [as specified in the Pharmacy Manual Section IV B3:]

(f) A drug or class of drug listed in 42 USC 1396r-8(d)(2) unless it is:

1. a. Specified within the drug class; and
- b. Placed on the drug file; or

2. Prior authorized using the prior authorization criteria of the department as specified in Section 3(3) of this administrative regulation [the Pharmacy Manual]; or

(g) A drug[-] provided to a recipient in an institution in which drugs are considered a part of the reasonable allowable costs under the Kentucky Medicaid Program.

(3) The Outpatient Drug Program shall make payment for a drug: [Coverage for outpatient drugs shall be limited to drugs:]

(a) 1. For which the drug manufacturer has entered into and complies with a rebate agreement under 42 USC 1396r-8(a); or

2. [(b)] Which has [Which are prescribed for a medically accepted indication; and

(c) That have] a prior authorized exemption from the rebate agreement granted by the Health Care Financing Administration; and

(b) [(c)] Which is prescribed for a medically accepted indication, as approved by the FDA or documented in official compendia.

(4) Limitations within the Outpatient Drug Program.

(a) With the exception of a prescription identified in paragraph (b) of this subsection, a prescription shall not be refilled:

1. More than five (5) times; [-] or

2. More than six (6) months after the original prescription has been [is] written.

(b) A prescription requiring a pharmacist to combine more than one (1) active ingredient shall not be refilled more than six (6) months after the original date of the subscription.

(c) A recipient placed in lock-in status pursuant to 907 KAR 1:0677 shall receive services in accordance with 907 KAR 1:677.

[(2) Drugs included on the Kentucky Medicaid Program Outpatient Drug List (as published by the department) may be provided without prior authorization. Prior authorization shall be required for all other drugs in accordance with 907 KAR 1:021.

(3) The drugs or classes of drugs listed in 42 USC 1396r-8(d)(2) shall be excluded from coverage unless specifically (individually by drug within the class) placed on the outpatient drug list or prior authorized using the usual prior authorization criteria of the department as specified in the Pharmacy Manual.]

(5) Prescription requirements. [(4)] [Prescribing quantities may be limited by the program as referenced in the Pharmacy Manual, section IV A.3 and 12.]

[(5) A recipient placed in "lock-in" status shall receive services in accordance with 907 KAR 1:677.

(6)(a) Practitioner authorization shall be [as] evidenced by the actual signature of the prescriber [shall be required]:

1. On each prescription not telephoned into the pharmacy [in];

2. On a [each] Schedule II controlled substance prescription; or [and]

3. On a prescription in which the prescriber certifies that, in his medical judgment, a specific brand shall be medically necessary for a particular patient. Certification procedures shall be in accordance with 42 CFR 447.332, 42 USC 1396r-8(e) and KRS 217.822, which mandate the following:

a. The certification shall be written in the prescriber's handwriting;

b. The certification shall be written directly on a:

(i) Prescription blank;

(ii) Nursing facility order sheet; or

(iii) A separate sheet.

c. The certification document shall be attached to the original prescription or order sheet.

d. If the certification has been written on a separate sheet, the name of the recipient and the specific medication shall also appear on the sheet.

e. If more than one (1) drug is written on the prescription blank, the certification shall be written for each drug requested.

f. The certification shall contain the phrase "brand medically necessary" or "brand necessary" [If the prescriber [override] certification of brand name necessity[] procedure is being used].

(b) For a telephone prescription, except as provided in paragraph (a) of this subsection, the pharmacist shall enter on the prescription

form the name of the prescriber and the initials of the pharmacist.

1. If a prescriber indicates that a specific brand is medically necessary, the pharmacy shall inform the prescriber of the need for a handwritten certificate.

2. The certificate shall be delivered to the pharmacy by the recipient upon receipt of the prescription or mailed to the pharmacist by the prescriber.

3. The pharmacist shall obtain the prescriber's certification no later than forty-five (45) days from the date the prescription is transmitted by telephone.

(c) Prescriber's license number.

1. A Kentucky Medicaid physician shall use his five (5) digit Kentucky license number.

2. A Kentucky dentist, optometrist, or podiatrist shall use his license number, including alpha characters.

3. A Kentucky advanced registered nurse practitioner (ARNP) shall use his registration number, including alpha characters.

4. A physician assistant shall use his certification number, including alpha characters.

5. An out-of-state prescriber shall use his state license number, including alpha characters, up to ten (10) characters.

6. An out-of-state ARNP or physician assistant shall use his unique personal identification number that authorizes prescriptive privileges in his respective scope of practice.

7. A licensed physician, enrolled in an approved graduate medical education program and working under the direct supervision of a licensed practitioner, shall use the license number of the supervising practitioner.

(d) Quantity requirements. An original prescription shall be limited to a thirty (30) day supply, except:

1. A refill of a maintenance prescription shall not occur less than twenty-three (23) days from the last date the medication was dispensed unless a pharmacist:

a. Completes a prior authorization request or calls the department's prior authorization telephone number; and

b. Requests authorization to refill a prescription before the twenty-three (23) day limit.

2. A prescriber may request an exception to the thirty (30) day supply, based on medical specialty best practice standards and appropriateness of care, in accordance with the following:

a.(i) The prescriber shall call one (1) of the toll-free prior authorization lines and make the request. The fiscal agent shall then notify the dispensing pharmacy of the approval for the exception to the thirty (30) day supply requirement; or

(ii) "A one (1) month supply shall not be required" shall be handwritten on the prescription and signed by the prescriber. The pharmacist shall call one (1) of the toll-free prior authorization lines and make the request for exception.

b. An approval shall be applicable for six (6) months if the need for the drug continues and the patient remains eligible.

(e) A prescription quantity dispensed which is changed from the original prescription shall be authorized by the prescriber.

1. The prescriber shall document in the recipient's medical record the following:

a. The authorized changed quantity amount;

b. The reason for the change;

c. Certification that the pharmacist contacted the prescriber and requested the change;

d. The name of the pharmacist requesting the change; and

e. The date of the authorization.

2. The pharmacist shall document on the prescription or an attached document the following:

a. Authorized changed quantity amount;

b. The reason for the change;

c. Certification that the prescriber has been contacted;

d. The name of the prescriber or the name of the office employee who transmitted authorization on behalf of the prescriber;

e. The date of the authorization;

f. The name of the pharmacist; and

g. The prescription number.

(f) A recipient, not in a nursing home or personal care facility, or his designee, shall sign for receipt of his medication.

(7) A prescription shall not be refilled more than five (5) times, or more than six (6) months after the original prescription is written.

(8) A drug, provided to a recipient in an institution in which drugs are considered a part of the reasonable allowable costs under the Kentucky Medicaid Program, shall not be billed as an outpatient pharmacy benefit.

(9) A drug provided to a recipient in a nursing facility (except for a patient in a head injury unit or a unit providing care for ventilator-dependent patients) shall be billed as an outpatient pharmacy benefit.

(10) Legend drugs, not included on the Kentucky Medicaid Program Outpatient Drug List, and which shall prevent hospitalization or a higher level of care of the recipient, shall be considered covered for an individual recipient if prior authorized by a qualified medical professional in the department.

(11) Drugs not on the Kentucky Medicaid Program outpatient drug list may be placed on a prior authorization list and authorized as a group, in accordance with 907 KAR 1:021 for a recipient in a personal care home and for those recipients in nursing facilities who meet patient status criteria for the facility.

(12) A drug for which the Food and Drug Administration has issued a "less than effective (LTE)" rating and a drug which is determined to be "identical, related, or similar to LTC drugs" shall not be covered.]

Section 3. Prior Authorization Process. (1) A medication which requires prior authorization shall be covered if prior authorization is approved pursuant to the procedures established in this section. [The prior authorization procedures and policies, as specified in the Pharmacy Manual Appendix II shall be followed for a drug on the drug file which requires prior authorization.]

(2) If a drug has been prior authorized, it shall be authorized singularly or as a group for a recipient in a nursing facility bed if he meets the patient status criteria established in 907 KAR 1:022 unless the commissioner or his designee within the cabinet approves the Drug Management Review Advisory Board's (DMRAB) recommendation to require individual prior authorization, in accordance with drug class parameters.

(3) Procedure for prior authorization.

(a) A request shall be made by the prescriber, or office personnel under his direct supervision, a pharmacist, or pharmacy personnel under his direct supervision, or social worker. The request shall be made by:

1. Completing a Prior Authorization Request Form MAP-122 and faxing or mailing the form to the department's fiscal agent. A written request shall be made for:

- a. A maintenance drug;
- b. An extension;
- c. A change of an existing prior authorization;
- d. A transfer of a prescription to another pharmacy; or
- e. An approval of a drug authorized by the issuance of a medical card for a retroactive period; or

2. A telephone call to the fiscal agent, Monday through Friday (except holidays). The caller shall provide the information from the form MAP-122.

(b) Prior to requesting a drug which requires prior authorization:

1. A drug not requiring prior authorization shall be prescribed;

2. Verbal or written documentation of unsuccessful drug therapy shall be provided; or

3. Verbal or written documentation of contraindication for use shall be provided.

(c) The pharmacy initially selected by a recipient who has been placed in the lock-in program in accordance with 907 KAR 1:677 shall remain the provider during the period of the prior authorization unless the department has determined that a valid reason for a change exists, in accordance with 907 KAR 1:677, Section 2.

(d) The maximum period for which a drug shall be prior authorized shall be six (6) months. A request for renewal shall be considered if the need for the drug continues.

(4) Disposition of a prior authorization request.

(a) The fiscal agent and its medical personnel shall review each request and approve or disapprove it based on official compendia criteria and Section 2(2) of this administrative regulation.

(b) If form MAP-122 is not completed in its entirety, the request shall be returned for completion.

(c) If the request has been submitted in writing, the provider initiating the request shall be notified by mail or fax.

(d) If the request has been telephoned in by the pharmacy, the medication approval shall be confirmed at that time.

(e) If the medication is to be started within twenty-four (24) hours, the pharmacy shall be notified by telephone.

(f) If a medication has not been approved pursuant to Section 2(2) of this administrative regulation, the prescriber may request a second review of a denied or pending request by the department. The request for a second review shall include the following:

1. A prescriber shall mail or fax to the department a letter explaining the reasons in support of approval of a denied prior authorization.

2. The department or its contracted peer review organization, in accordance with 42 USC 466.71, shall review a request using official compendia or medical literature.

3. If approved, the fiscal agent shall notify the pharmacy of the approval.

4. If denied, the prescriber shall be notified with the reason for the denial.

(g) Period of coverage. Unless retroactive coverage is requested, the effective date for coverage of a prior authorized drug shall begin on the date the request is postmarked or the date it is received by telephone. The prior authorization shall remain in effect:

1. For the approved time;

2. Until the recipient becomes ineligible; or

3. The National Drug Code meets the standards established in Section 2(2)(a) through (d) of this administrative regulation.

(h) Nursing home recipients. Except as provided in subsection (2) of this section, an eligible Medicaid recipient in a nursing facility, meeting Medicaid patient criteria established in 907 KAR 1:022, shall be exempt from the prior authorization process if a form MAP-573 is completed by the facility. [In addition to standard prior authorized drugs, as established in subsection (1) of this section, there are drugs identified on the Map 354 form, included in Pharmacy Manual Appendix III, which may be authorized singularly or as a group for a recipient in a personal care home pursuant to Pharmacy Manual Section 5L.]

(3) The prior authorized drugs referenced in subsection (1) of this section may be authorized singularly or as a group for a recipient in a long term care facility who meets the patient status criteria for the facility, pursuant to the Pharmacy Manual Section 5K.

(4) A drug class may be excluded from those authorized for a recipient in a long term care facility or personal care home pursuant to subsections (2) and (3) of this section and shall require individual prior authorization in accordance with drug class parameters as recommended by the drug advisory board and approved by the commissioner or his designee.]

Section 4. Drug Status Review Process for the First Twelve (12) Months. (1) A drug shall be covered for the first twelve (12) months on the market without prior authorization except as provided by the provisions of this section or as excluded by Section 2(2) of this administrative regulation.

(2) The factors established in subsections (3) and (4) of this section shall be considered by the department in determining whether prior authorization shall be required for a drug during the first twelve (12) months the drug is on the market.

(3) A determination shall be made whether the drug expense would favorably offset another patient care cost, including:

(a) A hospitalization;

(b) An emergency room visit;

(c) A physician visit; or

(d) Costs associated with diminished quality of life.

(4) A drug shall require prior authorization if the department has documented evidence that cost or safety concerns outweigh the benefit to a Medicaid recipient that would be gained by retaining the drug on the non-prior authorized drug file.

(a) The following criteria shall be used to screen for a drug that may result in an undesirable cost profile:

1. In any six (6) month period, the total cost of prescriptions for the drug to the department ranks in the top fifty (50) of drugs reimbursed by Medicaid;

2. The cost per prescription exceeds twice the average cost of drugs within its therapeutic class;

3. The combination of cost per prescription and volume results in an increased program expense that places the drug in the top fifty (50) of drugs reimbursed by Medicaid;

4. The drug is partially or completely reimbursed by Medicare or other payment system; and

5. A generic drug shall not be compared to a brand name drug. Available utilization data shall be used.

(b) The following criteria shall be used to screen for a drug that may result in an undesirable safety profile:

1. The drug has been documented to have a potential for recipient abuse as defined in KRS 205.8451(10);

2. The drug's use requires unusually complex administration techniques, procedures, or monitoring that make it undesirable for common ambulatory self-administration, in accordance with official compendia and the drug package insert; and

3. Experience with the product, when used alone or in combination with other products, has resulted in the reporting of:

a. Significant adverse events that were not previously known; or

b. Significant morbidity or mortality.

(5) Upon the department's verbal or written request, the manufacturer shall provide to the department the requested following information, within ten (10) working days. The manufacturer may provide the requested information on form DMRAB-001:

(a) Company name;

(b) Brand product name;

(c) Generic name;

(d) FDA approval date;

(e) Date introduced into United States market;

(f) American Hospital Formulary Service therapeutic class and code;

(g) FDA approval class, 1P, 1S, and orphan drugs;

(h) FDA Approved Drug Products therapeutic equivalence code. A copy of the respective page of the Supplement shall be provided;

(i) Patent expiration date;

(j) HCFA rebate drug designation;

(k) FDA approved indication;

(l) Side effects or toxicity;

(m) Name, strength, dosage form, usual daily dose and cost of treatment per day of comparable drugs on drug file;

(n) Specific advantages compared to other available drugs not requiring prior authorization or statement of why this drug should not require prior authorization;

(o) Most used indications, strength, dosage form, package size, National Drug Code number, average wholesale price, usual daily dosage, cost of treatment per day, average length of therapy;

(p) Name, address, FAX number, telephone number, e-mail address of requester;

(q) A statement indicating which drugs currently not requiring prior authorization may be changed to require prior authorization with no appreciable therapeutic loss to patient benefit and no significant dollar cost to the program if this drug is made available without prior authorization; and

(r) If available, clinical and pharmacoeconomic study citations.

(6) After the department has determined that a drug shall require a prior authorization:

(a) The department shall notify the manufacturer of the

drug, in writing, that the drug shall require prior authorization;

(b) The notification shall include the reasons for the determination that the drug shall require prior authorization; and

(c) The determination of the department shall be reviewed at the next DMRAB meeting that has been scheduled to meet at least two weeks subsequent to the date of notification to the manufacturer.

(7) Information concerning the drug prior authorization status process shall be placed in the department agent's web site at: <http://www.uky.edu/OtherOrgs/KyMedicaidDrug>. [Drug Advisory Board. The drug advisory board was established by order of the secretary in accordance with 42 USC 1396r-8(a). Duties of the drug advisory board include the following regarding the Medicaid Outpatient Drug Program:

(1) Prospective and retrospective review;

(2) Education in relation to drug therapy;

(3) Establishment of a standard for identification of suspected fraud and abuse;

(4) Disease management; and

(5) Review of drug related matters and make recommendations [recommendation] to the commissioner of the department.]

Section 5. Drug Status Review Process After the First Twelve (12) Months. (1) After a drug has been on the market for twelve (12) months, the department may conduct an evaluation due to concerns regarding cost or safety.

(2) The factors established in subsections (3) and (4) of this section shall be considered in determining whether prior authorization shall be required for a drug after it has been on the market for twelve (12) months.

(3) A determination shall be made whether the drug expense would favorably offset another patient care cost, including:

(a) A hospitalization;

(b) An emergency room visit;

(c) A physician visit; or

(d) Costs associated with diminished quality of life.

(4) A drug shall require prior authorization if the department has documented evidence that cost or safety concerns outweigh the benefit to a Medicaid recipient that would be gained by retaining the drug on the nonprior authorized drug file.

(a) The following criteria shall be used to screen for a drug that may result in an undesirable cost profile:

1. In any six (6) month period, the total cost of prescriptions for the drug to the department ranks in the top fifty (50) of drugs reimbursed by Medicaid;

2. The cost per prescription exceeds twice the average cost of drugs within its therapeutic class;

3. The combination of cost per prescription and volume results in an increased program expense that places the drug in the top fifty (50) of drugs reimbursed by Medicaid;

4. The drug is partially or completely reimbursed by Medicare or other payment system; and

5. A generic drug shall be compared to a brand name drug to ensure a complete review of the drug class.

(b) The following criteria shall be used to screen for a drug that may result in an undesirable safety profile:

1. The drug has been documented to have a potential for recipient abuse as defined in KRS 205.8451(10);

2. The drug's use requires unusually complex administration techniques, procedures, or monitoring that make it undesirable for common ambulatory self-administration, in accordance with the official compendia and the drug package insert; and

3. Experience with the product, when used alone or in combination with other products, has resulted in the reporting of:

a. Significant adverse events that were not previously known; or

b. Significant morbidity or mortality.

(5) Upon the department's verbal or written request, the manufacturer shall provide to the department the requested information identified in Section 4(5) of this administrative regulation.

(6)(a) The department shall present drug review recommendations to the Drug List/Prior Authorization Subcommittee established in accordance with KRS 205.5638(2).

(b) A person may address the Drug List/Prior Authorization Subcommittee if it is directly related to an agenda item.

(c) The subcommittee recommendation shall be sent to the DMRAB for review.

(d) The recommendation from the DMRAB, available pursuant to KRS 61.805 through 61.850, shall be sent to the commissioner of the department for his approval or denial.

(7)(a) The department may seek additional information from any pertinent source regarding a recommendation made by the DMRAB.

(b) Once required information is received and evaluated, a written decision containing an explanation of the reasons for the decision shall be made by the department in thirty (30) calendar days regarding the acceptance or rejection of the recommendation of the DMRAB.

(c) Subsequent to the decision, if new documented evidence including safety, efficacy, or cost becomes available from another source, the department may direct that the issue be re-reviewed by the board in light of the new information.

(d) A copy of the written notification regarding final disposition taken by the department shall be:

1. Forwarded to the:

a. Appropriate participating providers;

b. DMRAB;

c. Manufacturer; and

d. Legislative Research Commission to be distributed to appropriate committees; and

2. Posted to the department agent's web site on the Internet.

(8) Information concerning the drug prior authorization status process shall be placed in the department's agent's web site at: <http://www.uky.edu/OtherOrgs/KyMedicaidDrug/>.

Section 6. Twenty-four (24) Month Review. (1) Between July 1998 and July 2000, the department shall conduct a review of current drugs requiring prior authorization. The review shall be conducted in accordance with Section 7(5)(b) of this administrative regulation.

(2) The list of drugs and the calendar quarters in which the drug shall be reviewed shall be as follows:

Fiscal Quarter	Drug Classes
1	Anti-infective Agents Cardiovascular Drugs
2	Antidepressants Antipsychotic Agents Hormone Replacement Agents
3	Cephalosporins Macrolides Fluoroquinolones Antihypertensive Agents Diuretics; Potassium-Sparing Diuretics Barbiturates Benzodiazepines Hydantoins Succinimides Miscellaneous Anticonvulsants
4	Antiarrhythmics NSAIDs Nonbenzodiazepine Sedative-Hypnotics
5	Penicillins Vasodilators Opioids Lithium Skeletal Muscle Relaxants Gastrointestinal Agents (Antacids and Antidiarrheals) NSAIDs (revisited)

6	Miscellaneous Antibiotics Antifungals Miscellaneous Analgesics Endocrine Agents Antineoplastics Electrolyte Replacements Dental Agents Miscellaneous Agents (from classes initiated previously)
7	Enzymes Antitussives, Expectorants, Mucolytic Agents Eye, Ear, Nose, and Throat Preparations Antihistamines Serums, Toxoids, and Vaccines Miscellaneous Agents (from classes initiated previously)
8	Blood Formation and Coagulation Skin and Mucous Membrane Agents Vitamins Miscellaneous Agents (from classes initiated previously)

(3)(a) The department shall present drug review recommendations to the Drug List/Prior Authorization Subcommittee.

(b) A person may address the Drug List/Prior Authorization Subcommittee if it is directly related to an agenda item.

(c) The subcommittee recommendation shall be sent to the DMRAB for review.

(d) The recommendation from the DMRAB, available pursuant to KRS 61.805 through 61.850, shall be sent to the commissioner of the department for his approval or denial.

(4)(a) The department may seek additional documented information from another clinical source regarding a recommendation made by the DMRAB.

(b) Once additional documented information is received and evaluated, a written decision containing an explanation of the reasons for the decision shall be made by the department in thirty (30) calendar days regarding the acceptance or rejection of the recommendation of the DMRAB.

(c) Subsequent to the decision, if new documented evidence including safety, efficacy, or cost becomes available from another source, the department may direct that the issue be re-reviewed by the board in light of the new information.

(d) A copy of the written notification regarding final disposition taken by the department shall be:

1. Forwarded to the:

a. Appropriate participating providers;

b. DMRAB; and

c. Legislative Research Commission to be distributed to appropriate committees; and

2. Posted to the department agent's web site on the Internet.

(5) Information concerning the drug prior authorization status process shall be placed in the department agent's web site at: <http://www.uky.edu/OtherOrgs/KyMedicaidDrug/>.

Section 7. Requested Review Process. (1) An interested party requesting a drug status review shall submit a request in writing or electronically to the department.

(2) The department shall forward a written acknowledgment of receipt of the status review request and the current drug status to the requester within ten (10) working days of receipt.

(3) Upon the department's verbal or written request, the manufacturer shall provide to the department the requested information identified in Section 4(5) of this administrative regulation.

(4) Upon receipt of the requested information from the manufacturer, the department shall initiate the drug status review. The drug status review shall consist of the following:

(a) A determination of whether the reimbursement is excluded in accordance with Section 2(2) of this administrative regulation;

(b) A determination of whether the drug represents a line

extension not currently requiring prior authorization; and

(c) A determination of whether the drug represents a unique drug, which includes the following:

1. Schedule II/controlled substance;
2. Treatment of HIV/AIDS;
3. Orphan drug;
4. Oral birth control medication; or
5. Other drugs identified through product experience by providers, and upon the advice of the DMRAB.

(5) The department shall determine if a review of a drug product shall be conducted.

(a) A review shall be prepared by a health care practitioner, pharmacist, physician, or faculty member of a health science school in a university medical center within Kentucky. Health science schools include pharmacy, medicine, dentistry, nursing, public health, and allied health.

(b) A review shall include the following:

1. Comparison to other products on the drug file, including cost;

2. Primary indication for use and therapeutic classification;
3. Prominent advantages and disadvantages of the product;
4. A recommendation regarding prior authorization status of a drug;

5. Discussion of applicable studies from the medical literature; and

6. Discussion of applicable pharmacoeconomic studies.

(6)(a) The department shall present drug review recommendations to the Drug List/Prior Authorization Subcommittee.

(b) A person may address the Drug List/Prior Authorization Subcommittee if it is directly related to an agenda item.

(c) The subcommittee recommendation shall be sent to the DMRAB for review.

(d) The recommendation from the DMRAB, available pursuant to KRS 61.805 through 61.860, shall be sent to the commissioner of the department for his approval or denial.

(7)(a) The department may seek additional documented information from another clinical source regarding a recommendation made by the DMRAB.

(b) Once required information is received and evaluated, a written decision containing an explanation of the reasons for the decision shall be made by the department in thirty (30) calendar days regarding the acceptance or rejection of the recommendation of the DMRAB.

(c) Subsequent to the decision, if new evidence including safety, efficacy, or cost becomes available from another source, the department may direct that the issue be re-reviewed by the board in light of the new information.

(d) A copy of the written notification regarding final disposition taken by the department shall be:

1. Forwarded to the:

- a. Appropriate participating providers;
- b. DMRAB;
- c. Manufacturer; and
- d. Legislative Research Commission to be distributed to appropriate committees; and

2. Posted to the department agent's web site on the Internet.

(8) Information concerning the drug prior authorization status process shall be placed in the department agent's web site at: <http://www.uky.edu/OtherOrgs/KyMedicaidDrug/>.

Section 8. DMRAB Open Meeting Procedures. (1) A person may address the DMRAB if:

(a) The presentation is directly related to an agenda item; and

(b) Written notice has been given to the chairperson at least twenty-four (24) hours prior to the meeting.

(2) The DMRAB may establish time limits for presentations.

(3) The proposed agenda shall be placed on the department agent's web site at least seven (7) calendar days prior to the meeting. [Drug Status Review Process. (1) With the exception of provisions in paragraphs (a) and (b) of this subsection, in accordance with 1998 Ky. Acts ch. 561, updates and additions to the drug

file in accordance with Section 2(1) of this administrative regulation that are not otherwise excluded from coverage by Section 2(2) of this administrative regulation shall be covered without prior authorization for twelve (12) months;

(a) Consideration shall be given to whether the drug expense would favorably offset other patient care costs such as:

1. Hospitalizations;
2. Emergency room visits; or
3. Physician visits;

(b) The department determines that cost or safety concerns outweigh the benefit to Medicaid recipients. The safety risk associated with a drug may be balanced against the benefit gained by retaining the drug on the NPADF (nonprior authorized drug file). The following criteria shall be used to screen for drugs that may result in an undesirable cost or safety profile:

1. Criteria for cost include:

a. In any three (3) month period, the cost of the drug ranks in the top 200 of drugs reimbursed by Medicaid;

b. The cost per prescription exceeds twice the average cost, or is greater than the average cost of drugs within its therapeutic class;

c. The combination of cost and volume results in an increased program expense that places the drug in the top 200 of drugs reimbursed by Medicaid;

d. The number of prescriptions for the drug during the first ninety (90) days exceeds fifteen (15) percent of the total prescriptions for that therapeutic class of drugs; and

e. The drug is partially or completely reimbursed by Medicare or other payment system.

2. Criteria for safety include:

a. The drug is considered to have a potential for abuse;

b. The drug's use requires unusually complex administration techniques, procedures, or monitoring that make it undesirable for common ambulatory self-administration;

c. The drug labeling contains a black box warning consisting of a special notation within the manufacturer's labeling calling attention to extremely serious, sometimes life threatening, adverse reactions; or the labeling contains restrictions, contraindications, warnings or cautions which exceed those for other drugs in the same therapeutic class; and

d. Experience with the product, when used alone or in combination with other products, has resulted in the reporting of:

- (i) Significant adverse events that were not previously known;
- (ii) Significant morbidity or mortality; or
- (iii) The frequency of the event significantly exceeds that which is expected for the drug.

(2) The manufacturer shall be notified that a drug may require prior authorization prior to the expiration of the first twelve (12) months. This decision shall be reviewed at the next pharmacy advisory board meeting scheduled to meet at least two (2) weeks subsequent to the date of such notification.

(3) An interested party requesting a drug status review shall submit a request in writing to the department or its designee.

(4) The department or its designee shall forward a written acknowledgment of receipt of the status review request and any preliminary drug status to the requester.

(5) Upon request, the manufacturer shall provide to the department or its designee the following information for a drug product for which a status review is to be initiated:

- (a) Company name;
- (b) Brand product name;
- (c) Generic name;
- (d) FDA approval date;
- (e) Date introduced into United States market;
- (f) American Hospital Formulary Service therapeutic class and code;

(g) FDA approval class, 1P, 1S, and orphan drugs;

(h) FDA Approved Drug Products therapeutic equivalence code.

(Note: copy of respective page or supplement must be provided);

(i) Patent expiration date;

(j) HCFA rebate drug designation;

(k) FDA approved indication;

(l) Side effects or toxicity;

(m) Name, strength, dosage form, usual daily dose and cost of

treatment per day of comparable drugs on drug file;

(n) Specific advantages compared to other available drugs not requiring prior authorization or statement of why this drug should not require prior authorization;

(o) Most used indications, strength, dosage form, package size, National Drug Code number, average wholesale price, usual daily dosage, cost of treatment per day, average length of therapy;

(p) [Date of most recent price change;

(q) Amount of most recent price change, old price and new price;

(r) Name, address, fax number, telephone number, e-mail address of requester;

(q) [(s)] A statement indicating which drugs currently not requiring prior authorization may be changed to require prior authorization with no appreciable therapeutic loss to patient benefit and no significant dollar cost to the program should this drug be made available without prior authorization; and

(r) [(t)] If available, landmark clinical and pharmacoeconomic study citations;

(6) The department's review of a drug shall consider the following:

(a) If reimbursement is excluded in accordance with Section 2(2) of this administrative regulation;

(b) If the drug represents a line extension which means a new strength, dosage form, delivery system, or indication of a drug not currently requiring prior authorization. Drug products falling into this category may also be pharmaceutical equivalents or pharmaceutical alternatives as established by the FDA;

(c) If the drug represents a unique drug which include the following:

1. Schedule II/controlled substances;

2. Treatment of HIV/AIDS;

3. Orphan drug;

4. Oral birth control medication; or

5. Other drugs determined to be unique by the department upon the advice of the drug advisory board;

(7) The department or its designee shall determine whether to conduct a full review or a mini review of the drug product;

(a) A full review includes a review of the literature and differs from a mini review in its overall scope. A review may be prepared by a practitioner, pharmacist, physician, or faculty member, or a student of a health science learning center within Kentucky;

(b) A full review may include the following:

1. Medical literature search;

2. Pharmacoeconomic analysis;

3. Comparison to other products on the drug file;

4. Primary indication for use and therapeutic classification;

5. Prominent advantages and disadvantages of the product; or

6. A recommendation regarding status of a drug;

(c) A mini review may include the following:

1. Comparison to other products on the drug file, including cost;

2. Primary indication for use and therapeutic classification;

3. Prominent advantages and disadvantages of the product; or

4. A recommendation regarding status of a drug;

(8) Reviews with recommendations shall be forwarded to the drug advisory board, which shall make a recommendation to the department;

(9) Any person may address the drug advisory board if:

(a) The presentation is directly related to an agenda item; and

(b) Written notice has been given to the chairperson at least twenty-four (24) hours prior to the meeting;

(10) In addition to routine retrospective and prospective review findings, the drug advisory board may recommend educational programs, specific utilization studies or intervention plans. The results of educational programs or interventions implemented shall be evaluated for a period of six (6) months;

(11)(a) The department may seek additional information from sources within or outside of the Cabinet for Health Services regarding a recommendation made by the drug advisory board;

(b) Once required information is received and evaluated, a formal decision shall be made in thirty (30) days [a timely manner] regarding the acceptance or rejection of the recommendation of the drug advisory board;

(c) A formal decision shall be constituted by a written directive for implementation of the recommendation from the department. If new evidence becomes available regarding a formal decision, the department may direct that the issue be re-reviewed by the board in light of such new information;

(d) A written notification regarding final disposition taken by the department shall be:

1. Forwarded to the:

a. Appropriate participating providers; and

b. Drug advisory board; and

2. Posted to the departmental web site on the Internet;

(e) Information concerning the drug prior authorization status process may be posted at the department's web site and the web site address may be obtained by contacting the department;

(12) An interested party who is aggrieved by a recommendation of the drug advisory board to the department may submit a written exception to the department in accordance with the following:

(a) New information that was not available to be presented at the time of the board's consideration of the matter may be submitted;

(b) It shall be received within ten (10) days of the recommendation;

(c) If the deadline for filing a written exception falls on a Saturday, Sunday or state holiday, the exception may be filed the following day. After the time for filing an exception has expired, the department shall consider all exceptions filed in a timely manner prior to acting upon the recommendation of the board;

(d) In making a final decision on a recommendation of the board, the Commissioner of the Department for Medicaid Services, or his designee, may seek additional and clarifying information from any source. Additional information submitted to the commissioner, or his designee, shall be made a part of the administrative record supporting the final decision;

(e) An appeal from the decision of the commissioner, or his designee, may be made in accordance with KRS Chapter 13B by a manufacturer of the product. Unless held in abeyance or otherwise addressed by the hearing officer, the decision of the commissioner, or his designee, shall stand until final disposition of the issue.]

Section 9. Appeals Process. (1) Prior to the decision of the commissioner, a written exception may be filed with the commissioner in accordance with KRS 205.5639(3).

(2) An appeal by a pharmaceutical manufacturer of the decision by the commissioner shall be conducted in accordance with KRS 205.5639(5).

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form MAP-122, Drug Prior Authorization/Authorization to Bill, 10/98 edition, Department for Medicaid Services;

(b) Form MAP-573, For Drugs Prior Authorized for Nursing Facility Residents, 10/98 edition, Department for Medicaid Services; and

(c) DMRAB-001, Drug Product Information Form-Kentucky Outpatient Drug List, 4/99 edition, Department for Medicaid Services. [6. Incorporation by Reference. (1) The "Pharmacy Manual", October 1998 [December 1996] Edition, Department for Medicaid Services, is incorporated by reference.]

(2) This material [It] may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

[Section 4. The amendments to this administrative regulation shall be implemented with regard to services provided on or after December 1, 1996.]

DENNIS BOYD, Commissioner

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: January 7, 1999

FILED WITH LRC: January 7, 1999 at 11 a.m.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Financial Management and Analysis
(As Amended at ARRS, September 14, 1999)

907 KAR 1:021. Amounts payable for drugs.

RELATES TO: KRS 205.560, 205.561, 205.5631, 205.5632, 205.5634, 205.5636, 205.5638, 205.5639, 217.015, 311.555, 311.560, 42 CFR 440.120, 447.331, 447.332, 447.333, 42 USC 256b, 1396a-d[, 1998 Ky. Acts chs. 228, 561]

STATUTORY AUTHORITY: KRS 194A.030(3), 194A.050, 205.520(3), 205.560 [1998 Ky. Acts ch. 426, sec. 4(3)] [194.050, 42 GFR 440.120, 447.331, 447.332, 447.333, 42 USC 1396a-d]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services [Human Resources] has responsibility to administer the Medicaid [a] Program [of Medical Assistance]. KRS 205.560 authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the method for determining amounts payable by the department [cabinet] for drugs.

Section 1. **Definitions.** (1) "Dispensing fee" means a professional fee paid to reimburse a pharmacy for costs associated with the dispensing of a prescribed drug.

(2) "Non-solid dosage form" means a covered drug item other than an oral tablet or capsule form.

Section 2. **Reimbursement Limits.** (1) Reimbursement to a participating provider shall be comprised of a dispensing fee and the cost of the drug product.

(2) [Maximum Allowable Cost Reimbursement Limits. (1) Reimbursement to a pharmacy [pharmacies] participating in the Medicaid [Medical Assistance] Program for [those] a drug [drugs] contained on the Kentucky Medicaid [Medical Assistance] Program [Outpatient] drug file, established [as defined] in 907 KAR 1:019, [which is accessible through electronic media via the department's fiscal agent,] [List (as published by the Cabinet for Human Resources) or preauthorized for individual recipients based on medical necessity] and provided to an eligible recipient [eligible recipients] shall be determined in accordance with the following requirements [policies]:

(a) An appropriate rebate agreement shall be [must have been] signed by the drug manufacturer [or labeler] or the drug shall [must] be provided based on a prior authorized [preauthorized] exemption from the rebate requirement in accordance with 907 KAR 1:019.

(b) Drug costs shall be determined in the pharmacy program using a computerized price listing service with pricing based on the actual package size utilized, [-and]

(c) [If an average wholesale price is listed,] Except as provided in paragraph (d) of this subsection, reimbursement for a [the] drug cost shall be the lesser of:

1. The federal maximum allowable cost (FMAC) [or average wholesale price (AWP) minus ten (10) percent] plus a dispensing fee and unit dose add-on as appropriate [or the usual and customary billed charge] [unless the prescriber [physician] has hand-written "brand medically necessary" ["do not substitute"] or "brand necessary" on the prescription];

2. The estimated acquisition cost (EAC) which shall equal the average wholesale price (AWP) minus ten (10) percent plus a dispensing fee and unit dose add-on as appropriate; or

3. The usual and customary billed charge.

(d) If a prescriber has hand-written "brand medically necessary" or "brand necessary" on the prescription, the reimbursement shall be the lesser of:

1. The estimated acquisition cost (EAC) which shall equal the average wholesale price (AWP) minus ten (10) percent plus a dispensing fee and unit dose add-on as appropriate; or

2. The usual and customary billed charge.

(e) Reimbursement shall be denied if:

1. The recipient is ineligible on the date of service;

2. The National Drug Code (NDC) number meets the criteria

established in 907 KAR 1:019, Section 2(2);

3. The prior authorization is denied; or

4. The quantity is inappropriate.

(f) [If an AWP is not listed, reimbursement shall be the lesser of the FMAC or direct price plus a dispensing fee (and unit dose add-on, as appropriate), or the usual and customary billed charge unless the physician has written "do not substitute" or "brand necessary" on the prescription;

(e) If the physician has written "do not substitute" or "brand necessary" on the prescription, reimbursement shall be based on the lower of the pharmacy's usual and customary charge or the estimated acquisition cost (EAC) (AWP minus ten (10) percent or direct price as appropriate) for the respective drug plus a dispensing fee (and unit dose add-on, as appropriate);

(f) For a nursing facility resident [residents] meeting Medicaid patient status criteria in accordance with 907 KAR 1:022, there shall not be [no] more than:

1. One (1) dispensing fee allowed per drug within a calendar month for a drug classified by the Medicaid Program as a maintenance drug;

2. [drugs (as determined by the Medicaid agency), and no more than] Two (2) dispensing fees allowed per drug within a calendar month for other drugs; and

3. [-except for Schedules II, III, and IV controlled substances and for non-solid dosage forms, including topical medication preparations, for which no more than] Four (4) dispensing fees per drug [shall be allowed] within a calendar month for a non-solid dosage form, including a topical medication preparation, Schedule II, III or IV controlled substance [substances] or legend intravenous drug. [drugs. Non-solid dosage forms mean a covered drug item other than an oral tablet or capsule form.]

(g) [4:] For a nursing facility resident meeting Medicaid patient status criteria and if appropriate and in accordance with 201 KAR 2:190 and 902 KAR 55:065, an unused drug, paid for by Medicaid, shall be returned to the originating pharmacy and the department shall be credited for the cost of the drug and the unit dose packaging cost.

(h) An item not billable through the Pharmacy Program shall be, if otherwise allowed in accordance with 907 KAR 1:025, considered a routine cost to the nursing facility. A pharmacy may bill a nursing facility for a drug not billable through the Pharmacy Program and the nursing facility may include the cost of the item as a routine cost on its cost report.

(i) [(e)] For a nursing facility resident [residents] not meeting Medicaid patient status criteria established in 907 KAR 1:022 or a nonresident of a nursing facility [and nonresidents of nursing facilities], there shall not be [no] more than:

1. One (1) dispensing fee allowed per drug per calendar month for a drug [drugs] classified by the Medicaid Program as a maintenance drug unless there is a maintenance exception as described in subparagraph 3 of this paragraph; [drugs] [and]

2. [no more than] Four (4) dispensing fees [shall be] allowed per drug within a calendar month for a legend intravenous drug [drugs] or a schedule II, III or IV controlled substance; or

3.a. Two (2) dispensing fees within a six (6) month period for a refill of a maintenance prescription requested less than twenty-three (23) days from the last date the medication was dispensed; or

b. Four (4) dispensing fees in one (1) month if a prescriber requests an exception to the thirty (30) day supply, based on medical specialty, best practice standards, and appropriateness of care.

(j) [3:] The limitation on the number of [Though] dispensing fees [are limited, this] shall not have the effect of [be construed as] placing a limit on the quantity of reimbursable drugs for which the program shall [will] pay for a [any] patient, since the reasonable cost of the drug shall be [(as defined herein) is] reimbursable as a covered service in a [whatever] quantity [is] considered medically necessary for the patient.

(k) Reimbursement shall not be made for more than one (1) prescription to the same recipient on the same day for a drug with the same:

1. NDC; or

2. Generic name, strength, and dosage form.

(3) For a recipient participating in a hospice program, pay-

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ment for a drug shall be made by the hospice agency. [~~Non~~solid dosage forms include all covered drug items other than oral tablets or capsule forms.]

(g) Whenever possible, unused drugs paid for by the cabinet shall be returned to the pharmacy with the credit for the cost of the drug and the unit dose packaging cost (if applicable) accruing to the cabinet.]

(4) [(2)] Reimbursement to a hospital [hospitals] for a drug [drugs] provided to an eligible recipient [recipients] shall be on the basis of reasonable cost pursuant to 907 KAR 1:013. [While reimbursement for drugs provided to patients in brain injury units in nursing facilities and units providing ventilator dependent care in nursing facilities is within the all-inclusive rate for the brain injury unit or ventilator care unit, the upper limits in this administrative regulation shall be applicable with regard to payments for drugs provided in those settings.]

(5) A pharmacy claim [(3) Pharmacy claims] shall meet the point of sale (POS) requirements for services in accordance with 907 KAR 1:673.

(6) If a payment is made for a prescription refill for which there is no authorization, the provider shall reimburse the department.

(7)(a) A timely claim payment shall be processed in accordance with 42 CFR 447.45.

(b) A claim in which retroactive eligibility is established shall be submitted up to twelve (12) months from the issue date noted on the recipient's medical assistance identification card. If the date of service is greater than twelve (12) months old, the claim shall be submitted as a paper claim with a copy of the retroactive medical assistance identification card attached.

(8)(a) Pursuant to KRS 205.662, prior to billing the department, a provider shall submit a bill to Medicare if the provider has knowledge that Medicare may be liable for payment.

(b) Adherence to the provision established in paragraph (a) of this subsection shall be monitored through an on-site audit or a postpayment review of the claim.

(9)(a) If the medical assistance identification card indicates that the recipient has additional insurance, the provider may submit a bill to the third party or the department.

(b) A provider who is aware of a recipient who has other insurance, but no insurance indicated on the medical assistance identification card, shall submit a Third-party Liability Lead Form to the department's fiscal agent.

(10) Adherence to the requirements established in this section shall be monitored through an on-site audit, postpayment review of the claim, a computer audit or an edit of the claim.

Section 3. [2:] Dispensing Fees. (1) Except as provided in subsection (2) of this section, the dispensing fee shall be four (4) dollars and seventy-five (75) cents per prescription for a drug [drugs] reimbursed through the outpatient drug program if [when] dispensed to an [all] eligible recipient [recipients except those in nursing facilities meeting Medicaid patient status criteria].

(2) For an eligible recipient [recipients] in a nursing facility [facilities] meeting the appropriate patient status criteria requirements established in 907 KAR 1:022, the dispensing fee shall be five (5) dollars and seventy-five (75) cents per prescription for a drug [drugs] reimbursed through the Outpatient Drug Program.

(a) For a recipient identified in this subsection [(1) or] [(2) of this section], [these recipients:] a unit dose addition to the usual dispensing fee shall be made for a drug [drugs] dispensed through the pharmacy outpatient drug program in the amount of:

1. Two (2) cents per unit dose for a unit dose drug [drugs] packaged in unit dose form by the manufacturer; and

2. Four (4) cents per unit dose for a unit dose drug [drugs] packaged in unit dose form by the pharmacist.

(b) The unit dose dispensing fee amount shall be paid, as appropriate, even though the usual dispensing fee of five (5) dollars and seventy-five (75) cents is not paid due to monthly limits on dispensing fees.

Section 4. [3:] Reimbursement to Dispensing Physicians. (1) A participating dispensing physician [physicians] who practices [practice] in a county [counties] where a pharmacy is not [no pharmacies are] located shall be [are] reimbursed for the cost of the drug [only], with

the cost computed:

(a) As the lesser of:

1. The maximum allowable cost or estimated acquisition cost established [as shown] in Section 1(1) of this administrative regulation; or

2. The physician's usual and customary charge to the general public for the drug; [if less:] or

(b) In accordance with 907 KAR 3:010 For a free immunization through the Children's Vaccine Program. [1:010] [for drugs purchased on the open market for a specified immunization as established [immunizations shown] in 907 KAR 3:005 [1:009].]

[Section 4. Implementation Date. The provisions of this administrative regulation shall be applicable with regard to services provided on or after July 1, 1991.]

DENNIS BOYD, Commissioner

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: January 7, 1999

FILED WITH LRC: January 7, 1999 at 11 a.m.

CABINET FOR FAMILIES AND CHILDREN
Department for Community-Based Services
Division of Policy Development
(As Amended at ARRS, September 14, 1999)

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, [303.24; 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 establishes [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 there is 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 to the cabinet in a 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:

- 1. Be maintained and safeguarded as confidential; and
- 2. [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 institution in good faith; or

3. Providing a file [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; and

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.

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(As Amended at ARRS, September 14, 1999)

921 KAR 1:410. Child support collection and distribution.

RELATES TO: KRS 67A.620, 95.620, 95.878, 161.700(1), 186.570(2), 205.595, 205.710-205.800, 403.215, [404.467(4);] 405.060(2), 405.405, 405.430-405.510, 405.467(4), 407.5101-407.5701, 427.120, 427.125, 45 CFR 302.32, 302.38, 302.51-302.54, 302.60, 302.65, 303.6, 303.100-303.102, 303.104 [†65], 15 USC 1673, 42 USC 654, 654A, 666(a)(1)-(4), (6)-(12), (14)-(17) [†66], (19), 666(b)

STATUTORY AUTHORITY: KRS 194B.050(1), 205.712(2)(o), 205.7685(3), 205.795, 405.520, 407.5102, 407.5310(2)(d), 42 USC 654, 654A, 666(a)(1)-(4), (6)-(12), (14)-(17) [†66], (19), 666(b), EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: KRS 205.712(2)(i) requires the cabinet to establish and enforce child support obligations. This administrative regulation establishes procedures for collection and distribution of child support payments, including means of enforcement and management of disputes and appeals.

Section 1. Collection of Spousal Support. The cabinet shall collect spousal support if spousal support meets the definition of "duty of support" in KRS 205.710(5).

Section 2. Collection. (1) Income withholding.

(a) Shall be used:

- 1. As the primary tool for collection of child support; and
- 2. If necessary to facilitate enrollment of a child in a health insurance plan available through an obligor's employer.

(b) An obligor shall inform the cabinet of his current employer or source of income and his access to health insurance, and of changes to either.

(c) Pursuant to KRS 405.060, if an obligor transfers or assigns income or income-producing property after he has received notice that he has a child support obligation, the cabinet shall take action to obtain:

1. Judicial nullification of the transfer; or
2. A settlement in favor of the creditor.

(d) If current support and an arrearage amount is subject to withholding and a court has not set an amount for an arrearage payment, the arrearage payment shall be determined by multiplying the currently-ordered obligation by twenty-five (25) percent, if the order was issued in Kentucky and Kentucky has exclusive continuing jurisdiction.

(e) If only an arrearage amount is subject to withholding, the arrearage payment and frequency of payment shall be equal to the payment and frequency last designated by judicial or administrative order.

(f) If the address of the obligor is unknown and the cabinet is unable to comply with the notice provisions of KRS ~~405.467(4)~~ [404.467(4)], the cabinet shall provide notice of withholding within fifteen (15) calendar days of locating the obligor.

(g) The notice shall inform the obligor that:

1. He has ten (10) days from the date withholding is implemented to contest the withholding; and
2. If he does not contest, withholding and ordered health care coverage shall apply to the current and any subsequent employer.

(h) The cabinet shall notify the employer or other income source, within fifteen (15) days of the request for income withholding, of the following:

1. The employer or other income source shall implement withholding no later than the first pay period that occurs after fourteen (14) work days following the date the notice was mailed;

2. The employer or other income source shall, within seven (7) working days from the date an amount is withheld, forward:

- a. A child support payment to the state disbursement unit in the child support agency [cabinet];

- b. A medical insurance premium to the health insurance carrier;

3. The employer or other income source shall include on the transmittal to the cabinet the obligor's name, Social Security number, and cabinet-assigned case number, and the date the money was withheld;

4. The employer or other income source shall withhold ~~and forward withheld amounts~~ at least once monthly;

5. The employer or other income source may combine amounts due the cabinet into one (1) payment, if the amount attributable to each obligor is identified by name, Social Security number, and cabinet-assigned identification number; and

6. If the obligor terminates employment, the employer or other income source shall notify the cabinet promptly, and shall provide the information required by KRS 405.465(5).

(2) Withholding of unemployment compensation.

(a) The cabinet, through an agreement with the state employment security agency, shall collect a child support payment from an obligor receiving unemployment compensation if the state unemployment security agency has commenced withholding on one (1) of the following bases:

1. An obligor with a child support delinquency has voluntarily signed an agreement to withhold child support payments from his unemployment compensation benefits; or

2. An obligor, within fifteen (15) calendar days after he received an agreement from the cabinet, has failed to:

- a. Sign an agreement to withhold; or
- b. Contest the validity of the child support obligation.

(b) No more than fifty (50) percent of the obligor's unemployment benefit shall be withheld unless:

1. Ordered by a court of competent jurisdiction; or
2. Requested by the obligor.

(3) Federal tax refund offset and administrative offset.

(a) A public assistance case for past-due child support, medical support ordered by specific dollar amount, spousal support, K-TAP, or foster care support shall qualify for offset if there is:

1. A court-ordered or administratively-established support obligation;

2. An assignment of support to the cabinet;

3. An arrearage of at least \$150 delinquent for at least three (3) months; and

4. Cabinet verification of the accuracy of the obligor's name and Social Security number.

(b) A nonpublic assistance case involving past-due child support, medical support, or spousal support shall qualify for offset if:

1. The cabinet is enforcing a court-ordered or administratively-established support obligation;

2. The cabinet has verified the accuracy of the obligor's name and Social Security number;

3. The nonpublic assistance arrearage owed is equal to or greater than ~~[cabinet has verified an arrearage of]~~ \$500 ~~[or greater]~~, exclusive of fees, court costs, or other nonchild-support debt;

4. The cabinet has a copy of the:

- a. Current support order; and
- b. Payment record or affidavit signed by the custodial parent attesting to the amount of support paid; and

5. The arrearage is owed on behalf of a child who is a minor as of December 31 of the year in which the case is submitted for offset.

(c) A case submitted for federal tax refund offset shall be subject to federal administrative offset of nonexempt federal payments. Nonexempt federal payments shall be denied to individuals owing a child support arrearage as defined in paragraphs (a) and (b) of this subsection.

(4) State income tax refund.

(a) A public assistance case for past-due K-TAP, foster care, or medical support shall qualify for offset if:

1. There is an arrearage on a legally established child and medical support obligation;

2. The medical support order includes the specific dollar amount;

3. The obligor's name and Social Security number are known;

4. The arrearage has been verified as accurate; and

5. The amount of the arrearage is at least \$150 ~~[twenty-five (25) dollars]~~.

(b) A nonpublic assistance support arrearage shall qualify for offset if it meets the criteria specified in subsection (3)(b) of this section, and the required arrearage amount is not less than \$150.

Section 3. Kentucky Transitional Assistance Program Accounts Distribution. (1) A child support payment collected on behalf of a K-TAP recipient shall be:

(a) Payable to the state disbursement unit in the child support agency; and

(b) Reported to the K-TAP agency within ten (10) working days of the end of the month in which an escrow ~~[the]~~ payment is disbursed to the recipient ~~[received]~~.

(2) Upon receipt of a notice of payment, the K-TAP agency shall redetermine eligibility for K-TAP payments and report the result to the child support agency.

(a) If the K-TAP family becomes ineligible, the child support agency shall:

1. Distribute at the end of the month the amount of child support collected; and

2. Notify the family of continuation of child support services as specified in 921 KAR 1:380, Section 4(2).

(b) If the family remains eligible, or if a hearing is requested, the child support agency shall distribute the collection as specified in Section 6 of this administrative regulation.

Section 4. Distribution of Foster Care Accounts. A child support payment collected on behalf of a foster care recipient shall be:

(1) Payable to the state disbursement unit; and

(2) Distributed and disbursed to the foster care agency.

Section 5. Distribution of Tax Refund Intercept Amounts and Appeal Process. (1) A federal tax refund intercepted in a public assistance account.

(a) Amounts collected shall be applied to assigned arrearage.

(b) If no assigned arrearage remains, the amount collected shall be:

1. Held by the cabinet for six (6) months, if a joint income tax return has been filed, before being distributed; or

2. Forwarded to the K-TAP family or foster care agency within thirty (30) calendar days of the date of initial receipt.

(2) A federal tax refund intercepted in a nonpublic assistance account.

(a) Amounts collected shall be applied to assigned arrearage.

(b) If no assigned arrearage remains, the amount collected shall be:

1. Held by the cabinet for six (6) months, if a joint income tax return has been filed, before being distributed; or

2. Forwarded to the family within thirty (30) calendar days of the date of initial receipt.

(3) A state tax refund intercepted in an assistance account shall be distributed according to provisions of Section 3, 4, 6, or 8 of this administrative regulation, whichever is applicable.

(4) An obligor may contest the accuracy of a past-due amount by requesting an administrative hearing in accordance with KRS Chapter 13B. The cabinet shall, within fifteen (15) calendar days of the date of resolution of an obligor's appeal, forward the ordered amount to:

(a) The obligor, if resolution was in his favor; or

(b) The agency or family, if resolution was against the obligor.

Section 6. Treatment of Escrow and Excess Payments. (1) A child support payment shall be applied to the obligation amount for the month in which the support was received [collected].

(2) In a K-TAP case, if the obligation for current support and the collection for current support exceed the grant paid for the month in which the collection was made, the difference between the grant and the obligation or the collection, whichever is less, shall be considered escrow and shall be distributed as follows:

(a) The portion that represents the federal share, as determined by the Medicaid match rate, shall be sent to the federal government for reimbursement of public assistance previously paid.

(b) The portion that represents the state share, as determined by the Medicaid match rate, shall be sent to the family.

(c) An amount in excess of the current obligation shall be applied to arrearage.

Section 7. Income Withholding Distribution. (1) The date of collection for a child support or medical support payment made through income or other withholding shall be the date the income is received by the child support agency.

(2) Distribution of income withholding collections shall be made according to provisions of Section 3, 4, 6, or 8 of this administrative regulation, whichever is applicable.

Section 8. Interstate Case Payment Distribution. A child support payment that is collected by a responding state on behalf of an initiating state shall be forwarded to the location specified by the child support agency in the initiating state, within two (2) business days of initial receipt.

Section 9. Financial Institution Data Match. (1) The cabinet shall, when conducting a data match with a financial institution for the purpose of locating a delinquent obligor's assets:

(a) [(1)] Use the following criteria to identify a case for submission:

1. [(a)] The obligor owes an arrearage equal to six (6) months obligation or \$1,000, whichever is less; and

2. [(b)] The obligor is not complying with the current support order;

(b) [(2)] Issue to financial institutions holding the obligor's accounts with a combined balance of \$500 or more, the Order to Withhold, CS-68, and the Answer to Withhold, CS-69; [and]

(c) [(3)] Issue a copy of the Order to Withhold to the obligor by certified mail within two (2) working days after the Order to Withhold and Answer to Withhold are issued to the financial institution; [and]

(d) [(4)] Notify the obligor that the only basis for contesting an Order to Withhold shall be a mistake of fact pursuant to KRS 205.712(13); and

(e) [(5)] [To retain the account, an obligor shall take one (1) of the following actions within twenty (20) working days from the date of receipt of the Order to Withhold:

(a) Contest the Order to Withhold in writing; or

(b) Pay the total arrearage specified in the Order to Withhold; or

(c) Post a bond for the total arrearage specified in the Order to Withhold; or

(d) Enter into an agreement to pay current support plus a monthly payment on arrearage, specified as follows:

1. If the arrearage is less than \$1,000, fifty (50) percent;

2. If the arrearage is equal to or greater than \$1,000 and less than \$2,000, \$500 plus twenty-five (25) percent of the amount over \$1,000;

3. If the arrearage is equal to or greater than \$2,000, \$750 plus ten (10) percent of the amount over \$2,000;

(6) Refer the case for parent-locator service if the Order to Withhold is returned and the forwarding address for the obligor is unknown;

(f) [(7)] If the obligor requests a dispute hearing based upon a mistake of fact, and returns a written request within twenty (20) calendar days of the date notification was received:

1. [(a)] Schedule and hold an interview with the obligor within ten (10) working days of the request;

2. [(b)] Attempt to resolve the dispute at the time of the interview; and

3. [(c)] If the dispute is not resolved, forward the obligor's written request for a hearing to the cabinet's hearing branch;

(g) [(8)] If there is no dispute or a hearing results in a finding that the case qualifies for the withhold and deliver process, and the obligor does not take an action specified in subsection (5) of this section, send to the financial institution, within (20) twenty days of the date of decision, the Order to Deliver; and [or]

(h) [(9)] Notify the financial institution and the obligor of the Release of Order to Withhold, CS-70, within twenty (20) working days of the hearing branch's decision or the obligor's action as follows:

1. [(a)] Makes full payment; [or]

2. [(b)] Posts a bond for the full arrearage; or

3. [(c)] Enters into an agreement as specified in subsection (5)(d) of this section and makes the first payment within seven (7) calendar days of the agreement.

(2) To retain the account, an obligor shall take one (1) of the following actions within twenty (20) working days from the date of receipt of the order to withhold:

(a) Contest the order to withhold in writing;

(b) Pay the total arrearage specified in the order to withhold;

(c) Post a bond for the total arrearage specified in the order to withhold; or

(d) Enter into an agreement to pay current support plus a monthly payment on arrearage, specified as follows:

1. If the arrearage is less than \$1,000, fifty (50) percent;

2. If the arrearage is equal to or greater than \$1,000 and less than \$2,000, \$500 plus twenty-five (25) percent of the amount over \$1,000; or

3. If the arrearage is equal to or greater than \$2,000, \$750 plus ten (10) percent of the amount over \$2,000.

Section 10. Administrative Enforcement Actions. (1) If an obligor of a child receiving public assistance owes past-due support, he shall be required to participate in work activities pursuant to KRS 405.430(8).

(2) If an obligor owes an arrearage equal to or greater than one (1) month's obligation, the cabinet shall:

(a) File a lien on the obligor's interest in personal or real property within the Commonwealth, pursuant to KRS 205.745; [and]

(b) Give notice to the obligor that:

1. He may contest the lien pursuant to KRS Chapter 13B and 921 KAR 1:400; and

2. A transfer of property in order to avoid payment will be considered an act of fraud, in accordance with KRS 405.060(2); [and]

(c) Provide advance notice to the obligor that:

1. Past-due amounts will be reported to a certified consumer reporting agency; and

2. He may contest the accuracy of the information by filing an appeal pursuant to KRS Chapter 13B; [and]

(d) Not submit the obligor's information for inclusion on the periodic report made available to certified consumer reporting agencies pursuant to KRS 205.768, if the advance notice is returned as undeliverable and subsequent location efforts are unsuccessful; [or]

(e) Submit the obligor's name and arrearage amount for inclusion on the periodic report made available to certified consumer reporting agencies, if the obligor does not pay or appeal within thirty (30) calendar days from the date notice was received; **and**

(f) Request a full credit report from a certified consumer credit reporting agency if the obligor does not pay or appeal within thirty (30) calendar days from the date notice was received.

(3) If an obligor owes an arrearage equal to or greater than one (1) year's obligation, and for action against a driver's license the arrearage has accrued since January 1, 1994, the cabinet shall:

(a) Determine if the obligor holds a driver's license, professional license or certificate, occupational license or certificate, recreational license, sporting license, or a license to carry a concealed weapon;

(b) Send to the obligor, by certified mail:

1. A "Notice of Intent to Request Denial or Suspension" which includes an Answer to Notice of Intent; [of License or Certificate];

2. [A blank "Obligor's Answer to Notice of Intent" form; and

3. Notification that the only basis for a dispute hearing contesting the action is a mistake in fact, pursuant to KRS 205.712(13);

3. [4.] Notification that the "Notice to Licensing/Certification Board or Agency" ["Notice of Intent to Request Denial or Suspension of License or Certificate"] will be rescinded if he:

a. Pays the total arrearage accrued; [or]

b. Posts a bond for the total arrearage; or

c. Enters into an agreement to pay current support plus a monthly payment on arrearage, specified as follows:

(i) If the arrearage is less than \$1,000, fifty (50) percent;

(ii) If the arrearage is equal to or greater than [or equal to] \$1,000 and less than \$2,000, \$500 plus twenty-five (25) percent of the amount over \$1,000; or

(iii) If the arrearage is equal to or greater than [or equal to] \$2,000, \$750 plus ten (10) percent of the amount over \$2,000.

(c) Refer the case for parent-locator service, if the notice of intent is returned and the forwarding address unknown;

(d) If the obligor requests a dispute hearing based upon a mistake of fact, and returns the obligor's answer to notice of intent within twenty (20) calendar days of the date notification was received;

1. Schedule and hold an interview with the obligor within ten (10) working days of the response;

2. Attempt to resolve the dispute at the time of the interview; and

3. If the dispute is not resolved, forward the obligor's written request for a hearing to the cabinet's hearing branch;

(e) If there is no dispute, or a hearing results in a finding that the case qualifies for license or certificate denial, suspension, or revocation, and the obligor does not take an action specified in paragraph (b)4 of this subsection, send within twenty (20) days of the date of decision a "Notice to Licensing/Certification Board or Agency" ["Notice to Request Denial or Suspension of License or Certificate"] to the issuing agency or board of licensure or certification; or

(f) Notify the issuing board or agency that the obligor is no longer deemed by the cabinet to be subject to denial, suspension, or revocation, if the obligor:

1. Makes full payment; [or]

2. Posts a bond for the full arrearage; [or]

3. Makes a good faith payment equal to three (3) month's current support, and enters into an agreement as specified in paragraph (b)4c of this subsection; or

4. For a person who had failed to respond to a subpoena or warrant, the person has complied with the subpoena or warrant.

(4) If the obligor owes an arrearage of \$5,000 or more:

(a) The cabinet shall send an advance notice of intent to collect past-due support, notifying the obligor that his name is being submitted for passport denial, revocation, or limitation, pursuant to KRS 205.712(8);

(b) The cabinet shall forward the certified name and supporting documents to the Secretary of the U.S. Department of Health and Human Services for passport denial, revocation, or limitation;

(c) The cabinet shall notify the Secretary of the U.S. Department of Health and Human Services that the cabinet rescinds its request for passport denial, revocation, or limitation if:

1. The obligor's timely appeal is resolved with a finding that the arrearage is less than \$5,000; [or]

2. The obligor is in compliance with payments ordered in an existing arrearage judgment; [or]

3. A payment reduces the arrearage to less than \$5,000; or

4. If there is no ordered arrearage payment, the obligor:

a. Posts a bond for the total amount due; or

b. Enters into a payment agreement to pay current support plus a monthly payment on the arrearage, specified as follows:

(i) In the first month, a \$750 lump sum plus ten (10) percent of the arrearage balance as of the date of the agreement; and

(ii) In successive months, ten (10) percent of the arrearage balance as of the date of the agreement, or the remaining balance if less than ten (10) percent.

(5) If a person fails to comply with a subpoena or warrant relating to a paternity or child support proceeding:

(a) The agency shall contact the contracting official to determine if the contracting official intends to pursue judicial action;

(b) If the contracting official determines that judicial action will not be taken, the agency shall:

1. Advise the contracting official of the agency's intent to proceed with the notice to revoke or deny a license or certificate; and

2. Proceed in accordance with the provisions of subsection (3) of this section, except that the person shall be notified that he may retain his license or certificate by complying with the subpoena or warrant.

Section 11. [10.] Appeal Procedure. An obligor may request a dispute hearing in accordance with KRS 405.450 or 405.490(4).

Section 12. [11.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) CS-44 "Notice of Intent to Request Denial or Suspension", edition 8/99;

(b) CS-63 "Notice to Licensing/Certification Board or Agency", edition 8/99;

(c) CS-68 "Order to Withhold", edition 8/99;

(d) CS-69 "Answer to Withhold", edition 8/99;

(e) CS-70 "Release of Order to Withhold", edition 8/99;

(f) CS-76 "Unemployment Insurance Agreement", edition 8/99;

(g) CS-78 "Payment Agreement", edition 10/98;

(h) CS-83 "Order to Deliver", edition 8/99;

(i) CS-84 "Administrative Subpoena", edition 10/98;

(j) CS-85 "Notice of Lien", edition 10/98;

(k) CS-89 "Order and Notice to Withhold Income for Child Support", edition 10/98;

(l) CS-92 "Intrastate Notice of Lien", edition 10/98;

(m) CS-93 "Advance Notice of Intent to Request Full Credit Report", edition 10/98;

(n) CS-111 "Child Support Received Affidavit", edition 10/98;

(o) CS-119 "Obligor's Notice of Lien", edition 8/99;

(p) CS-120 "Release of Lien", edition 10/98;

(q) CS-121 "Noncustodial Parent or Obligor Answer to Withhold", edition 8/99;

(r) CS-122 "Advance Notice of Intent to Collect Past-Due Support", edition 10/98;

(s) CS-148 "Custodial Parent Affidavit Letter", edition 10/98;

(t) CS-149 "Custodial Parent Affidavit of Support Paid", edition 10/98;

(u) CS-164 "Notice of Income Withholding", edition 10/98;

(v) NOI "Notice of Claim", edition 8/99. [CS-44 "Notice of Intent to Request Denial or Suspension", (10/98 Edition), Cabinet for Families and Children;

(b) CS-63 "Notice to Request Denial or Suspension of License or Certificate", (10/98 Edition), Cabinet for Families and Children;

(c) CS-78 "Payment Agreement", (10/98 Edition), Cabinet for Families and Children;

(d) CS-84 "Administrative Subpoena", (10/98 Edition), Cabinet for Families and Children;

(e) CS-85 "Notice of Lien", (10/98 Edition), Cabinet for Families

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and Children;

(f) CS-89 "Order and Notice to Withhold Income for Child Support", (10/98 Edition), Cabinet for Families and Children;

(g) CS-92 "Intrastate Notice of Lien", (10/98 Edition), Cabinet for Families and Children;

(h) CS-93 "Advance Notice of Intent to Request Full Credit Report", (10/98 Edition), Cabinet for Families and Children;

(i) CS-111 "Child Support Received Affidavit", (10/98 Edition), Cabinet for Families and Children;

(j) CS-119 "Obligor's Notice of Lien", (10/98 Edition), Cabinet for Families and Children;

(k) CS-120 "Release of Lien", (10/98 Edition), Cabinet for Families and Children;

(l) CS-122 "Advance Notice of Intent to Collect Past-Due Support", (10/98 Edition), Cabinet for Families and Children;

(m) CS-148 "Custodial Parent Affidavit Letter", (10/98 Edition), Cabinet for Families and Children;

(n) CS-149 "Custodial Parent Affidavit of Support Paid", (10/98 Edition), Cabinet for Families and Children;

(o) CS-164 "Notice of Income Withholding", (10/98 Edition), Cabinet for Families and Children;

(2) This material may be inspected, copied, or obtained at the Department for Community-Based Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: June 14, 1999

FILED WITH LRC: June 15, 1999 at noon

CABINET FOR FAMILIES AND CHILDREN
Department for Community-Based Services
Division of Policy Development
(As Amended at ARRS, September 14, 1999)

921 KAR 3:050. Claims and additional administrative provisions.

RELATES TO: 7 CFR 272.1, 272.5, 273.16, 273.17, 273.18, [273.18(d)(4)(iii);] 26 CFR 301.6402-6 et seq., 31 CFR 5.23 et seq., 56 FR 41325-31, 57 FR 39176-77, 7 USC 2014(e)(2)(C), 2020(e)(8)(D), 2022 [PL 103-66]

STATUTORY AUTHORITY: KRS 194B.050(1), EO 98-731 [13A-120, 194.050]

NECESSITY, FUNCTION, AND CONFORMITY: 7 USC 2011 to 2029 **requires** the Cabinet for Families and Children **to [shall]** administer a Food Stamp Program [pursuant to [as prescribed under] 7 USC 2011 to 2029]. KRS 194B.050(1) [194.050] provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation **establishes [sets forth]** additional provisions used by the cabinet in the administration of the Food Stamp Program.

Section 1. Civil Rights Compliance. The cabinet shall not discriminate against an [any] applicant or participant in any aspect of program administration for reasons of age, race, color, sex, disability, religious creed or [;] national origin [, or political beliefs].

Section 2. Restoration of Lost Benefits. (1) Benefits shall be restored to a household if the [a] household has lost benefits:

(a) Due to an administrative error; or

(b) By an administrative disqualification for intentional program violation that is subsequently reversed.

(2) Benefits shall be restored for a period of not more than twelve (12) months from:

(a) The date the agency receives a request for restoration; or

(b) If no request is received, the date a fair hearing action is initiated.

(3) Benefits to be restored shall be calculated by determining the difference between what the household was entitled to receive and

what the household actually received.

(4) Benefits to be restored shall be used to offset an [any] unpaid or suspended claim [claims] the household may have.

Section 3. Program Informational Activities. (1) A low-income or disadvantaged household [households] shall be informed of the availability of the program and [;] program rights and responsibilities through program informational activities including posters and pamphlets from the Food and Nutrition [Consumer] Service.

(2) Other programs that a household [households] shall be encouraged to use are the:

(a) Special Supplemental Food Program for Women, Infants and Children; and

(b) Expanded Food and Nutrition Education Program.

Section 4. Identification of a Claim [Claims] Against a Household [Households]. (1) All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household.

(2) The cabinet shall establish a claim against a household that:

(a) Has received more food stamp benefits than it is entitled to receive; or

(b) Contains an adult member who was an adult member of another household that received more food stamp benefits than it was entitled to receive.

Section 5. Classification and Establishment of Claims. A claim [Claims] shall be classified as:

(1) Inadvertent household error claim [claims]. Overissuance was due to:

(a) The household unintentionally failed to provide the food stamp office [state agency] with correct or complete information;

(b) An action, or failure to take action, by the Social Security Administration, that results in the household improperly receiving Supplemental Security Income; or

(c) A misunderstanding or unintended error on the part of a categorically eligible household, **established in 921 KAR 3:020** [as defined in 921 KAR 3:030], Section 4 [5], that receives benefits [food stamps] solely because of categorical eligibility, and is subsequently determined ineligible for either Kentucky Transitional Assistance Program (K-TAP) or Supplemental Security Income or both;

(d) The household unintentionally failed to report to the cabinet a change [changes] in its household's circumstance [circumstances];

(e) The household unintentionally received benefits or more benefits than it was entitled to receive pending a fair hearing decision because the household requested a continuation of benefits based on the mistaken belief that it was entitled to the benefits.

(2) Administrative error claim [claims]. Overissuance was due to the agency:

(a) Failing to take action on a change reported by the household;

(b) Incorrectly computing household income or deductions or otherwise issuing an incorrect allotment;

(c) Issuing duplicate benefits;

(d) Continuing to issue benefits after the certification period expired without a reapplication determination; or

(e) Taking an action or failing to take an appropriate action, that [which] resulted in the household improperly receiving K-TAP.

(3) Intentional program violation claim [claims].

(a) Overissuance was due to an act of intentional program violation on the part of the household by:

1. Making a false or misleading statement, or misrepresenting, concealing or withholding facts; or

2. Committing a violation of 7 USC 2011-2029, 921 KAR Chapter 3, or any state statute relating to the Food Stamp Program, relating to the:

a. Use;

b. Presentation;

c. Transfer;

d. Acquisition;

e. Receipt; or

f. Possession of food stamp coupons or an electronic benefit transfer card.

(b) The act of intentional program violation is determined by:

1. An administrative disqualification hearing official;
2. A federal, state or local court;
3. An individual signing a waiver of his right to an administrative disqualification hearing; or
4. An individual signing a disqualification consent agreement in a case [cases] referred for prosecution.

(4) Neither an agency error claim nor an inadvertent household error claim shall be established if an overissuance occurred as a result of the cabinet failing to insure that a household fulfilled the following procedural requirements:

- (a) Sign the application form;
- (b) Complete the registration of an individual who is required to register for work pursuant to [in accordance with] 921 KAR 3:042 [3:044]; or
- (c) Certify the household in the correct county where [in which] the household resides [they reside].

Section 6. Calculating the Amount of a Claim [Claims]. (1) Inadvertent household error and agency error claim [claims].

(a) For each month that a household received an overissuance due to an inadvertent household error or agency error, the cabinet shall determine the correct amount of food stamp benefits the household was entitled to receive.

(b) The amount of the inadvertent household error or agency error claim shall be calculated based on the amount of overissuance that [which] occurred during the twenty-four (24) months preceding the date that the overissuance was discovered.

(c) In a case [cases] involving a reported change [changes], the cabinet shall determine the month the overissuance initially occurred as follows:

1. For an inadvertent household error claim [claims], if the household failed to report a change in a circumstance [its circumstances] within the required time frame [frames]:

a. The first month affected by the household's failure to report shall be the first month that [in which] the change would have been effective had it been timely reported.

b. The first month of the established overissuance shall not be [in no event shall the cabinet determine as the first month in which the change would have been effective] any month later than two (2) months from the month that [in which] the change in a household's circumstance [household circumstances] occurred.

2. For an agency error claim [claims], if the household timely reported a change, but the cabinet did not act on the change within the required time frame [frames]:

a. The first month affected by the cabinet's failure to act shall be the first month the cabinet would have made the change effective had it timely acted.

b. The first month of the established overissuance shall not be [in no event shall the cabinet determine as the first month in which the change would have been effective] any month later than two (2) months from the month that [in which] the change in a household's circumstance [household circumstances] occurred.

c. If a notice of action was required but was not provided, the cabinet shall assume for the purpose of calculating the claim that the household would have been allowed the maximum advance notice period to expire without the household requesting a fair hearing including:

- (i) Ten (10) days to report the change;
- (ii) Ten (10) days for the caseworker to act on the change; and
- (iii) Ten (10) days for the client to respond to the notice of action.

(d) If the household received a larger allotment than it was entitled to receive the cabinet shall:

1. For an inadvertent household error claim, [the cabinet shall] not apply the twenty (20) percent earned income deduction to that portion of earned income that the household failed to report; or

2. For an agency error claim, [the cabinet shall] establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received.

(e) For a categorically eligible household as specified in 921 KAR 3:020, Section 4[(2)], a claim shall only be determined when it can be computed on the basis of changed household net income and household size.

(f) After calculating the amount of the inadvertent household error or agency error claim:

1. The cabinet shall offset the amount of the claim against any amount that has [amounts which have] not yet been restored to the household pursuant to [in accordance with] Section 2 of this administrative regulation.

2. The cabinet shall then initiate collection action for the remaining balance, if any.

(2) Intentional program violation claim [claims].

(a) For each month that a household received an overissuance due to an intentional program violation, the cabinet shall determine the correct amount of food stamp benefits, if any, the household was entitled to receive.

1. The amount of the intentional program violation claim shall be calculated back to the month the act of intentional program violation occurred. The intentional program violation claim shall not be calculated [but back no] more than six (6) years from the date the overissuance was discovered.

2. If it is determined that the household member [is determined to have] committed an intentional program violation by intentionally failing to report a change in the [its] household's circumstance [circumstances], the first month affected by the household's failure to report shall be the first month that [in which] the change would have been effective had it been reported.

3. The first month of the established overissuance shall not be [in no event shall the cabinet determine as the first month in which the change would have been effective] any month later than two (2) months from the month that [in which] the change in a household circumstance [household circumstances] occurred.

(b) If the household received a larger allotment than it was entitled to receive:

1. The cabinet shall establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received;

2. When determining the amount of benefits the household should have received, the cabinet shall not apply the twenty (20) percent earned income deduction to that portion of earned income that [which] the household intentionally failed to report.

(c) Once the amount of the intentional program violation claim is established, the cabinet shall offset the claim against any amount of lost benefits that have not yet been restored to the household pursuant to [in accordance with] Section 2 of this administrative regulation.

Section 7. Collecting a Claim [Claims] Against a Household [Households]. The cabinet shall initiate collection action against a household [households] with an established claim pursuant to [in accordance with] the following criteria:

(1) A claim [All claims] identified in Section 5 of this administrative regulation, as an inadvertent household or [and] administrative error claim [claims], shall have collection action initiated unless the:

- (a) Claim is collected through offset; or
- (b) Claim is less than \$125 [thirty-five (35) dollars] and cannot be recovered by benefit [coupon] reduction due to inactive status [-or
- (c) Department has documentation that the household cannot be located].

(2) A household member found to have committed an intentional program violation, pursuant to [in accordance with] Section 5(3) of this administrative regulation, shall have collection action initiated against the individual's household unless the:

- (a) [The] Household has repaid the overissuance;
- (b) [The department has documentation that the household cannot be located; or
- (c) Collection action would prejudice the case against a household member referred for prosecution; or
- (c) Claim is less than \$125 and cannot be recovered by benefit reduction due to inactive status.

(3) A payment [Payments] for a claim [claims] against the household shall be collected as follows:

- (a) A lump sum payment [payments].
1. If the household states it is financially able to pay the entire amount of the claim at one (1) time, either as cash payment or benefits [food stamp coupons], the cabinet shall collect a lump sum payment, [-however]

2. The household shall not be required to liquidate all of its resources to make this lump sum payment.

3. If the household states it is financially unable to pay the entire amount of the claim at one (1) time and prefers to make a lump sum payment of cash or benefits [food stamp coupons] as partial payment of the claim, the cabinet shall accept this method of repayment.

(b) Installments.

1. The cabinet shall negotiate a payment schedule with the household for repayment of any amount [amounts] of the claim not repaid through a lump sum payment.

a. The minimum monthly payment shall [must] be equal to the amount that [which] would be received through benefit [coupon] reduction described [outlined] in paragraph (c) of this subsection.

b. Payment shall be accepted by the cabinet in regular installments and shall be paid to the cabinet on a due date agreed upon by the household and the cabinet [no later than the tenth of the month].

c. The household may use benefits [food stamp coupons] as full or partial payment of any installment.

d. If the full claim or remaining amount of the claim cannot be liquidated in thirty-six (36) months, the cabinet may compromise the amount of the claim by reducing it to an amount that allows the household to pay the claim in thirty-six (36) months.

e. The cabinet shall use the full amount of the claim, including any amount compromised, to offset benefits pursuant to [in accordance with] Section 2 of this administrative regulation.

2. If the household fails to make a payment pursuant to [in accordance with] the established repayment schedule, either a lesser amount or no payment, the cabinet shall allow the household an opportunity to renegotiate the payment schedule.

(c) Reduction in the food stamp allotment. For a participating household [households], the cabinet shall collect a payment [payments] for a claim [claims], unless a repayment schedule has been [otherwise] negotiated, by reducing the household's benefits pursuant to [food stamp allotments in accordance with] the following criteria:

1. For an inadvertent household error or administrative error claim [claims], the amount of reduction shall be the greater of:

- a. Ten (10) percent of the household's monthly allotment; or
- b. Ten (10) dollars per month;

2. [For administrative error claims;

a. The amount of reduction shall be negotiated with the household and

b. Coupon reduction shall only be imposed if the household prefers to use this method.

3. For an intentional program violation error claim [claims], the amount of reduction shall be the greater of:

- a. Twenty (20) percent of the household's monthly entitlement; or
- b. Ten (10) dollars per month.

(d) Federal salary offset procedures.

1. The cabinet shall offset the salary of a federal or United States Postal Service employee who owes an:

- a. Administrative error claim;
- b. Inadvertent household error claim; or
- c. [b:] Intentional program violation claim; unless
- (i) The claim has been paid;
- (ii) The claim is being paid under a current payment agreement; or
- (iii) The claim is not collectible.

2. [Prior to salary offset, the cabinet shall provide each federal or United States Postal Service employee verified as owing an inadvertent household error or intentional program violation claim with an advance notice of salary offset which includes an opportunity to enter into a voluntary repayment agreement.

3. The federal or United States Postal Service employee shall avoid referral for salary offset if within thirty (30) days of the date of the federal government's advance notice of intention to attach wages:

- a. Payment of the claim is received in full; or
- b. The first installment of fifty (50) dollars or more is received by the cabinet and the debtor continues to pay installment payments of fifty (50) dollars or more on an agreed-upon monthly schedule [by the tenth day of each subsequent month] until the claim is paid in full.

3. [4:] If any monthly installment of at least fifty (50) dollars is not received by agreed upon month schedule [the tenth day of each subsequent month], the claim shall [will] be referred for salary offset with no further right to enter into a voluntary repayment agreement;

4. [5:] If a federal or United States Postal Service employee believes that he is not responsible for the claim or that the claim has been paid, he may submit documentation to the cabinet, including a:

- a. Payment record [records]; or
- b. Legal bar [bars] to collection of a claim [claims].

5. [6:] Unless the documentation clearly shows that the claim has been paid or is not legally collectible, the cabinet shall refer the claim for collection from the debtor's salary.

6. A debtor [7-Debtors] shall have the right to a formal appeal to the Food and Nutrition [Consumer] Service.

[8- The advance notice to federal employees is incorporated into this administrative regulation by reference.]

(4) An individual who has defaulted on repayment of his debt shall have the debt offset through intercept of his:

(a) State income tax return if his claim is identified as:

1. Noncourt established intentional program violation [as] described in Section 5(3)(b)1, 3, or 4 of this administrative regulation; [or]
2. An inadvertent household error [as] described in Section 5(1) of this administrative regulation;
3. An administrative error described in Section 5(2) of this administrative regulation; or

4. Court established fraud, pursuant to Section 5(3)(b)2 of this administrative regulation, that is out of court jurisdiction; and

(b) Federal income tax return if his claim is identified as:

1. Court established fraud as described in Section 5(3)(b)2 of this administrative regulation;
2. Noncourt established intentional program violation [as] described in Section 5(3)(b)1, 3, or 4 of this administrative regulation; [or]
3. An inadvertent household error as described in Section 5(1) of this administrative regulation; or
4. An administrative error described in Section 5(2) of this administrative regulation.

(5) Disqualification from the Food Stamp Program shall be imposed on an individual with an intentional program violation claim pursuant to [claims in accordance with] 921 KAR 3:060, Section 10.

(6) Cabinet forms necessary to collect an overpayment [overpayments] are incorporated into this administrative regulation by reference.

Section 8. Disclosure of Information. Use or disclosure of information including the address, Social Security number, and, if available, photograph obtained from an applicant household [households], exclusively for the Food Stamp Program, shall be restricted to the following individuals:

(1) A person [Persons] directly connected with the administration or enforcement of the provisions of:

- (a) 7 USC 2011-2029;
- (b) A [Other] federal assistance program [programs]; or
- (c) A federally-aided state program that provides [programs which provide] assistance, on a means-tested basis, to a low income household [households];

(2) An employee [Employees] of the Comptroller General's Office of the United States for audit examination authorized by a [any other] provision of law; and

(3) A local, state or federal law enforcement official [officials], upon his [their] written request, for the purpose of investigating an alleged violation of 7 USC 2011-2029 or regulations. The written request shall include:

- (a) The identity of the person requesting the information and his authority to do so;
- (b) The nature of the violation being investigated including a fugitive felon or parole and probation violator; and
- (c) The identity of the person about whom the information is requested.

Section 9. General Program Information. 921 KAR Chapter 3 shall be maintained in the cabinet central and local office for examination by a member [members] of the public on a regular workday [workdays] during regular office hours. A copy of an [Copies of] administrative regulation [regulations] may be obtained from the cabinet. Federal laws and regulations shall be maintained by the cabinet central office and the Food and Nutrition [Consumer] Services and shall be available for inspection and copying.

Section 10. Retention of Records. (1) The cabinet shall retain [all] program records in an orderly fashion, for audit and review purposes, for a period of three (3) years from the date the claim is paid in full, unless the claim is involved in an audit [month-of-origin-of-each-record].

(2) The cabinet shall retain fiscal records and accountable documents for three (3) years from the date of fiscal or administrative closure.

Section 11. Disaster Certification. The cabinet shall distribute emergency benefits [coupon-allotments] to a household within a food stamp county determined to be a disaster area pursuant to:

(1) [~~In accordance with~~] 42 USC 5122, authorized by the Food and Nutrition [Consumer] Service of the United States Department of Agriculture as a result of a major disaster that is determined by the President of the United States; or

(2) [~~In accordance with~~] 7 USC 2011-2029, authorized by the Food and Nutrition [Consumer] Service as a result of a lesser disaster, if:

(a) The emergency has resulted either from a natural or human occurrence that [which] disrupted the commercial channels of food distribution; and

(b) The Food Stamp Program is operational.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "KCA-1, General Claims Notice FS-01", edition 9/98;
- (b) "KCA-1, General Claims Notice FS-02", edition 9/98;
- (c) "KCA-1, General Claims Notice FS-03", edition 9/98;
- (d) "KCA-1, General Claims Notice FS-04", edition 9/98;
- (e) "KCA-1, General Claims Notice FS-05", edition 9/98;
- (f) "KCA-1, General Claims Notice FS-06", edition 9/98;
- (g) "KCA-1, General Claims Notice FS-07", edition 9/98;
- (h) "KCA-1, General Claims Notice FS-08", edition 7/96;
- (i) "KCA-1, General Claims Notice FS-09", edition 7/96;
- (j) "KCA-1, General Claims Notice FS-10", edition 9/98;
- (k) "KCA-1, General Claims Notice FS-11", edition 7/96;
- (l) "KCA-1, General Claims Notice FS-12.1", edition 7/96;
- (m) "KCA-1, General Claims Notice FS-12.2", edition 7/96;
- (n) "KCA-1, General Claims Notice FS-12.3", edition 7/96;
- (o) "KCA-1, General Claims Notice FS-20", edition 7/96;
- (p) "KCA-1, General Claims Notice FS-21", edition 9/98;
- (q) "KCA-1, General Claims Notice FS-22", edition 9/98;
- (r) "KCA-1, General Claims Notice FS-23", edition 9/98;
- (s) "KCA-1, General Claims Notice FS-24", edition 9/98;
- (t) "KCA-1, General Claims Notice FS-25", edition 9/98;
- (u) "KCA-1, General Claims Notice FS-28", edition 9/98;
- (v) "KCA-1, General Claims Notice FS-29", edition 9/98;
- (w) "KCA-1, General Claims Notice FS-30", edition 9/98;

(2) This material may be inspected, copied, or obtained at the Department for Community-Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [Material Incorporated by Reference. (1) Forms necessary for the establishment and collection of claims against households, are incorporated effective January 1, 1995. These forms include:

- (a) Advance Notice to Federal Employees, revised 1/95;
- (b) FS-410, revised 3/92;
- (c) FS-412, revised 1/93;
- (d) FS-413, revised 6/91; and
- (e) FS-415, revised 1/93.

(2) These forms may be inspected and copied at the Department for Community-Based Services, 275 East Main Street, Frankfort, Kentucky 40621 and at each of the department's local offices.]

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: May 28, 1999

FILED WITH LRC: June 15, 1999 at noon

CABINET FOR FAMILIES AND CHILDREN
Department for Community-Based Services
Division of Policy Development
(As Amended at ARRS, September 14, 1999)

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 work or attend an education or training program that will lead to self-sufficiency; [:

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 CCDF 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 parent;

(b) Physical or mental incapacity of one (1) parent when both parents are in the home; or

(c) Unemployment of at least one (1) parent when both parents are in the home].

(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 is [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 [providers] 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 C, 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 discon-

tinuance 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 921 [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 complies with licensing and regulatory requirements pursuant to 922 KAR 2:001, 922 KAR 2:090, 922 KAR 2:100, 922 KAR 2:110, and 922 KAR 2:120. [-]

[(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 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:]

(2) A provider shall be enrolled with the cabinet to meet the minimum health and safety standards unless he is:

(a) Not required to be licensed or certified pursuant to 922 KAR 2:001, 905 KAR 2:090, 922 KAR 2:100, 922 KAR 2:110, or 922 KAR 2:120; and

(b) A relative provider,

(3) A provider requesting enrollment shall:

(a) Complete the DSS-1296, "Child Care Provider Enrollment Self Assessment" and:

1. DSS-1297, "Application for Child Care Provider Enrollment: In Child's Home"; or

2. DSS-1295, "Application for Child Care Provider Enrollment: In Provider's Home"; and

(b) 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; and [-]

7. The provider shall have at least one (1) telephone in working order.

(c) If a preschool child of day care staff receives care in the facility, he shall be included in the number for which the facility is licensed.

(d) 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.

(e) [(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.

(f) [(e)] If the provider feels an action of the Department for Community Based Services is [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.

(g) [(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).

(h) [(g)] The hearing shall be conducted pursuant to [as governed by] KRS 13B.080 and 13B.090.

(i) [(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.

(j) [(i)] The recommended order shall be filed with the commissioner, or designee, and shall comply with KRS 13B.110.

(k) [(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.

(l) [(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.

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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, Chris-

tian, 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, 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.-ls] 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

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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	\$6.75 [7.00]	\$7.50 [8.00]
1,800	1,899	\$7.50	\$7.50	\$8.50	\$7.50 [7.00]	\$8.50 [8.00]	\$7.50	\$8.50
1,900	1,999	\$8.00	\$8.00	\$9.00	\$8 [7].00	\$9 [8].00	\$8.00	\$9.00
2,000	2,099	\$8.50	\$8.50	\$9.50	\$8.50 [7.00]	\$9.50 [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	
	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

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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 may be waived in a case under SSBG or CCDF [cases]:

[1- A copayment [Copayments] may be waived in a child protective service case under SSBG or CCDF.]

(c) [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.

(d) [3:] The family shall be [is] eligible for a service [services] without regard to income.

(e) [(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.

(f) [(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. The cabinet shall recoup an overpayment in each of the following cases:

1. Fraud involving a current recipient, in which overpayment equals or exceeds the cost of recovery; or

2. Overpayment to a child care provider due to provider error or fraud. [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.]

(b) [(c)] An overpayment shall be recovered through a reduction in the amount payable to the provider.

(c) [(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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

GENERAL GOVERNMENT CABINET
Kentucky State Treasurer
(Amended After Hearing)

20 KAR 1:040. Unclaimed properties; claims.

RELATES TO: KRS 393.010, 393.040, 393.110, 393.140, 393.150

STATUTORY AUTHORITY: KRS 393.130, 393.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 393.130 allows the holder of unclaimed property or the Department of Unclaimed Property, Office of the Kentucky State Treasurer, to turn that property over to a claimant upon proper proof. This administrative regulation defines what proof is proper and governs how that proof shall be made. This administrative regulation also governs regulation of finders of unclaimed property. [This administrative regulation relates to the claims process for unclaimed property, which owners and heirs shall follow; and the proof necessary for authorization of a claim refund;]

Section 1. Claims for unclaimed property held in an interest-bearing demand, savings or time deposit held in an account assignable to the department under KRS 393.130(5) shall be filed in writing with the holder of the unclaimed property who maintains the interest-bearing account containing the unclaimed property. Upon receipt of a claim by a person other than a depositor or beneficiary of an account, the holder may refer the claim to the department to determine ownership of the property. Monetary claims for unclaimed property not held in an interest-bearing demand, savings or time deposit, may be filed in writing with either the department or with the holder who remitted the unclaimed property to the department. All other claims for unclaimed property shall be made in writing and filed with the department. [Claims for unclaimed property or the proceeds from the sale of unclaimed property shall be filed with the department. Upon receipt of the initial claims inquiry from a person having an interest in the property, the department shall send the required claim forms to be completed by the claimant; and request necessary documentation as proof of ownership.]

(1) Documentation to prove ownership shall consist of a driver's license or other picture identification, a document proving Social Security number; and, one (1) or more of the following:

- (a) Copy of birth certificate;
- (b) Copy of will;
- (c) Copy of probate distribution;
- (d) Copy of marriage certificate;
- (e) Copy of divorce decree;
- (f) Copy of documentation providing a connection with the reported address or business for the year cited as the "Date of Last Transaction" in the holder's report;
- (g) Copy of letters testamentary;
- (h) Copy of guardianship or trust agreement;
- (i) Notarized affidavit executed by an individual other than the claimant having knowledge of, and in support of, a claim when requested information or documentation is not available;
- (j) Signature verification cards of financial institutions;
- (k) Family or church records, and personal correspondence;
- (l) Newspaper articles, including marriage announcements and birth or obituary notices;

(m) Other documentation which may be used in support of the claim include an income tax return, adoption records, court records, CD's, stale dated checks, or other public or business records.

(2) In addition to items set out above, minimum requirements needed to establish ownership for various types of property shall be:

- (a) Checking accounts: a check (blank or canceled) showing the account number for that bank, or a statement on that account which contains the account number;
- (b) Savings account: a copy of the passbook showing the account number or correspondence referencing the account number;
- (c) Safe deposit box: a copy of the safe deposit box rental receipt

or correspondence referencing that rental;

(d) Wages: copies of W-2 forms, tax records or correspondence relating to that employment;

(e) Stocks or dividends: copies of a stock certificate of the business entity reported; correspondence relating to the stock certificate or a statement from the broker showing purchase or sale of that stock;

(f) Bearer bonds and certificates of deposit: a copy of the record of purchase;

(g) Insurance: a copy of the policy; or correspondence relating to that policy by policy number;

(h) Court funds: a copy of the court decree or court order for the case that was the source of the funds. (i.e., probate, condemnation, quiet title, divorce, child support, and appearance bond);

(i) Vendor checks: copies of accounts receivable billing, invoices, bills of lading or correspondence with the holder reporting and remitting the funds that show a business relationship for each payment, or a statement that the funds are still considered to be due and owing on the account;

(j) Claims by heirs of listed owners: if the claim is based on hardship, one (1) or more of the following documents shall be required: final decree of probate; death certificate; or an affidavit of "Proof of Death and Heirship" executed by a person disinterested in the claim may be acceptable when the decedent's estate was not probated;

(k) Cashier's checks shall be claimed by the payee as the owner unless the purchaser submits sufficient documentation to prove a superior claim.

(3) Claims by finders or agents of listed owner. The claim shall be based on a notarized contract with the owner or heir of the owner. The department shall contact the owner or claimant to make sure that the owner or the claimant is aware of the full amount of unclaimed property involved. The finder or agent shall provide the department:

(a) A notarized copy of the contract showing names, current address, and Social Security number or Federal Employer Identification numbers of all parties to the contract; and

(b) A notarized affidavit from the owner or heir of the owner for the executive or power to act on his behalf. The affidavit shall also stipulate that the finder or agent has explained to the owner or claimant the state law on unclaimed properties and that any unclaimed properties due to the owner or claimant can be claimed without a fee, free and simple.

(4) Stock certificates received through safe deposit boxes or directly from a holder will be released to the rightful owner by one (1) of the following methods:

- (a) Stock certificate in the owner's name;
- (b) Stock certificate in the name of the department with an affidavit ready for transfer to the owner;
- (c) Payment of money received for the certificate if the certificate has been redeemed by the issuer or has been sold in accordance with state law; or
- (d) Obsolete stock certificates in the original owner's name will be transferred directly to the owner. If the original owner is deceased, the lawful heirs must determine disposition.]

Section 2. Upon receipt of a claim for unclaimed property which has been transferred to the department, either submitted to the department by the apparent owner or a holder seeking to recover money paid to an apparent owner, the department shall determine whether or not there is sufficient proof that the claimant is entitled to the claimed property. Proper proof shall consist of the following:

(1) Documentation to prove ownership shall consist of a driver's license or other picture identification, a document proving Social Security number; and, any [one (1) or more] of the following as the department finds necessary [is needed] to establish that the claimant is entitled to the unclaimed property;

- (a) Copy of birth certificate;
- (b) Copy of death certificate and copy of probate distribution or an order of the court appointing an administrator to an estate or a copy of an order from the court dispensing with administration or a

small estate affidavit;

- (c) Copy of marriage certificate;
- (d) Copy of divorce decree;
- (e) Signature verification cards of financial institutions;
- (f) Copy of guardianship or trust agreement;

(g) In the event that the claimant can show that none of the above documentation is available or not applicable, the claimant may use other documentation in support of the claim including, but not limited to, the following: an income tax return, adoption records, court records, certificates of deposit, stale dated checks, public or business records, copy of documentation providing a connection with the reported address or business for the year cited as the "Date of Last Transaction" in the holder's report, newspaper articles (including marriage announcements and birth or obituary notices), family or church records, personal correspondence or a notarized affidavit executed by an individual other than the claimant having knowledge of a claim.

(2) In addition to items set out above, **additional evidence which may be considered by the department** [minimum requirements needed] to establish ownership for various types of property valuing over \$400 **includes** [shall be]:

(a) Checking accounts: a check showing the account number for that bank, or a statement on that account which contains the account number;

(b) Savings account: a copy of the passbook showing the account number or correspondence referencing the account number;

(c) Safe deposit box: a copy of the safe deposit box rental receipt or correspondence referencing that rental;

(d) Wages: copies of W-2 forms, tax records, pay stubs or correspondence relating to that employment;

(e) Stocks or dividends: copies of a stock certificate of the business entity reported, correspondence relating to the stock certificate or a statement from the broker showing ownership of that stock;

(f) Bearer bonds. If the department holds original bonds, then a copy of the bonds or information that establishes relationship to the bonds. If the department held the original bonds but sold them pursuant to statute, then the claimant may use any evidence which establishes ownership of the bonds including copies of the bonds or lists of serial numbers and a relationship to the holder;

(g) Certificates of deposit: a copy of the certificate of deposit or a record of purchase;

(h) Insurance: a copy of the policy, or correspondence relating to that policy;

(i) Court funds: a copy of the court decree or court order for the case that was the source of the funds. (i.e., probate, condemnation, quiet title, divorce, child support, and appearance bond);

(j) Vendor checks: copies of accounts receivable billing, invoices, bills of lading or correspondence with the holder reporting and remitting the funds that show a business relationship for each payment, or a statement that the funds are still considered to be due and owing on the account;

(k) Claims by heirs of listed owners: final decree of probate, in the event of an intestate estate, an order of the court dispensing with administration or a court order appointing an administrator to the estate and a letter from the administrator of the estate allowing the release of the property from the estate;

(l) Cashier's checks shall be claimed by the payee as the owner based upon proof of identity, unless the purchaser submits sufficient documentation to prove a superior claim;

(m) For claims where ownership cannot be established by proof identified in this section the department may in its discretion accept alternative proof to establish ownership.

(3) Claims by finders or agents of listed owner. The claim shall be based on a notarized contract with the owner or heir of the owner. The department may contact the owner or claimant to verify that the owner or the claimant is aware of the full amount of unclaimed property involved. The finder or agent shall provide the department;

(a) A notarized copy of the contract showing names, current address, and Social Security number or Federal Employer Identification numbers of all parties to the contract; and

(b) A notarized affidavit from the owner or heir of the owner for the executive or power to act on his behalf. The affidavit shall also

stipulate that the finder or agent has explained to the owner or claimant the law on unclaimed properties and that any unclaimed properties due to the owner or claimant can be claimed without a fee, free and simple; and

(c) Any documentation that the owner or claimant of the unclaimed property would have to exhibit in order to show proper proof of entitlement to the unclaimed property.

(4) Payment of claims shall be authorized upon review of documentation submitted by claimant and approval by three (3) [four] designated department employees. Payment shall be made:

(a) [(+)] In the name of, and mailed to, the established owner; or

(b) [(2)] To the executor, executrix, administrator, administratrix of the estate or personal representative; the court appointed guardian; or to an heir for distribution to other heirs, if any.

Section 3. Stock certificates received through safe deposit boxes or directly from a holder will be released to the rightful owner by one (1) of the following methods:

(1) Stock certificate in the owner's name;

(2) Stock certificate in the name of the department with an affidavit ready for transfer to the owner;

(3) Payment of money received for the certificate if the stock has been redeemed by the issuer or has been sold in accordance with state law; or

(4) Obsolete stock certificates in the original owner's name will be transferred directly to the owner. If the original owner is deceased, the lawful heirs must determine disposition.

Section 4. If a claim for unclaimed property is made to a holder for property which is not held in an interest bearing demand, savings or time deposit account, the holder may direct the claimant to the department for review and payment of the claim. If the holder chooses to consider the claim for payment, the holder shall, prior to paying the claim, inquire in writing to the department to determine whether there have been any other competing claims for that property. The department shall respond to the holder in writing within ten (10) business days of receipt of the inquiry indicating whether or not any other claims have been paid out of the property at issue or whether there are any competing claims pending. If there are competing claims or if other claims have been paid out of the property at issue, the department shall notify the holder and the holder shall not pay the claimant. The department [and the holder] shall notify the claimant in writing of his right to request a hearing on his claim [with the department].

Section 5. If a claimant submits a claim for unclaimed property to a holder, and the holder determines that the claimant is entitled to the property and that there have been no other competing claims paid out of the same property, then the holder may pay the claimant. If the property was not held in an interest-bearing demand, savings or time deposit, and if the property has already been turned over to the department, then the holder may be reimbursed by the department for any claim paid only if:

(1) The holder submits written confirmation from the department that the department was contacted prior to the payment of the claim to determine if there were any conflicting claims or if there were any prior paid claims on the property; and

(2) The holder submits an affidavit which identifies the proof used to determine that the claimant was entitled to the property, that proof meets the requirements of Section 2 of this administrative regulation, and attached to the affidavit are copies of the proof relied on; and

(3) The holder submits proof that payment was made to the claimant.

JOHN KENNEDY HAMILTON, Kentucky State Treasurer

ROBERT S. JONES, Assistant Attorney General

APPROVED BY AGENCY: September 13, 1999

FILED WITH LRC: September 13, 1999 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Contact person: Robert S. Jones

(1) Type and number of entities affected: All holders of unclaimed property will be affected by this regulation.

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

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

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

1. First year following implementation: For business and entities that may hold unclaimed property, there may a slight increase in paperwork and administrative time caused by the implementation of SB 339 for the first year and all following years. SB 339 allows claimants of unclaimed property to seek such property from the holder, not just the department who was the sole entity who returned unclaimed property under the previous law.

2. Second and subsequent years: See above.

(3) Effects on the promulgating administrative body:

1. First year: Some operational costs of the department will be increased; other costs will be decreased. There will be some costs associated with the implementation of this bill and the education of the public and the holders. Although there will be decreased department costs in that we will not be handling all property claims since claimants can approach the holders in certain instances, we will have increased administrative costs in maintaining records on interest-bearing accounts and on distributions of unclaimed property by the holder. Other than implementation costs as discussed, these costs will continue throughout the life of the regulation.

(a) Direct and indirect costs or savings:

1. First year: See above.

2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs: See above.

(b) Reporting and paperwork requirements: See above.

(4) Assessment of anticipated effect on state and local revenues: Unable to anticipate effect on state revenues. Increased compliance with remittance of unclaimed property through reporting may increase the amount of unclaimed property received by the state.

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

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

(a) Geographical area in which emergency administrative regulation will be implemented: Implemented statewide, same as below.

(b) Kentucky: Potential slight increased costs for holder of unclaimed property, no cost associated with the general public.

(7) Assessment of alternative methods: reasons why alternatives were rejected: This was the only alternative possible as required by the wording of the statute and would allow for maximum protection of the public's interest in their unclaimed property.

(8) Assessment of expected benefits: Expected benefits would be to return more unclaimed property to its rightful owner in a way that is more efficient.

(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:

(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: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. The regulation applies to all holders of lost and abandoned property.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this emergency administrative regulation relate to any aspect of a local government, including any service provided by that local government? No, unless the local government is a holder of unclaimed property.

2. State, what unit, part or division of local government this administrative regulation will affect. None, unless any unit, part or division of local government is considered the holder of unclaimed property.

3. State the aspect or service of a local government to which this administrative regulation relates. None

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

Revenues: None

Expenditures: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Water (Amended After Hearing)

401 KAR 5:002. Definitions [of terms] for 401 KAR Chapter 5.

RELATES TO: KRS 224.01-010, 224.01-400, 224.10-100, 224.10-110, 224.16-050, 224.16-060, 224.40, 224.43, 224.46, 224.50, 224.60, 224.70, 224.71, 224.73 [224.70-100, 224.70-110], 40 CFR Parts 35, 116, 130, 131, 136, 401 - 471, 33 USC 1281, 1288, 1313(e), 1314(b), 1341, 1342, 42 USC 300f-j, 9601-9675

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.16-060, 224.70-100, 224.70-110, 224A.111, 224A.112, 224A.113, 40 CFR Parts 116, 130, 131, 136, 401 - 471, 33 USC 1281, 1288, 1313(e), 1314(b), 1341, 1342

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the Natural Resources and Environmental Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of all water pollution. This administrative regulation and 401 KAR 5:026, 5:029, 5:030, and 5:031 will operate to protect the surface waters of the Commonwealth, and thus protect water resources. This chapter establishes administrative regulations for the issuance of permits to construct, modify, and operate facilities which discharge pollutants to waters of the Commonwealth. This administrative regulation establishes definitions for terms and acronyms, abbreviations, and symbols used in 401 KAR Chapter 5, relating to the issuance of those permits. Where applicable, these definitions are the same as definitions used for the federal National Pollutant Discharge Elimination System program in 40 CFR Parts 116, 136, 401 - 471, and the planning requirements in 40 CFR Part 130; there are no definitions that are more stringent than federal requirements.

Section 1. Definitions. (1) "Act" means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 USC 1251, et seq.

(2) "Activity" means, for purposes of 401 KAR 5:050 to 5:080 and when used in conjunction with facility, any KPDES point source, or any other activity, including land or appurtenances thereto, that is subject to regulation under the KPDES program.

(3) "Acute-chronic ratio" means the ratio of the acute toxicity, expressed as an LC_{50} , of an effluent or a toxic substance, to its chronic toxicity. It is used as a factor to estimate chronic toxicity from acute toxicity data.

(4) "Acute criteria" means the highest instream concentration of a toxic substance or an effluent to which an organism can be exposed for a brief period of time without causing an unacceptable harmful effect.

(5) "Acute toxicity" means lethality or other harmful effect sustained by either an indigenous aquatic organism or a representative indicator organism used in a toxicity test, due to a short-term expo-

sure, of ninety-six (96) hours or less, to a specific toxic substance or mixture of toxic substances.

(6) "Acute toxicity unit" means the reciprocal of the effluent dilution that causes the acute effect, or LC_{50} , by the end of the acute exposure period.

(7) "Administrator" means the administrator of the United States Environmental Protection Agency, or the administrator's authorized representative.

(8) "Adversely affect" or "adversely change" means, for purposes of 401 KAR 5:026 through 5:031, to alter or change the community structure or function, to reduce the number or proportion of sensitive species, or to increase the number or proportion of pollution tolerant aquatic species so that aquatic life use support or aquatic habitat is impaired.

(9) "Agricultural wastes handling system" means a no-discharge structure or equipment that conveys, stores, or treats manure from an animal feeding operation prior to land application, but does not include a swine feeding operation.

(10) "Alternative effluent limitations" means all effluent limitations or standards of performance for the control of the thermal component of any discharge which are established under 401 KAR 5:055.

(11) "Animal feeding operation" means, for purposes of 401 KAR 5:005 and 5:050 to 5:080, a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

(a) 1. Animals other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12) month period; and

2. Crops, vegetation forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(b) Two (2) or more animal feeding operations under common ownership are considered to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

(12) "Animal unit" means, for purposes of 401 KAR 5:005 and 5:050 to 5:080, the unit of measurement for any animal feeding operation, calculated according to the following equation:

Animal Unit = $(N_1 \times 1.0) + (N_2 \times 1.4) + (N_3 \times 0.4) + (N_4 \times 0.1) + (N_5 \times 2.0)$

Where:

N_1 = Number of slaughter and feeder cattle;

N_2 = Number of mature dairy cattle;

N_3 = Number of swine weighing over twenty-five (25) kg;

N_4 = Number of sheep; and

N_5 = Number of horses.

(13) "Applicable standards and limitations" means all standards and limitations to which a discharge or a related activity is subject under KRS Chapter 224, and administrative regulations promulgated pursuant thereto, including but not limited to effluent limitations, water quality standards, standards of performance, and toxic effluent standards.

(14) "Application" means the document submitted by an applicant to the cabinet which provides information used by the cabinet in the issuance of a permit or approval. The application may have several different forms, depending on the type of permit which is requested. The specific forms are required in the applicable administrative regulation.

(15) "Approved POTW pretreatment program", "POTW pretreatment program", "pretreatment program", or "program" means a program administered by a POTW that meets the criteria established in 401 KAR 5:057 and which has been approved by the cabinet.

(16) "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater plants and animals.

(17) "Area of review" means a fixed radius around a facility of not less than one-fourth (1/4) mile.

(18) "Arithmetic mean for seven (7) consecutive days" means the average of a minimum of two (2) samples taken on separate days in a seven (7) day period.

(19) "Arithmetic mean for thirty (30) consecutive days" means the average of a minimum of three (3) samples collected in separate calendar weeks during a period of thirty (30) consecutive days with a minimum of twenty (20) days occurring between the first and last sam-

ple days.

(20) "Association of Boards of Certification" or "ABC" means that organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of water supply and wastewater systems, and assists authorities in establishing new certification programs and upgrading existing programs.

(21) "Available" means located within the planning area and:

(a) Located within one and zero-tenths (1.0) mile of a regional facility for WWTPs with an average daily design capacity larger than 1,000 gpd. The distance shall be measured along the most feasible route of connection to a point where the downstream sewer has capacity to carry the additional flow; or

(b) For new construction if the distance is one and zero-tenths (1.0) mile or more, where it is cost-effective to connect as determined by a twenty (20) year present worth cost analysis.

(22) "Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

(23) "Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

(24) "Balanced indigenous community" means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species, and a lack of domination by pollution tolerant species. The [Such-a] community may include historically nonnative species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modification. Normally, however, such a community does not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance of all sources with 401 KAR 5:065, and may not include species whose presence or [ef] abundance is attributable to alternative effluent limitations imposed pursuant to 401 KAR 5:055.

(25) "Barrel" means forty-two (42) U.S. gallons.

(26) "BAT" means best available technology economically achievable.

(27) "BCT" means best conventional pollutant control technology.

(28) "Best management practices" or "BMPs" means, for purposes other than agriculture operations, schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the Commonwealth. BMPs also include treatment requirements, operating procedures, practices to control site run-off, pollution of surface water and groundwater from nonpoint sources, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(29) "Biochemical oxygen demand", "BOD", or "BOD₅" means the amount of oxygen required to stabilize biodegradable organic matter under aerobic conditions within a five (5) day period. Other time periods may be measured, and if so, are indicated where the term is used.

(30) "BMPs" means best management practices.

(31) "Board" means the Kentucky Board of Certification of Wastewater System Operators, as established by KRS 224.73-110.

(32) "BOD" or "BOD₅" means biochemical oxygen demand.

(33) "BPT" means best practicable technology currently available.

(34) "Building drain" means that part of the lowest piping of the drainage system which receives the discharge from plumbing fixtures and other interior drainage pipes and conveys its discharge to the building sewer which begins two (2) feet outside the building wall.

(35) "Building sewer" means that part of the drainage system which extends from the end of the building drain, beginning two (2) feet outside the building wall, and conveys its discharge to a downstream manhole, sewer line, pump station, or sewage disposal system.

(36) "Bypass" means the intentional diversion of sewage or wastewaters from a portion of a facility or industrial user's treatment facility.

(37) "°C" means degrees Celsius.

(38) "CAH" means cold water aquatic habitat.

(39) "Carbonaceous biochemical oxygen demand" or "CBOD" means BOD, not including the nitrogenous oxygen demand of the

wastewater.

(40) "Cation exchange capacity" or "CEC" means the measure of the ability of a soil to retain cations in a form available for uptake by plants. CEC is expressed in milliequivalents per 100 grams of soil.

(41) "CBOD" means carbonaceous biochemical oxygen demand.

(42) "CEC" means cation exchange capacity.

(43) "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 USC 9601 et seq.).

(44) "Certificate" means the certificate of competency issued by the secretary or the secretary's designated agent stating that the operator has met the requirements for the specified operator classification as set by 401 KAR 5:010.

(45) "Certified operator" means a wastewater operator employed at a wastewater system who has primary responsibility for the system or a portion thereof which may affect the performance of the system and who holds a certificate of competency meeting the requirements of 401 KAR 5:010.

(46) "cfm" means cubic feet per minute.

(47) "CFR" means Code of Federal Regulations.

(48) "Chronic criteria" means the highest instream concentration of a toxic substance or an effluent to which organisms can be exposed indefinitely without causing an unacceptable harmful effect.

(49) "Chronic toxicity" means lethality, reduced growth or reproduction or other harmful effect sustained by either indigenous aquatic organisms or representative indicator organisms used in toxicity tests due to long-term exposures, relative to the life span of the organisms or a significant portion of their life span, to toxic substances or mixtures of toxic substances.

(50) "Chronic toxicity unit" means the reciprocal of the effluent dilution that causes twenty-five (25) percent inhibition of growth or reproduction to the test organisms by the end of the chronic exposure period.

(51) "Clean Water Act" or "CWA" means the Clean Water Act as subsequently amended (33 USC Section 1251 et seq.), otherwise known as the Federal Water Pollution Control Act.

(52) "Coal remining operation" means a surface coal mining operation which begins after July 11, 1990, at a site on which a coal mining operation was conducted before August 3, 1977. It also means a surface coal mining operation existing on July 11, 1990, which receives a permit revision from the Department for Surface Mining Reclamation and Enforcement (DSMRE) in accordance with 405 KAR 8:010, Section 20 for a site on which a coal mining operation was conducted before August 3, 1977.

(53) "COD" means chemical oxygen demand.

(54) "Cold water aquatic habitat" or "CAH" means surface waters and associated substrate that will support indigenous aquatic life or self-sustaining or reproducing trout populations on a year-round basis.

(55) "Combined sewer" or "combined sewer line" means a sewer or sewer line designed to carry storm water runoff as well as sanitary wastewater.

(56) "Combined sewer overflow" or "CSO" means the flow from a combined sewer in excess of the interceptor or regulator capacity that is discharged into a receiving water without going to a POTW.

(57) "Composite sample" means:

(a) Not less than four (4) effluent portions collected at regular intervals over a period of eight (8) hours and combined in proportion to flow;

(b) Not less than four (4) combined equal volume effluent portions collected over a period of eight (8) hours at intervals proportional to flow;

(c) An effluent portion collected continuously over a period of twenty-four (24) hours at a rate proportional to the flow; or

(d) An effluent portion consisting of a minimum of four (4) combined equal volume grab samples taken approximately two (2) hours apart.

(58) "Concentrated animal feeding operation" means, for purposes of 401 KAR 5:005, 5:009, and 5:050 to 5:080, an animal feeding operation where:

(a) More than the following numbers of indicated animals are confined:

1. 1,000 slaughter and feeder cattle;

2. 700 mature dairy cattle, whether milked or dry cows;

3. 2,500 swine each weighing over twenty-five (25) kilograms (approximately fifty-five (55) pounds);

4. 500 horses;

5. 10,000 sheep or lambs;

6. 55,000 turkeys;

7. 100,000 laying hens or broilers if the facility has continuous overflow watering;

8. 30,000 laying hens or broilers if the facility has a liquid manure system;

9. 5,000 ducks; or

10. 1,000 animal units; or

(b)1. More than the following number and types of animals are confined:

a. 300 slaughter or feeder cattle;

b. 200 mature dairy cattle, whether milked or dry cows;

c. 750 swine each weighing over twenty-five (25) kilograms (approximately fifty-five (55) pounds);

d. 150 horses;

e. 3,000 sheep or lambs;

f. 16,500 turkeys;

g. 30,000 laying hens or broilers if the facility has continuous overflow watering;

h. 9,000 laying hens or broilers if the facility has a liquid manure system;

i. 1,500 ducks; or

j. 300 animal units; and

2. Either pollutants are discharged into navigable waters through a manmade ditch, flushing system or other similar manmade device; or pollutants are discharged directly into waters of the Commonwealth which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(c) If an animal feeding operation discharges only during a twenty-five (25) year, twenty-four (24) hour storm event or greater, the animal feeding operation shall not be considered to be a concentrated animal feeding operation.

(59) "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria in 401 KAR 5:060 or which the cabinet designates under 401 KAR 5:060.

(60) "Consolidation sewer" means a conduit, without direct sanitary connections, which intercepts and transports combined sewer storm overflows to a treatment facility or a single combined sewer overflow point.

(61) "Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(62) "Control authority" means the POTW if the POTW has an approved pretreatment program or the cabinet if the POTW does not have an approved pretreatment program.

(63) "Conventional domestic water supply treatment" means or includes coagulation, sedimentation, filtration, and chlorination.

(64) "Conventional pollutant" means biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC), total suspended solids (TSS), ammonia (as N), bromide, chlorine (total residual), color, fecal coliform, fluoride, nitrate, kjeldahl nitrogen, oil and grease, and phosphorus.

(65) "Copermittee" means a permittee to a KPDES permit that is only responsible for the permit conditions relating to the discharge for which it is the operator.

(66) "Criteria" means specific concentrations or ranges of values, or narrative statements of water constituents which represent a quality of water expected to result in an aquatic ecosystem protective of designated uses of surface waters. Criteria are derived to protect legitimate uses such as aquatic life, domestic water supply, and recreation and to protect human health.

(67) "CSO" means combined sewer overflow.

(68) "CWA" means the Clean Water Act, as amended.

(69) "Daily discharge" means the discharge of a pollutant measured during a calendar day or any twenty-four (24) hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average meas-

urement of the pollutant over the day.

(70) "Date of program approval" means September 30, 1983, the effective date of the administrator's approval of Kentucky's KPDES regulatory program under CWA Section 402 (33 USC Section 1342).

(71) "Day" means a twenty-four (24) hour period.

(72) "Designated project area" means the portions of the waters of the Commonwealth within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan of operation, including, but not limited to, physical confinement, which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

(73) "Direct discharge" means the discharge of a pollutant into waters of the Commonwealth if the discharge is not included under the definition of indirect discharger, but does not include a discharge of animal waste onto land by land application if the discharge does not reach the waters of the Commonwealth.

(74) "Discharge" or "discharge of a pollutant" means any addition of any pollutant or combination of pollutants to waters of the Commonwealth from any point source. This definition includes, but is not limited to, additions of pollutants into waters of the Commonwealth from surface run-off which is collected or channeled by human effort; discharges through pipes, sewers or other conveyances whether publicly or privately owned which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works.

(75) "Discharge monitoring report" or "DMR" means the report including any subsequent additions, revisions, or modifications, for the reporting of self-monitoring results by KPDES permittees.

(76) "Disappearing stream" means an intermittent or perennial surface stream that terminates and drains underground through caves, fractures, or swallets in the stream bed.

(77) "Disposal well" means a borehole drilled or proposed to be drilled, or a well converted to be used, for the sole purpose of disposing of any water, gas, produced water, or other fluid by injection or other method into a subsurface zone.

(78) "Division" means the Kentucky Division of Water, within the Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet.

(79) "DMR" means discharge monitoring report.

(80) "Domestic" means relating to household wastes or other similar wastes. It is used to distinguish municipal, household, or commercial water or wastewater services from industrial water or wastewater services.

(81) "Domestic sewage" means sewage devoid of industrial or other wastes and which is typical of waste received from residential facilities. It may include wastes from commercial developments, schools, restaurants, and other similar developments.

(82) "Domestic water supply" or "DWS" means surface waters that with conventional treatment are suitable for human consumption through a public water system as defined in 401 KAR 8:010, culinary purposes, or for use in any food or beverage processing industry; and meet state and federal regulations under the Safe Drinking Water Act, as amended, 42 USC 300f - 300j.

(83) "Draft permit" means a document prepared under 401 KAR 5:009 or 5:075 indicating the cabinet's preliminary decision to issue or deny, modify, revoke and reissue, revoke, or reissue a permit. It includes a notice of intent to revoke a permit and a notice of intent to deny a permit as provided in 401 KAR 5:009 or 5:075. It does not include a proposed permit; a denial of a request for modification, revocation, and reissuance; or a denial of a request for revocation.

(84) "Drilling pit" means an earthen excavation for the collection of fluids associated with the drilling, construction, completion, acidizing, or fracturing of an oil or gas well.

(85) "Dry gas well" means a gas well producing one (1) barrel or less of produced water at maximum production conditions during a given twenty-four (24) hour period.

(86) "DWS" means domestic water supply.

(87) "Effluent ditch" means that portion of a treatment system which is a discrete, person-made conveyance, either totally owned, leased or under valid easement by the discharger, which transports a discharge to surface waters of the Commonwealth.

(88) "Effluent lagoon" means a treatment lagoon.

(89) "Effluent limitation" means any restriction imposed by the cabinet on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the Commonwealth.

(90) "Effluent limitations guideline" means a federal regulation published by the administrator under CWA Section 304(b) (33 USC Section 1314(b)) to adopt or revise technology-based effluent limitations.

(91) "Engineer" means a professional engineer.

(92) "Enhanced recovery well" means a well used for the injection of fluids to improve or maintain reservoir productivity.

(93) "Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

(94) "Epilimnion" means the thermally homogeneous water layer overlying the metalimnion of a thermally stratified lake or reservoir.

(95) "Establishment" means a manufacturing or industrial works or facility in the operation of which sewage, industrial wastes, or other wastes are generated or stored including but not limited to an industrial plant, mill, factory, tannery, paper or pulp mill, mine or mineral processing or producing facility, quarry, or oil refinery.

(96) "Eutrophication" means the enrichment of a surface water by the discharge or addition of a nutrient.

(97) "Exceptional water" means a surface water categorized as exceptional by the cabinet pursuant to 401 KAR 5:030.

(98) "Excessive infiltration" means a high groundwater period induced peak infiltration rate which results in operational problems and permit violations at the WWTP or results in recurring overflows from the sewer system or the WWTP. It does not include overflows which result from blockages, power failures or other temporary mechanical failures, or flood waters entering the sewer system directly. For combined sewer systems, infiltration shall not be considered to be excessive if an overflow occurs at a KPDES permitted overflow point that is in compliance with its permit requirements.

(99) "Excessive inflow" means a rainfall induced peak inflow rate which results in operational problems and permit violations at the WWTP or results in recurring overflows from the sewer system or the WWTP. For combined sewer systems, inflow shall not be considered to be excessive if an overflow occurs at a KPDES permitted overflow point that is in compliance with its permit requirements. It does not include overflows which result from blockages, power failures or other temporary mechanical failures, or flood waters entering the sewer system directly.

(100) "Existing source" means, for purposes of 401 KAR 5:080, any source which is not a new source or a new discharger.

(101) "Existing use" means a legitimate use being attained in or on a surface water of the Commonwealth on or after November 28, 1975, irrespective of its use designation.

(102) "Expanded discharge" means an increase in pollutant loading of twenty (20) percent or greater.

(103) "°F" means degrees Fahrenheit.

(104) "Facility" means:

(a) For purposes of 401 KAR 5:005, 5:006, or 5:009, a sewage system as defined in KRS 224.01-010 except for septic tanks, pretreatment facilities regulated by an approved pretreatment program or intermunicipal agreement, and disposal wells as used in 401 KAR 5:090;

(b) For purposes of 401 KAR 5:050 to 5:080 and when used in conjunction with activity, any KPDES point source, or any other facility, including land or appurtenances thereto, that is subject to regulation under the KPDES program; or

(c) For purposes of 401 KAR 5:090, any well, tank, pit, structure, appurtenance or improvement used in the exploration, drilling, or production of oil or gas or used for treating, storing, or disposing of produced water.

(105) "Facilities or equipment" means buildings, structures, process or production equipment, or machinery which form a permanent part of the new source and which will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.

(106) "Fecal coliform" means the portion of the coliform group of

bacteria which are present in the intestinal tract or the feces of warm-blooded animals. It generally includes organisms which are capable of producing gas from lactose broth in a suitable culture medium within twenty-four (24) hours at forty-four and five-tenths (44.5) degrees plus or minus two-tenths (0.2) degrees C.

(107) "Filter strip" means a strip or area of vegetation for removing sediment, organic material, and other pollutants from runoff and wastewater.

(108) "Flood relief sewer" means a conduit, without direct sanitary connections, that is used to transport sewage when a flood control structure or overflow detention basin is in operation.

(109) "Force main" means a conduit used to transport sewage from a pump discharge to a sewer line, pump station, or WWTP.

(110) "Gas" means, for purposes of 401 KAR 5:090, all natural gas, including casinghead gas, and all other hydrocarbons not defined as oil.

(111) "General permit" means any KPDES permit authorizing a category of discharges under KRS Chapter 224 within a geographical area, issued under 401 KAR 5:055.

(112) "Geologically isolated" means a zone separated from drinking water aquifers and free of known open faults or fractures and free of any unprotected wells within the area of review.

(113) "GPD" or "gpd" means gallons per day.

(114) "Grab sample" means:

(a) For purposes of 401 KAR 5:045, a single instantaneous portion of the effluent; or

(b) For purposes of 401 KAR 5:050 to 5:080, a single effluent portion which is not a twenty-four (24) hour composite sample.

(115) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table and perched water zones below the B soil horizon including water circulating through fractures, bedding planes, and solution conduits.

(116) "Harmonic mean flow" means the reciprocal of the mean of the reciprocal daily flow values.

(117) "Hazardous substance" means, for purposes of 401 KAR 5:050 to 5:080, any pollutant designated under 40 CFR Part 116.

(118) "Holding pit" means an earthen excavated depression which receives and stores produced water at a facility.

(119) "Hydraulic gradient" means the vertical distance measured from the surface of the swine waste in the lagoon, one (1) foot below the spillway, to the bottom of the liner, divided by the thickness of the liner.

(120) "Hypolimnion" means the lower cold region of a thermally stratified lake or reservoir that extends below the metalimnion to the bottom.

(121) "IC₂₅" means an inhibition concentration of twenty-five (25) percent.

(122) "Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a KPDES permit, other than the KPDES permit for discharges from the municipal separate storm sewer, and discharges resulting from fire fighting activities.

(123) "Impact" means, for the purpose of 401 KAR 5:026 through 5:031, a change in the chemical, physical, or biological quality or condition of a surface water.

(124) "Impairment" means, for the purpose of 401 KAR 5:026 through 5:031, a detrimental impact to a surface water that prevents attainment of a designated use.

(125) "Inactive mining operations" means mining sites that are not being actively mined, but which have an identifiable owner or operator. Inactive mining operations do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim.

(126) "Incorporated place" means a city, town, township, or village that is created under the Kentucky Revised Statutes.

(127) "Indigenous aquatic life" means naturally occurring aquatic organisms including but not limited to bacteria, fungi, algae, aquatic insects, other aquatic invertebrates, reptiles, amphibians, and fishes. Under some natural conditions one (1) or more of the above groups may be absent from a surface water.

(128) "Indirect discharge" or "discharge" means, for purposes of

401 KAR 5:057, the introduction of pollutants into a POTW from a non-domestic industrial source regulated by the program.

(129) "Indirect discharger" means a nondomestic discharger introducing pollutants to a publicly-owned treatment works.

(130) "Industrial user" or "user" means a source of indirect discharge.

(131) "Industrial wastes" means any liquid or other waste resulting from a process of industry, manufacture, trade, or business; or from the depletion of a natural resource.

(132) "Industrial wastewater treatment plant" or "IWWTP" means a privately owned WWTP with more than ninety (90) percent of the influent flow from sources of industrial waste.

(133) "Infiltration" means water other than wastewater that enters a sewer system from the ground through means such as defective pipes, pipe joints, connections, or manholes.

(134) "Inflow" means water other than wastewater that enters a sewer system from means such as roof leaders, yard drains, area drains, drains from springs or swampy areas, openings in manhole covers, cross connections with storm sewers, catch basins, cooling towers, storm waters, source runoff, street wash waters, drainage, or any other source which directs rainwater into the sewer system.

(135) "Inhibition concentration of twenty-five (25) percent" or "IC₂₅" means the concentration that is determined by a linear interpolation method for estimating the concentration at which a twenty-five (25) percent reduction is shown in reproduction or growth in test organisms, and which statistically approximates the concentration at which no unacceptable chronic effect is observed.

(136) "Injection" means, for purposes of 401 KAR 5:009, a type of land application in which the waste is placed directly beneath the land surface.

(137) "Intended use plan" means that document developed by the cabinet annually or biennially, as necessary, which contains a project priority list that prioritizes the cabinet's projects qualifying for federally assisted wastewater revolving fund monies pursuant to KRS Chapter 224A.

(138) "Interference" means a discharge which, alone or in conjunction with discharges from other sources:

(a) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use, or disposal; and

(b) Therefore, is a cause of a violation of a requirement of the POTW's KPDES permit, including an increase in the magnitude or duration of a violation, or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and administrative regulations or permits issued thereunder or under more stringent local administrative regulations: Section 405 of the Clean Water Act, as amended, the Solid Waste Disposal Act as amended (SWDA), including RCRA, and including any administrative regulations contained in a sludge management plan prepared pursuant to Subtitle D of the SWDA as amended, the Clean Air Act as amended, and the Toxic Substances Control Act as amended.

(139) "Intermediate facility" means a WWTP with an average daily design capacity of 10,000 to 49,999 gallons per day (GPD) or sewer lines of 2,500 feet to 5,000 feet in length including appurtenances.

(140) "Intermediate nonpublicly-owned treatment works" means a facility which has a design flow rate of between 10,000 gpd and 49,999 gpd of wastewater containing only conventional pollutants and which is not a POTW.

(141) "Intermediate WWTP" means:

(a) WWTP with an average daily design capacity of 10,000 to 49,999 gpd; or

(b) For coal washing facilities, a WWTP which serves a permanent coal processing facility that processes less than or equal to 500 tons per hour of raw coal.

(142) "Intermittent water" means a stream that flows only at certain times of the year.

(143) "Interstate agency" means an agency of which Kentucky and one (1) or more states is a member established by or under an agreement or compact, or any other agency, of which Kentucky and one (1) or more other states are members, having substantial powers or duties pertaining to the control of pollution as determined and approved by the secretary or administrator under the CWA or KRS Chapter 224.

(144) "IWWTP" means an industrial WWTP.

(145) "KAR" means Kentucky Administrative Regulations.

(146) "Karst" means the type of geologic terrane underlain by carbonate rocks where significant solution of rock has occurred due to flowing groundwater.

(147) "Karst feature" means a naturally occurring feature formed by the dissolution of carbonate rock including but not limited to a sinkhole drain, karst window, swallow, spring, sinking stream, or cave.

(148) "Kentucky Pollutant Discharge Elimination System" or "KPDES" means the Kentucky program for issuing, modifying, revoking and reissuing, revoking, monitoring and enforcing permits to discharge, and imposing and enforcing pretreatment requirements.

(149) "Kentucky Intermunicipal Operational Permit" or "KIMOP" means a permit issued pursuant to 401 KAR 5:005 for operating a publicly-owned sewer system which has more than 5,000 linear feet of sewer line which discharges to a sewer system, or a WWTP which is owned by another person.

(150) "Kentucky No Discharge Operational Permit" or "KNDOP" means a permit issued pursuant to 401 KAR 5:005 for operating a WWTP which does not have a discharge to a stream, including agricultural waste handling systems and spray irrigation systems.

(151) "kg" means kilograms.

(152) "KPDES" means the Kentucky Pollutant Discharge Elimination System.

(153) "KPDES permit" means a Kentucky Pollutant Discharge Elimination System permit issued to a facility, including a POTW, or activity pursuant to KRS Chapter 224 for the purpose of operating the facility or activity.

(154) "KRS" means Kentucky Revised Statutes.

(155) "Land application" means the uniform placement of animal waste on or in the soil by spraying or spreading on the surface, incorporation into the soil, or injection directly beneath the surface.

(156) "Land treatment" or "land disposal" means the application or incorporation of a pollutant onto or into the soil.

(157) "Large facility" means a WWTP with an average daily design capacity of 50,000 GPD or more, or sewer lines of more than 5,000 feet in length including appurtenances.

(158) "Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

(a) Located in an incorporated place with a population of 250,000 or more as determined by the latest census of the Bureau of Census;

(b) Owned or operated by a municipality other than that described in paragraph (a) of this subsection, and that are designated by the cabinet as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (a) of this subsection. In making this determination the cabinet may consider the following factors:

1. Physical interconnections between the municipal separate storm sewers;

2. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (a) of this subsection;

3. The quantity and nature of pollutants discharged to waters of the Commonwealth;

4. The nature of the receiving waters; and

5. Other relevant factors; or

(c) The cabinet may, upon petition, designate as a large municipal separate storm sewer system, those municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one (1) or more of the systems described in paragraph (a) or (b) of this subsection.

(159) "Large nonpublicly-owned treatment works" means a facility which has a design flow rate of greater than or equal to 50,000 gpd of wastewater containing only conventional pollutants and which is not a POTW.

(160) "Large WWTP" means:

(a) A WWTP with an average daily design capacity of 50,000 GPD or more; or

(b) For coal washing facilities, a WWTP which serves a permanent coal processing facility that processes more than 500 tons per hour of raw coal.

(161) "LC₅₀" means that concentration of a toxic substance or mixture of toxic substances that is lethal, or immobilizing if appropri-

ate, to one (1) percent of the organisms tested in a toxicity test during a specified exposure period.

(162) "LC₅₀" means that concentration of a toxic substance or mixture of toxic substances that is lethal, or immobilizing if appropriate, to fifty (50) percent of the species tested in a toxicity test during a specified exposure period.

(163) "Log sorting and log storage facilities" means, for purposes of 401 KAR 5:050 to 5:080, facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water or stored on land where water is applied intentionally on the logs.

(164) "Long-term CSO control plan" means a control plan which complies with the "Combined Sewer Overflow Control Policy" issued by the U.S. EPA in the "Federal Register" on April 19, 1994 (59 FR 18688).

(165) "Maintain" means, for purposes of 401 KAR 5:026 through 5:031, to preserve or keep in present condition by not allowing an adverse permanent or long-term change to water quality or to a population of an aquatic organism or its habitat.

(166) "Maintenance replacement" means replacement of:

(a) Existing component parts with component parts that have similar characteristics and capacity; or

(b) A section of sewer or force main with the same size, alignment, and slope;

(c) The term does not include replacement of an entire WWTP with a new WWTP.

(167) "Major facility" means any KPDES facility or activity classified as such by the cabinet in cooperation with the regional administrator. Designation as a major industry as used in KRS 224.70-120, does not indicate automatic classification as a major facility.

(168) "Major industry" means an industry that generates and discharges process-related wastewater while engaged in commercial activities including, but not limited to, resource recovery, manufacturing, products distribution, and wholesale and retail trade. Each industry has a design flow rate of greater than or equal to 50,000 gpd of process wastewater containing conventional, nonconventional, or thermal pollutants. A major industry designation is not a criteria for classification as a major facility.

(169) "Major municipal separate storm sewer outfall" or "major outfall" means:

(a) A municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of thirty-six (36) inches or more or its equivalent of a discharge from a single conveyance other than a circular pipe which is associated with a drainage area of more than fifty (50) acres; or

(b) For municipal separate storm sewers that receive storm water from lands zoned for industrial activity based on comprehensive zoning plans or the equivalent, an outfall that discharges from a single pipe with an inside diameter of twelve (12) inches or more or from its equivalent of a discharge from other than a circular pipe associated with a drainage area of two (2) acres or more.

(170) "Major outfall" means a major municipal separate storm sewer outfall.

(171) "Manmade" means constructed by humans.

(172) "Maximum daily discharge limitation" means the highest allowable daily discharge.

(173) "Measurement" means the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

(174) "Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

(a) Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the latest census by the Bureau of Census;

(b) Owned or operated by a municipality other than that described in paragraph (a) of this subsection, and that are designated by the cabinet as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (a) of this subsection. In making this determination the cabinet may consider the following factors:

1. Physical interconnections between the municipal separate storm sewers;

2. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (a) of this subsection;

3. The quantity and nature of pollutants discharged to waters of the Commonwealth;

4. The nature of the receiving waters; and

5. Other relevant factors; or

(c) The cabinet, may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one (1) or more of the systems described in paragraph (a) or (b) of this subsection.

(175) "Metalimnion" means the region of the thermocline.

(176) "µg/l" means micrograms per liter, same as ppb, assuming unit density.

(177) "mgd" or "MGD" means million gallons per day.

(178) "mg/l" means milligrams per liter, same as ppm, assuming unit density.

(179) "Milligrams per liter" or "mg/l" means the milligrams of substance per liter of solution, and is equivalent to parts per million in water, assuming unit density.

(180) "Minimum design volume" means the treatment volume in the lagoon necessary to maintain an anaerobic condition in the lagoon.

(181) "Minor industry" means an industry that generates and discharges process-related wastewater while engaged in commercial activities including, but not limited to, resource recovery, manufacturing, products distribution, and wholesale and retail trade. Each industry has a design flow rate of less than 50,000 gpd of process wastewater containing conventional, nonconventional, or thermal pollutants. If a facility discharges process-related wastewater and does not qualify under this definition, then the facility shall be considered to be a major industry.

(182) "Minor modification to a WWTP" means, for purposes of construction approvals required by 401 KAR 5:005, a modification which does not change the WWTP average daily design hydraulic or organic treatment capacity of the WWTP or discharge location.

(183) "Mixing zone" means a domain of a water body contiguous to a treated or untreated wastewater discharge with quality characteristics different from those of the receiving water. The discharge is in transit and progressively diluted from the source to the receiving system. The mixing zone is the domain where wastewater and receiving water mix.

(184) "Municipal separate storm sewer" means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:

(a) Owned or operated by a state, city, town, county, district, association, or other public body created by or pursuant to law, having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district, or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the CWA that discharges to waters of the Commonwealth;

(b) Designed or used for collecting or conveying storm water;

(c) Which is not a combined sewer; and

(d) Which is not part of a POTW.

(185) "Municipality" means a city, district, or other public body created by or under the Kentucky Revised Statutes and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency under CWA Section 208 (33 USC 1288).

(186) "National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements.

(187) "National pretreatment standard", "pretreatment standard", or "standard" means a federal regulation containing pollutant discharge limits promulgated by the U.S. EPA in accordance with Section 307(b) and (c) of the Act, which applies to industrial users. This term includes prohibitive discharge limits established pursuant to 401 KAR 5:057.

(188) "Natural Resources Conservation Service" or "NRCS" means the organization created pursuant to 7 USC 6962 in the United States Department of Agriculture. The NRCS was formerly called the Soil Conservation Service.

(189) "Natural temperature" means, for purposes of 401 KAR 5:026 through 5:031, the temperature that would exist in waters of the Commonwealth without the change of enthalpy of artificial origin, as contrasted with that caused by climatic change or naturally occurring variable temperature associated with riparian vegetation and seasonal changes.

(190) "Natural water quality" means, for purposes of 401 KAR 5:026 through 5:031, those naturally occurring physical, chemical, and biological properties of waters.

(191) "Net discharge" means, for purposes of 401 KAR 5:026 through 5:031, the amount of substance released to a surface water by excluding the influent value from the effluent value if both the intake and discharge are from and to the same or similar body of water.

(192) "New discharger" means, for purposes of 401 KAR 5:050 to 5:080, any building, structure, facility or installation:

(a) 1. From which there is or may be a discharge of pollutants;

2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

3. Which has never received a finally effective NPDES or KPDES permit for discharges at that site; and

4. Which is not a new source.

(b) This definition includes an indirect discharger which commences discharging into the waters of the Commonwealth after August 13, 1979. It also includes any existing mobile point source that begins discharging at a site for which it does not have a permit.

(193) "New source" means:

(a) For purposes of 401 KAR 5:050 to 5:080, any building, structure, facility, or installation from which there is or may be a direct or indirect discharge of pollutants, the construction of which commenced:

1. After promulgation of EPA's standards of performance or pretreatment standards which are applicable to such source; or

2. After proposal of EPA's standards of performance or pretreatment standards which are applicable to such source, but only if the federal standards are promulgated within 120 days of their proposal; or

(b) 1. For purposes of 401 KAR 5:057, a building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards which will be applicable to the source if the standards are thereafter promulgated if:

a. The building, structure, facility or installation is constructed at a site at which no other source is located;

b. The building, structure, facility or installation totally replaces the process of production equipment that causes the discharge of pollutants at an existing source; or

c. The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining if these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source shall be considered.

2. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subparagraph 1b or c of this paragraph but otherwise alters, replaces, or adds to existing process or production equipment.

3. Construction of a new source has commenced if the owner or operator has:

a. Begun, or caused to begin as part of a continuous on-site construction program:

(i) A placement, assembly, or installation of facilities or equipment;

(ii) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which may be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this clause.

(194) "Nonconventional pollutant" means a pollutant not consid-

ered to be a conventional pollutant, including priority pollutants identified in 401 KAR 5:060.

(195) "Nonpoint" means any source of pollutants not defined by a point source, as used in this chapter.

(196) "Nonprocess industry" means an industry that generates and discharges only nonprocess wastewater while engaged in commercial activities including manufacturing, resource recovery, products distribution, and wholesale and retail trade. Each industry discharges nonprocess wastewater, for example, noncontact cooling or stockpile run-off, and discharges wastewater that neither contains nor is likely to contain toxic pollutants in concentrations equal to or greater than the ninety-six (96) hour lethal concentration for fifty (50) percent mortality (96 LC₅₀) for a representative indigenous aquatic organism. If any of the above conditions is not met, then the discharge is considered to be from a minor industry.

(197) "NPDES" is defined [shall have the meaning given it] in KRS 224.01-010.

(198) "NRCS" means the Natural Resources Conservation Service.

(199) "Nutrient management plan" means the plan for an individual operation developed for the purpose of recycling nutrients from animal waste onto cropland or pasture in a manner that does not cause environmental harm.

(200) "Oil" means, for purposes of 401 KAR 5:090, natural crude oil or petroleum and other hydrocarbons, regardless of specific gravity, which are produced at the well in liquid form and which are not the result of condensation of gas after it leaves the underground reservoir.

(201) "O&M" means operation and maintenance.

(202) "Operate" means, for purposes of 401 KAR 5:090, any act relating to the construction, operation, or maintenance of any facility.

(203) "Operator" means:

(a) Any person involved in the operation of a facility or activity;

(b) For purposes of 401 KAR 5:010, any person involved in the operation of a wastewater system; or

(c) For purposes of 401 KAR 5:090, any person who operates a facility.

(204) "Other wastes" means sawdust, bark or other wood debris, garbage, refuse, ashes, offal, tar, oil, chemicals, acid drainage, wastes from agricultural enterprises, and other foreign substances not included within the definitions of industrial wastes and sewage which may cause or contribute to the pollution of any waters of the Commonwealth.

(205) "Outfall" means a point source at the point where a municipal separate storm sewer discharges to waters of the Commonwealth, but does not include open conveyances connecting two (2) municipal separate storm sewers, or pipes, tunnels, or other conveyances which connect segments of the same stream or other waters of the Commonwealth and are used to convey waters of the Commonwealth.

(206) "Outstanding national resource water" means a surface water categorized by the cabinet as an outstanding national resource water pursuant to 401 KAR 5:030.

(207) "Outstanding state resource water" means a surface water designated by the cabinet as an outstanding state resource water pursuant to 401 KAR 5:031.

(208) "Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally-occurring surface materials that are not disturbed by mining operations.

(209) "Overflow" means:

(a) Any intentional or unintentional diversion of flow from a facility; or

(b) For purposes of 401 KAR 5:057, the intentional or unintentional diversion of flow from the POTW before the POTW treatment plant.

(210) "Owner" means any person who possesses any interest in:

(a) The right to develop, operate, or produce oil or gas; or

(b) Any facility or activity.

(211) "Package WWTP" means a factory-built WWTP which is transported to and assembled or set in place at the site.

(212) "Pass through" means a discharge which exits the POTW into waters of the Commonwealth in quantities or concentrations which, alone or in conjunction with discharges from other sources, is a cause of violation of a requirement of the POTW's KPDES permit, including an increase in the magnitude or duration of a violation.

(213) "pCi/l" means picocuries per liter.

(214) "PCR" means primary contact recreation.

(215) "Permit" means:

(a) For purposes of 401 KAR 5:005 or 5:006, a document issued by the cabinet which authorizes the permittee to construct, modify, or operate a facility;

(b) For purposes of 401 KAR 5:009, a Swine Waste Management Permit; or

(c) For purposes of 401 KAR 5:050 to 5:080, a KPDES permit.

(216) "Plan of study" means a report that contains the following information required for a regional facility plan by 401 KAR 5:006, Section 4: planning area maps; a discussion of the need for sewer service in the area; population projections; and an estimation of the twenty (20) year cost by category.

(217) "Planning area" means the geographic area proposed to be served by a regional planning agency in a projected twenty (20) year period.

(218) "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal feeding operation, from which pollutants are or may be discharged. The term does not include agricultural storm water run-off or return flows from irrigated agriculture.

(219) "POTW" means publicly-owned treatment works as defined in KRS 224.01-010.

(220) "POTW treatment plant" means that portion of the POTW which is designed to provide treatment, including recycling and reclamation, of municipal sewage and industrial waste.

(221) "ppb" means parts per billion; assuming unit density, same as µg/l.

(222) "ppm" means parts per million; assuming unit density, same as mg/l.

(223) "Preexisting discharge" means any discharge that is occurring when applying for a KPDES permit under 401 KAR 5:029 or 5:040.

(224) "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing the pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical, or biological processes, process changes or by other means, except as prohibited by 401 KAR 5:057. Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that may interfere with or otherwise be incompatible with the POTW. However, if wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility shall meet an adjusted pretreatment limit, calculated in accordance with 401 KAR 5:057.

(225) "Pretreatment requirement" means a substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on an industrial user.

(226) "Pretreatment standard" means a national pretreatment standard.

(227) "Primary contact recreation water" means those waters suitable for full body contact recreation during the recreation season of May 1 through October 31.

(228) "Primary industry category" means any industry category listed as being a primary industry in 401 KAR 5:060.

(229) "Primary responsibility" means having the authority to conduct the procedures and practices necessary to ensure that the wastewater system or any portion thereof is operated in accordance with accepted practices, laws, and administrative regulations of the Commonwealth, or to supervise others in conducting these practices.

(230) "Privately-owned treatment works" means any device or system which is used to treat wastes from any facility or source of sewage whose owner or operator is not the owner or operator of the treatment works and which is not a POTW.

(231) "Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product.

(232) "Produced water" means all water, pollutants, and combinations thereof resulting, obtained, or produced from the exploration, drilling, or production of oil or gas.

(233) "Productive aquatic community" means an assemblage of

indigenous aquatic life capable of reproduction and growth.

(234) "Professional engineer" or "engineer" means a person registered to practice engineering pursuant to KRS Chapter 322.

(235) "Project priority list" means the list developed by the cabinet pursuant to KRS Chapter 224A which includes a priority ranking of applicants for the construction of wastewater treatment works under 33 USC 1313(e)(3)(H).

(236) "Propagation" means the continuance of a species by successful spawning, hatching, and development or natural generation in the natural environment, as opposed to the maintenance of the species by artificial culture and stocking.

(237) "Proposed permit" means a KPDES permit prepared after the close of the public comment period and, when applicable, any public hearing and administrative appeals, which is sent to EPA for review before final issuance by the cabinet. A proposed permit is not a draft permit.

(238) "Public water" shall have the meaning given it in 401 KAR 8:010.

(239) "RCRA" means the Resource Conservation Recovery Act as amended (42 USC 6901 et seq.).

(240) "Reclamation area" means the surface area of a coal mine which has been returned to required contour and on which revegetation (seeding or planting) work has commenced.

(241) "Recommencing discharger" means a source which recommences discharge after terminating operations.

(242) "Regional administrator" means the regional administrator of the Region IV office of the U.S. EPA or the authorized representative of the regional administrator.

(243) "Regional facility" means a facility designated by a regional facility plan or water quality management plan to provide wastewater collection, transportation, or treatment services for a specific area. This facility shall be owned by a city, county, or other public body that was created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220.

(244) "Regional facility plan" means a type of water quality management plan addressing point sources of pollution for the purpose of areawide waste treatment management planning prepared by the designated regional planning agency pursuant to Sections 201, 205, and 208 of the CWA to control point sources of pollution within a planning area.

(245) "Regional planning agency" means a governmental agency, such as a city, county, or other public body created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220, that has been designated pursuant to 33 USC 1288 of the CWA and 40 CFR Part 130 to provide planning for the treatment of wastewater and for controls and recommendations relating to wastewater for a particular area. Those existing agencies that have developed plans pursuant to Sections 201, 205, 208, and 303(e) of the CWA shall be considered the regional planning agency for the area.

(246) "Regional sewage collection system" means a sewage collection system designated by a regional planning agency which is owned by a city, county, or other public body that was created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220.

(247) "Register" means to file forms with the division which contain information as to oil and gas well geographic location, production, produced water production, methods used for treating, storing, or disposing of produced water, and other information deemed necessary by the division.

(248) "Remined area" means only that area of any coal remining operation on which a coal mining operation was conducted before August 3, 1977.

(249) "Removal" means, for purposes of 401 KAR 5:057, a reduction in the amount of a pollutant in the POTW's effluent or alteration of the nature of a pollutant during treatment at the POTW. The reduction or alteration may be obtained by physical, chemical, or biological means and may be the result of specifically designed POTW capabilities or may be incidental to the operation of the treatment system. Removal shall not mean dilution of a pollutant in the POTW.

(250) "Representative important species" means species which are representative, in terms of their biological needs, of a balanced, indigenous community of shellfish, fish, and wildlife in the body of water into which a discharge of heat is made.

(251) "Representative indicator organism" means an aquatic organism designated for use in toxicity testing because of its relative sensitivity to toxicants and its widespread distribution in the aquatic

environment.

(252) "Requester" means any industrial user or a POTW or other interested person seeking a variance from the limits specified in a categorical pretreatment standard.

(253) "Residual solids" means the accumulated solid waste in the lower portion of a lagoon that contains greater than two and zero-tenths (2.0) percent total solids by dry weight analysis.

(254) "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap.

(255) "Run-off coefficient" means the fraction of total rainfall that will appear at a conveyance as run-off.

(256) "SARA" means the Superfund Amendments and Reauthorization Act, as amended.

(257) "Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements leading to compliance with KRS Chapter 224 and administrative regulations promulgated pursuant thereto.

(258) "SCR" means secondary contact recreation.

(259) "Secondary contact recreation waters" means those waters that are suitable for partial body contact recreation, with minimal threat to public health due to water quality.

(260) "Secondary industry category" means any industry category which is not a primary industry category.

(261) "Secondary treatment" means that degree of treatment which results in an effluent quality which meets the minimum requirements of 401 KAR 5:045.

(262) "Service area" means that geographic area currently being served by a regional facility.

(263) "Seven-Q-ten" or "7Q₁₀" means that minimum average flow which occurs for seven (7) consecutive days with a recurrence interval of ten (10) years.

(264) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage shall not mean economic loss caused by delays in production.

(265) "Sewage" means the water-carried human or animal wastes from residences, buildings, or other places together with industrial wastes or underground, surface, storm or other water, as may be present.

(266) "Sewage sludge" means the solids, residues, and precipitate separated from or created in sewage by the unit processes of a wastewater treatment plant. Sewage as used in this definition means any wastes, including wastes from humans, households, commercial establishments, industries, and storm water run-off, that are discharged to or otherwise enter a wastewater treatment plant.

(267) "Sewer line" means those devices used for collecting, transporting, pumping, or disposing of sewage, but not a building sewer which serves an individual building. A sewer line begins at the junction of two (2) building sewers which serve different buildings. Sewer lines include gravity sewer lines, pump stations, and force mains.

(268) "Sewer line extension" means a proposed construction project which extends a sewer system; it includes gravity sewer lines, pump stations, and force mains.

(269) "Sewer system" means the network of sewer lines, pump stations, and force mains that discharge to a common WWTP.

(270) "SIC" means standard industrial classification.

(271) "Significant industrial user" means:

(a) Except as provided in paragraph (b) of this subsection:

1. Industrial users subject to categorical pretreatment standards promulgated by EPA and codified in 40 CFR Chapter I, Subchapter N (Parts 401 through 471); and

2. Any other industrial user that:

a. Discharges an average of 25,000 gallons per day or more of process wastewater to the POTW, excluding sanitary, noncontact cooling and boiler blowdown wastewater;

b. Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

c. Is designated as such by the control authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating a pretreatment standard or require-

ment.

(b) Upon a finding that an industrial user meeting the criteria for a significant industrial user has no reasonable potential for adversely affecting the POTW's operation or for violating a pretreatment standard or requirement, the control authority may, on its own initiative or in response to a petition received from an industrial user or a POTW, and in accordance with 401 KAR 5:057, determine that the industrial user is not a significant industrial user.

(272) "Significant materials" means, but is not limited to, and for purposes of 401 KAR 5:050 to 5:080: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of CERCLA; any chemical the facility is required to report pursuant to Section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with storm water discharges.

(273) "Silvicultural point source" means, for purposes of 401 KAR 5:050 to 5:080, any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the Commonwealth. The term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural run-off.

(274) "Sinkhole" means a naturally occurring topographic depression in a karst area. Its drainage is subterranean and serves as a recharge source for groundwater and it is formed by the collapse of a conduit or the solution of bedrock.

(275) "Site" means, for purposes of 401 KAR 5:050 to 5:080, the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

(276) "Sludge requirements" means the following statutory provisions and administrative regulations or permits issued thereunder, or under more stringent local administrative regulations: Section 405 of the Clean Water Act, as amended; the Solid Waste Disposal Act (SWDA), as amended, including Title II, more commonly referred to as the Resource Conservation Recovery Act (RCRA) and administrative regulations contained in any sludge management plan prepared pursuant to Subtitle D of SWDA, as amended; the Clean Air Act, as amended; and the Toxic Substances Control Act, as amended.

(277) "SMCRA" means the Surface Mining Control and Reclamation Act, as amended (33 USC 1201 et seq.).

(278) "Small facility" means a WWTP with an average daily design capacity less than 10,000 GPD or sewer lines of less than 2,500 feet in length including appurtenances.

(279) "Small nonpublicly-owned treatment works" means a facility which has a design flow rate of less than 10,000 gpd of wastewater containing only conventional pollutants and which is not a POTW.

(280) "Small WWTP" means:

(a) A WWTP with an average daily design capacity of less than 10,000 gpd; or

(b) For coal washing facilities, a WWTP which serves a portable coal processing facility.

(281) "Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(282) "SPCC" means spill prevention control and countermeasure.

(283) "Standard" means:

(a) For purposes of 401 KAR 5:026, 5:029, 5:030 or 5:031, a water quality standard; or

(b) For purposes of 401 KAR 5:057, a pretreatment standard.

(284) "Storm water" means storm water run-off, snow melt run-off, and surface run-off and drainage.

(285) "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw material storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the KPDES program under 401 KAR 5:055. For the categories of industries identified in paragraphs (a) to (j) of this subsection,

the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or byproducts used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas including tank farms for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in paragraph (k) of this subsection, the term includes only storm water discharges from all the areas except access roads and rail lines, that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this subsection, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, byproduct, or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in this subsection, include those facilities designated under 401 KAR 5:060, Section 12(1)(a). The following categories of facilities are considered to be engaging in an industrial activity for purposes of this subsection:

(a) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 401 KAR 5:065, Section 4, except facilities with toxic pollutant effluent standards which are exempted under paragraph (k) of this subsection;

(b) Facilities classified as Standard Industrial Classifications 24 except 2434; 26 except 265 and 267; 28 except 283; 29; 311; 32 except 323; 33; 3441; and 373;

(c) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations, except for areas of coal mining operations that are no longer reclamation areas because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of noncoal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990, and oil and gas exploration production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, by-products, or waste products located on the site of these operations;

(d) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA;

(e) Landfills, land application sites, and open dumps that receive or have received any industrial wastes, that is waste that is received from any of the facilities described under this subsection, including those that are subject to regulation under Subtitle D of RCRA;

(f) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(g) Steam electric power generating facilities, including coal handling sites;

(h) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 except 4221-4225, 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance, including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication, equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (a) to (g) and (i) to (k) of this subsection are associated with industrial activity;

(i) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage,

treatment, recycling, and reclamation of municipal or domestic sewage, including lands dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of one and zero-tenths (1.0) mgd or more, or required to have an approved pretreatment program under 401 KAR 5:057. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with Section 405 of the CWA;

(j) Construction activity including clearing, grading and excavation activities except operations that result in the disturbance of less than five (5) acres of total land area which are not part of a larger common plan of development or sale;

(k) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 except 311, 323, 34 except 3441, 35, 36, 37 except 373, 38, 39, 4221-4225, and which are not otherwise included within categories of paragraphs (b) to (j) of this subsection.

(286) "Stripper well" means any oil well producing ten (10) barrels or less per day of oil.

(287) "Submission" means, for purposes of 401 KAR 5:057:

(a) A request by a POTW to the cabinet for approval of a pretreatment program; and

(b) A request by a POTW to the cabinet for authority to revise the discharge limits in categorical pretreatment standards to reflect POTW pollutant removals.

(288) "Supernatant" means the water that accumulates in the upper portion of a lagoon and contains no greater than two and zero-tenths (2.0) percent total solids by dry weight analysis.

(289) "Surface mining operation" means only those facilities required to have a permit by 405 KAR Chapters 7 through 26.

(290) "Surface waters" means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface. Effluent ditches and lagoons used for waste treatment which are situated on property owned, leased, or under valid easement by a permitted discharger are not considered to be surface waters of the Commonwealth.

(291) "SWDA" means the Solid Waste Disposal Act, as amended (42 USC 6901 et seq.).

(292) "Swine feeding operation" means an operation that:

(a) Confines 1,000 or more swine units at a given time; and

(b) Is not a concentrated animal feeding operation.

(293) "Swine units" means the units of measurement used to determine the applicability of 401 KAR 5:009. The number of units shall be determined using the formula in 401 KAR 5:009.

(294) "Swine waste" means the waste from a swine feeding operation, including manure, bedding, soil, wasted water and feed, and flushing water from swine confinement.

(295) "Swine waste lagoon" means a structure constructed pursuant to 401 KAR 5:009 for the purpose of collecting, storing, and treating the waste from a swine feeding operation.

(296) "Swine Waste Management Permit" or "SWMP" means the permit issued pursuant to 401 KAR 5:009 that authorizes the construction or operation of one (1) or more swine waste lagoons and all related appurtenances and the implementation of a nutrient management plan at the swine feeding operation.

(297) "SWMP" means a swine waste management permit.

(298) "Tank battery" means an installation where oil is collected from wellheads and is separated from produced water.

(299) "TDS" means total dissolved solids.

(300) "Thermocline" means the plane in a thermally stratified body of water in which the maximum rate of decrease in temperature occurs with respect to depth.

(301) "Total dissolved solids" or "TDS" means the total dissolved solids (filterable residue) as determined by use of the method specified in 40 CFR Part 136.

(302) "Total suspended solids" or "TSS" means the total suspended solids (nonfilterable residue) as determined by use of the method specified in 40 CFR Part 136.

(303) "Toxic pollutant" means, for purposes of 401 KAR 5:050 to 5:080, any pollutant listed as being toxic in 401 KAR 5:080.

(304) "Treatment lagoon" or "effluent lagoon" means, as used in 401 KAR 5:029 and as applied to facilities subject to 401 KAR 5:090, a secondary recovery or water-flood impoundment on which on-site construction commenced before May 19, 1980; owned or operated by a person eligible to receive a KPDES permit for a discharge from that impoundment, if used for the purpose of diluting produced water, and if the owner or operator received approval from the cabinet of its request for designation as such on or before September 4, 1986.

(305) "Toxic substance" means a substance that is bioaccumulative, synergistic, antagonistic, teratogenic, mutagenic or carcinogenic and causes death, disease, a behavioral abnormality, a physiological malfunction, or a physical deformity in an organism or its offspring or interferes with normal propagation.

(306) "TSS" means total suspended solids.

(307) "Twenty-four (24) hour composite sample" means not less than twelve (12) effluent portions collected at regular intervals over a period of twenty-four (24) hours which are composited in proportion to flow.

(308) "Twenty-five (25) year, twenty-four (24) hour rainfall event" means a twenty-four (24) hour rainfall event with a probable recurrence interval of once in twenty-five (25) years, as determined by "Rainfall Frequency Values for Kentucky, Engineering Memorandum No. 2, April 30, 1971, Revised July 1, 1979", incorporated by reference in Section 3 of this administrative regulation.

(309) "Underground injection" means a well injection.

(310) "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards or technology-based effluent limitations because of factors beyond the reasonable control of the industrial user or permittee. An upset shall not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(311) "USC" means United States Code.

(312) "U.S. EPA" means the United States Environmental Protection Agency.

(313) "USGS" means the United States Geological Survey.

(314) "Use-protected water" means a surface water categorized as use protected by the cabinet pursuant to 401 KAR 5:030.

(315) "Variance" means:

(a) For purposes of 401 KAR 5:050 through 5:080, any mechanism or provision under the KPDES administrative regulations which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines; or

(b) For purposes of 401 KAR 5:009, a mechanism or provision that allows a modification or waiver of specified requirements.

(316) "WAH" means warm water aquatic habitat.

(317) "Warm water aquatic habitat" or "WAH" means any surface water and associated substrate capable of supporting indigenous warm water aquatic life.

(318) "Wastewater system" means a sewage system as defined in KRS 224.01-010.

(319) "Wastewater treatment plant" or "WWTP" means a facility used for the treatment and disposal of sewage.

(320) "Water quality management plan" or "WQM plan" means:

(a) A plan consisting of initial plans produced in accordance with Sections 208 and 303(e) of the CWA and certified and approved updates to those plans; or

(b) A state or areawide waste treatment management plan developed and updated in accordance with Sections 201, 205(j), 208, and 303(e) of the CWA and 40 CFR Part 130.

(321) "Water quality standard" means an administrative regulation promulgated by the cabinet establishing the designated use of a surface water and the water quality criteria necessary to maintain and protect that designated use.

(322) "Well" or "water well" means:

(a) For purposes of 401 KAR 5:005, any excavation or opening in the surface of the earth that is drilled, cored, bored, washed, driven, jetted, or otherwise constructed when the actual or intended use in whole or in part of an excavation is the removal of water for any purpose, including but not limited to culinary household purposes, animal consumption, food manufacture, use of geothermal resources for domestic heating purposes, and industrial, irrigation, and dewatering

purposes;

(b) For purposes of 401 KAR 5:050 to 5:080, a bored, drilled, or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension; or

(c) For purposes of 401 KAR 5:090, a borehole drilled, or proposed to be drilled for the purpose of producing gas or oil or one (1) through which gas or oil is being produced, or a borehole drilled or proposed to be drilled for the purpose of injecting any water, gas, produced water, or other fluid therein or one (1) into which any water, gas, produced water, or other fluid is being injected.

(323) "Wellhead protection area" means:

(a) The surface and subsurface area surrounding a water well, well field, or spring, supplying a public water system, through which pollutants are reasonably likely to move toward and reach the water well, well field, or spring; or

(b) An area defined as a wellhead protection area in a county water supply plan.

(324) "Well injection" means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension.

(325) "Wetlands" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(326) "Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

(327) "WWTP" means wastewater treatment plant.

(328) "Zone" means a subsurface layer or stratum capable of producing or receiving fluids.

(329) "Zone of initial dilution" means the limited area permitted by the cabinet surrounding or downstream from a discharge location where rapid, first-stage mixing occurs. The zone of initial dilution is the domain where wastewater and receiving water initially mix.

(330) "Zone of saturation" means the zone in which all the subsurface voids in the rock or soil are filled with water.

(331) "100-year, twenty-four (24) hour rainfall event" means a twenty-four (24) hour rainfall event with a probable recurrence interval of once in 100 years, as determined by "Rainfall Frequency Values for Kentucky, Engineering Memorandum No. 2, April 30, 1971, Revised July 1, 1979", incorporated by reference in Section 3 of this administrative regulation.

Section 2. Federal Regulations Adopted Without Change. The following federal regulations govern the subject matter of this administrative regulation and are hereby adopted without change. The federal regulations are available for inspection and copying, [subject to copyright law;] during normal business hours of 8 a.m. to 4:30 p.m., eastern time, excluding state holidays, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky, or may be purchased from the U.S. Superintendent of Documents, Washington, D.C.

(1) "40 CFR Part 116, "Designation of Hazardous Substances," July 1, 1997", U.S. Environmental Protection Agency, U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328;

(2) "40 CFR Part 136, "Guidelines Establishing Test Procedures for the Analysis of Pollutants," July 1, 1998 [1997]", U.S. Environmental Protection Agency, U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328; and

(3) "40 CFR Chapter I, Subchapter N, Parts 401 through 471, "Effluent Guidelines and Standards," July 1997", [U.S. Environmental Protection Agency;] U.S. Environmental Protection Agency, U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328.

Section 3. Incorporation by Reference. (1) "Rainfall Frequency Values for Kentucky, Engineering Memorandum No. 2, April 30, 1971; Revised June 1, 1979"; Commonwealth of Kentucky, Department for Natural Resources and Environmental Protection, Bureau of Natural Resources, Division of Water Resources, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Kentucky Division of Water, 14 Reilly Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. [This material may be subject to

copyright law.]

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: September 9, 1999

FILED WITH LRC: September 9, 1999 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact person: Jack A. Wilson

(1) Type and number of entities affected: This administrative regulation defines the terms used by administrative regulations in 401 KAR Chapter 5. It is being amended to accompany the amended water quality standards, 401 KAR 5:026, 5:029, 5:030 and 5:031, filed on the same date. The terms defined apply to all the programs in 401 KAR Chapter 5, including the Kentucky Pollutant Discharge Elimination System, permits for the construction and operation of wastewater facilities, oil and gas production, and the amended water quality standards. Any impact of these administrative regulations on the entities affected occurs in the specific administrative regulation where the term is actually used. This administrative regulation is being amended to provide one central location where terms used in Chapter 5 are defined.

(2) Direct and indirect costs or savings: There are no direct or indirect costs or savings on the affected entities due to the amendment of this administrative regulation; any direct or indirect costs or savings would occur in the administrative regulation where the term is used.

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No known or expected impacts. No specific comments were received during the public comment period.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No known or expected impacts. No specific comments were received during the public comment period.

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

1. First year following implementation: No specific comments were received during the public comment period.

2. Second and subsequent years: No specific comments were received during the public comment period.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There are no effects on this agency from defining these terms. Any impact would occur when the terms are used in a particular administrative regulation.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no reporting and paperwork requirements imposed by the terms defined in this amended administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: No known or expected effects. Any effects would occur in the administrative regulation where the term is used.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The sources of revenue will be those funds appropriated to each program in 401 KAR Chapter 5.

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

(a) Geographical area in which administration regulation will be implemented: No specific comments were received during the public comment period.

(b) Kentucky: No specific comments were received during the public comment period.

(7) Assessment of alternative methods; reasons why alternatives were rejected: One alternative method would have been to define all terms in Section 1 of each administrative regulation, but that would have required that terms be duplicated in each administrative regulation in the chapter. That in turn would have generated longer administrative

regulations, requiring more printing time, paper, and other resources. Also, if a definition changed, each administrative regulation would have to be amended. Therefore to save time and expenses of amending and printing each administrative regulation, and so the public will know that all the definitions are in one location, the Division of Water is amending the administrative regulation that will apply to all administrative regulations in the chapter. As the administrative regulations in the chapter are amended, the definitions in those administrative regulations will be moved to this administrative regulation.

(8) Assessment of expected benefits of the administrative regulation: None

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None; any effect on public health and environmental welfare would occur where the term is used in an administrative regulation.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Any detrimental effect on environment and public health if the administrative regulation were not implemented would occur in the program where the administrative regulation would exist.

(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: No known statute, administrative regulation, or government policy is in conflict, overlapping, or duplication.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is not applicable to definitions. However, the individual administrative regulation where the terms are used may be tiered.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation mandating that Kentucky implement a water pollution control program or use these definitions. For Kentucky to maintain its delegation over the NPDES permit program, however, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 CFR Part 131, including the requirement for an antidegradation policy. This administrative regulation is being amended to add definitions relating to the triennial review and the antidegradation policy and its implementation. There is federal guidance issued for states on how to implement the water quality standards and the antidegradation policy, but there is no federal regulation that mandates these definitions.

2. State compliance standards. 401 KAR 5:002, 5:026, 5:029, 5:030, and 5:031, the water quality standards regulations.

3. Minimum or uniform standards contained in the federal mandate. The Clean Water Act requires designated uses, criteria, standards and antidegradation policies in water quality standards.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no stricter standard or additional or different responsibilities or requirements.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. This amended administrative regulation applies to city, county, or other municipal governments, including special districts, sanitation districts, etc.

3. State the aspect or service of local government to which this

administrative regulation relates. Portions of this amended administrative regulation apply to city, county, or other municipal governments, including special districts, sanitation districts, etc. Those entities provide sanitation services to the populations served by the local government.

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

Revenues (+/-): None

Expenditures (+/-): None

Other explanation: Since this amended administrative regulation merely defines terms, it does not impact the expenditures or revenues of a local government.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Water (Amended After Hearing)

401 KAR 5:026. Designation of uses of surface [Classification of] waters.

RELATES TO: KRS 146.200 to 146.360, 146.410 to 146.990, 224.01-100, 224.01-400, 224.16-050, 224.16-070, 224.40, 224.43, 224.46, 224.50, 224.60, 224.70, 224.71, 224.73 [Chapter 224]

STATUTORY AUTHORITY: KRS 146.200 to 146.360, 146.410 to 146.990, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 CFR Part 131, 16 USC 1271 et seq., 1531 et seq., 33 USC 1311, 1313, 1314, 1316, 1341

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of pollution. This administrative regulation and 401 KAR 5:002, 5:029, 5:030, and 5:031 will operate to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation applies the designated uses described [use classifications found] in 401 KAR 5:031 to the surface waters of the Commonwealth. This administrative regulation also makes all surface waters subject to the general criteria specified in [Section 2 of] 401 KAR 5:031, Section 2. Definitions for terms used in this administrative regulation are found in 401 KAR 5:002 [5:029].

Section 1. Scope of Designation [Classification to Designated Uses]. (1) Surface waters listed [classified] under this administrative regulation shall be designated for all legitimate uses contained [listed] in KRS 224.70-100(1) except as specified in 401 KAR 5:031, Sections [Section] 5 and 7, or until redesignated [reclassified] in accordance with the procedures of this administrative regulation.

(2) Those designated uses are:

(a) Warm water aquatic habitat;

(b) Cold water aquatic habitat;

(c) Primary contact recreation;

(d) Secondary contact recreation;

(e) Domestic water supply; and

(f) Outstanding state resource water.

(3) Listed [Classified] waters shall meet all criteria applicable to their designated uses and those criteria listed in [Section 2 of] 401 KAR 5:031, Section 2, unless the cabinet grants an exception pursuant to 401 KAR 5:031, Section 9 or 10 [8].

(4) Outstanding state resource waters may have unique water quality characteristics that [which] shall be protected [maintained] by additional criteria adopted as administrative regulations by the cabinet pursuant to 401 KAR 5:031, Section 7.

Section 2. Redesignation of Surface Water Uses. [Reclassification.] (1) Surface waters may be redesignated [reclassified] only upon affirmative findings by the cabinet pursuant to Sections 3 and 4 [5 and 6] of this administrative regulation. Before redesignating a [reclassifying any] surface water, the cabinet shall provide notice and an oppor-

tunity for a public hearing.

(2) In redesignating a [reclassifying any] surface water, the cabinet shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream surface waters.

(3) A designated use shall not be removed for a surface water if that use is an existing use, or if the use may be attained by implementing effluent limitations required under Sections 301(b) and 306 of the Clean Water Act, 33 USC 1311(b) and 1316, and by implementing cost-effective and reasonable best management practices for nonpoint source control.

(4) If a surface water is designated for a use that is not an existing use, the cabinet shall redesignate [reclassify] the surface water upon demonstration that the designated use is unattainable because:

(a) Naturally occurring pollutant concentrations prevent the attainment of the use; or

(b) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges; or

(c) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or

(d) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the surface water to its original condition or to operate such modification in a way that would result in the attainment of the use; or

(e) Physical conditions related to the natural features of the surface water, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of the aquatic life use; or

(f) Controls more stringent than those required by Sections 301(b) and 306 of the Clean Water Act, 33 USC 1311(b) and 1316, would result in substantial and widespread economic and social impact as determined by following the guidelines in "Interim Economic Guidance for Water Quality Standards Workbook (EPA, March 1995)" incorporated by reference in Section 6 of this administrative regulation.

(5) Redesignations shall [Reclassifications will] be consistent with the antidegradation provisions [nondegradation requirements] of 401 KAR 5:029 and 401 KAR 5:030 [; Section 2].

Section 3. [Priority for Implementation. Priorities for reclassification of the surface waters of the Commonwealth are:

(1) Surface waters receiving or proposed to receive discharges from a POTW or serving as public water system sources have first priority in the following order:

(a) Any local unit of government with a pending construction permit application for installation or upgrading of a POTW or public water system treatment plant;

(b) Any local unit of government in the cabinet's construction grants program administered pursuant to 33 USC 1281 for installation or upgrading of a POTW in an order of priority consistent with its priority project list rank;

(c) Any local unit of government which requests consideration prior to entering its own construction project, applying for an NPDES or KPDES permit, or applying for participation in the cabinet's construction grants program administered pursuant to 33 USC 1281 for installation or upgrading of a POTW;

(d) Other local units of government, on a first-come, first-served basis;

(2) Surface waters receiving or proposed to receive discharges from any other treatment works shall have second priority in the following order:

(a) Applicants for new or modified NPDES or KPDES permits for discharges to surface waters which may potentially be classified for cold-water aquatic habitat;

(b) All other surface waters with point source dischargers on a first come, first served basis;

(3) Reclassifications for all other surface waters which do not have any existing or proposed point source dischargers have third priority;

(4) These priorities may be varied by order of the cabinet.

Section 4. Responsibility for Providing Documentation. The fol-

lowing entities are responsible for providing the documentation for the reclassification of the surface waters under this administrative regulation. The required documentation is listed in Section 5 of this administrative regulation:

(1) The cabinet will provide supporting documentation for the reclassification of surface waters on which are located or proposed to be located facilities which are either:

(a) POTWs; or

(b) Outstanding resource waters on publicly owned land; or

(c) Applicants for new or modified NPDES or KPDES permits for discharges to surface waters which may potentially be classified as outstanding resource waters;

(2) Any applicant filing for reclassification of surface waters in circumvention of the priority system contained in Section 3 of this administrative regulation shall provide the cabinet with classification documentation. The applicant has the burden of proof that the reclassification is appropriate and necessary;

(3) The cabinet will provide documentation for all other surface waters which do not have any existing or proposed point source dischargers.

Section 5. Required Documentation for Redesignations. (1) A person may request redesignation of surface water uses by petition to the cabinet. The petitioner shall provide the cabinet with the documentation required in subsection (3) of this section and shall have the burden of proof that the redesignation is appropriate.

(2) The cabinet may propose redesignations of surface water uses. The cabinet shall provide documentation for those surface waters that it proposes for use redesignation.

(3) Documentation [which shall be required] to support the redesignation [reclassification] of a surface water of the Commonwealth shall be [is as follows]:

(a) [(1)] A United States Geological Survey 7.5 minute topographic map or its equivalent approved by the cabinet showing those surface waters to be redesignated [reclassified], with a description consisting of a river mile index with [any] existing and proposed discharge points;

(b) [(2)] Existing uses and water quality data for the surface waters for which the redesignation [reclassification] is proposed. If [Where] adequate data are unavailable, additional studies may be required by the cabinet;

(c) [(3)] Descriptions of general land uses [e.g., mining, agricultural, recreation, low, medium, and high density residential, commercial-industrial, etc.] and specific land uses adjacent to the surface waters for which the redesignation [reclassification] is proposed;

(d) [(4)] The existing and designated uses of the downstream waters into which the surface water under consideration discharges;

(e) [(5)] General physical characteristics of the surface water including, but not limited to width, depth, bottom composition, and slope;

(f) [(6)] The frequency of occasions when there is no natural flow in the surface water and the 7Q₁₀ and harmonic mean flow values for the surface water and adjacent surface waters;

(g) [(7)] An assessment of the existing and potential aquatic life habitat in the surface waters under consideration and the adjacent upstream surface waters. The existing aquatic life shall be documented and livestock and natural wildlife dependence on the surface water shall be assessed. The occurrence of individuals or populations, indices of diversity and well-being, and abundance of species of any unique native biota shall be documented;

(h) [(8)] The proposed designated uses for the surface water in question; and

(i) [(9)] An explanation of the irretrievable person-induced, or natural conditions which preclude attainment of a higher use designation or an assessment of the substantial and widespread social and economic impacts resulting from the imposition of additional controls necessary for existing point sources, beyond the most stringent effluent limitation levels normally required for the [such] sources.

Section 4. [6.] Procedures for Redesignation [Reclassification. This section outlines the procedures for evaluating proposed use reclassifications]. (1) For each of the surface waters for which a redesignation [reclassification] is proposed, the cabinet or petitioner [applicant] shall prepare a fact sheet containing, but not limited to, the following information:

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- (a) The name and address of the petitioner [applicant];
 - (b) The name and sketch or description of the surface water proposed for specified use redesignations [reclassifications], including the location of existing and proposed dischargers;
 - (c) The proposed use redesignations [classifications];
 - (d) A brief abstract of the supportive documentation which demonstrates that the redesignation [reclassification] is appropriate;
 - (e) The appropriate water quality criteria for the surface water based on the proposed designated use(s);
 - (f) The treatment requirements proposed for discharges to the surface water in question if designated for the proposed use(s); and
 - (g) A "plain English" summary of the implications of the [such] designation for the community and other users or potential users of the surface water in question;
 - (h) The procedure by which the designation will be made.
- (2) The cabinet shall document the determination to propose or deny redesignation as a result of a petition, and shall provide a copy of the decision to the petitioner and other interested parties. [Based upon all available information, the staff shall make its recommendation of use classifications of the surface waters in question to the secretary of the cabinet.]
- (3) The cabinet shall have a list of surface waters and their redesignated uses promulgated as an amendment to this administrative regulation. [The secretary shall have a list of surface waters and their classification prepared to be published as an administrative regulation.]
- (4) Upon completing the procedure for promulgation of administrative regulations set forth in KRS Chapter 13A, all designated sur-

face waters and their use classifications shall be listed in this administrative regulation.]

Section 5. [7:] Surface Water Use Designations [Classifications].
 (1) Listed in the tables below are the use designations [classifications] for specific surface waters of the Commonwealth. The county column indicates the county in which the mouth or outlet of the surface water is located. The identifying symbols for use designations [classifications] are [as follows]:

WAH	Warm Water Aquatic Habitat
CAH	Cold Water Aquatic Habitat
PCR	Primary Contact Recreation
SCR	Secondary Contact Recreation
DWS	Domestic Water Supply, [(applicable at existing points of public water supply withdrawal)]
OSRW	Outstanding State Resource Water

(2) Surface waters not specifically listed in this section are designated for the use of warm water aquatic habitat, primary [primarily] contact recreation, secondary contact recreation and domestic water supply in accordance with Section 1 of this administrative regulation.

(3) Exceptions to specific criteria in 401 KAR 5:031 that [which] apply to particular surface waters are shown in the tables of surface water use designations [classifications] in this section. All other criteria in 401 KAR 5:031 applicable to the listed use designations shall [classifications] apply to these surface waters.

[LIST OF DESIGNATED] SURFACE WATER USE DESIGNATIONS [CLASSIFICATIONS]				
Stream	Zone	County	Use Designation [Classification]	Exceptions To Specific Criteria
BIG SANDY RIVER BASIN				
Big Sandy River	River Mile 26.8 to Ohio River	Boyd	WAH, PCR, SCR	
Hood Creek	Source to Wheeler Branch	Lawrence	WAH, PCR, SCR	
Levisa Fork of Big Sandy River	Kentucky-Virginia State Line to River Mile 147.5 (Headwaters of Fishtrap Lake)	Pike	WAH, PCR, SCR, DWS	
Levisa Fork of Big Sandy River	River Mile 126.6 (Fishtrap Lake Dam) to Big Sandy River	Lawrence	WAH, PCR, SCR, DWS	
Paint Creek of Levisa Fork	River Mile 8.3 (Paintsville Lake Dam) to Levisa Fork	Johnson	CAH, PCR, SCR	
Russell Fork of Big Sandy River	Kentucky-Virginia State Line (River Mile 15.9) to Levisa Fork	Pike	WAH, PCR, SCR, DWS	
Tug Fork of Big Sandy River	Kentucky-Virginia State Line (River Mile 94.0) to Big Sandy River	Lawrence	WAH, PCR, SCR, DWS	
LAKES AND RESERVOIRS				
Dewey	Entire reservoir	Floyd	WAH, PCR, SCR, DWS	
Fishtrap	Entire reservoir	Pike	WAH, PCR, SCR, DWS	
Paintsville	Entire reservoir	Johnson	WAH, CAH, PCR, SCR	
LITTLE SANDY RIVER BASIN				
Big Caney Creek	Source to Grayson Lake	Elliott	CAH, PCR, SCR	
Big Sinking Creek	River Mile 6.0 to Little Sandy River	Carter	WAH [CAH], PCR, SCR	
Laurel Creek	Source to Little Sandy River	Elliott	CAH, PCR, SCR	
Little Sandy River	Source to River Mile 71.1 (Headwaters of Grayson Lake)	Elliott	WAH, PCR, SCR, DWS	
Little Sandy River	River Mile 50.0 (Grayson Lake Dam) to Ohio River	Greenup	WAH, PCR, SCR, DWS	
LAKES AND RESERVOIRS				
Grayson	Entire Reservoir	Carter	WAH, PCR, SCR	
Greenbo	Entire Reservoir	Greenup	WAH, CAH, PCR, SCR, DWS	
TYGARTS CREEK BASIN				
Buffalo Creek	Source to Tygarts Creek	Carter	WAH, PCR, SCR	
Little White Oak Creek	Source to Tygarts Creek	Greenup	WAH, PCR, SCR	
Tygarts Creek	Source to Ohio River	Greenup	WAH, PCR, SCR, DWS	
White Oak Creek	Source to Tygarts Creek	Greenup	WAH, PCR, SCR	
LICKING RIVER BASIN				
Burning Fork	Basin	Magoffin	WAH, PCR, SCR	
Craney Creek	Source to North Fork of Licking River	Rowan/ Morgan	CAH, PCR, SCR	
Fleming Creek	Source to Licking River	Nicholas	WAH, PCR, SCR	

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Licking River	Source to River Mile 218.2 (Headwaters of Cave Run Lake)	Morgan	WAH, PCR, SCR, DWS	
Licking River	River Mile 169.6 to Ohio River	Kenton/ Campbell	WAH, PCR, SCR, DWS]	
Licking River	River Mile 176.8 (Cave Run Lake Dam) to River Mile 169.6 (U.S. Highway 60 Bridge)	Bath/Rowan	CAH, PCR, SCR, DWS	
Licking River	River Mile 169.6 to River Mile 165.0	Bath/Rowan	WAH, PCR, SCR, DWS	
Licking River	River Mile 165.0 to River Mile 154.5	Bath/Rowan	WAH, PCR, SCR, OSRW	
Licking River	River Mile 154.5 to River Mile 115.0	Nicholas/ Bourbon	WAH, PCR, SCR, DWS	
Licking River	River Mile 115.0 to River Mile 18.9	Kenton/ Campbell	WAH, PCR, SCR, DWS, OSRW	
Licking River	River Mile 18.9 to Ohio River	Kenton/ Campbell	WAH, PCR, SCR, DWS	
Licking River	Source to River Mile 218.2	Morgan	WAH, PCR, SCR, DWS]	
North Fork of Licking River	Source to Licking River	Pendleton/ Bracken	WAH, PCR, SCR, DWS	
Slabcamp Creek	Basin including Stonecoal Branch	Rowan	CAH, PCR, SCR	
Slate Creek	Source to Licking River	Bath	WAH, PCR, SCR, DWS	
South Fork of Licking River	River Mile 65.1 to Licking River	Pendleton	WAH, PCR, SCR, DWS	
LAKES AND RESERVOIRS				
Cave Run	Entire Reservoir	Rowan/Bath	WAH, PCR, SCR	
KENTUCKY RIVER BASIN				
Bailey Run	Basin	Anderson	WAH, PCR, SCR	
Buck Lick Branch	Basin	Lee	WAH, PCR, SCR	
Cedar Brook	Basin	Anderson	WAH, PCR, SCR	
Chimney Top Creek	Basin	Wolfe	CAH, PCR, SCR	
Clarks Run	Source to Herrington Lake	Boyle	WAH, PCR, SCR	
Dix River	Source to River Mile 33.1 (Headwaters of Herrington Lake)	Boyle/ Garrard	WAH, PCR, SCR	
Dix River	[Herrington Lake Dam] to Kentucky River	Garrard/ Mercer	CAH, PCR, SCR	
Dix River	Source to River Mile 33.1 (Headwaters of Herrington Lake)	Boyle/ Garrard	WAH, PCR, SCR]	
East Fork of Indian Creek	Source to Indian Creek	Menifee	CAH, PCR, SCR	
Gladie Creek	Basin	Menifee	CAH [WAH] [GAH], PCR, SCR	
Hanging Fork Creek	Source to Dix River	Boyle/Lincoln	WAH, PCR, SCR	
Indian Creek	River Mile 5.2 to River Mile 1.2	Menifee	CAH, PCR, SCR	
Kentucky River	River Mile 254.8 to Ohio River	Carroll	WAH, PCR, SCR, DWS	
Middle Fork of Kentucky River	Source to River Mile 76.6 (Headwaters of Buckhorn Lake)	Leslie	WAH, PCR, SCR	
Middle Fork of Kentucky River	River Mile 43.2 (Buckhorn Lake Dam) to North Fork of Kentucky River	Lee	WAH, PCR, SCR	
Middle Fork of Red River	Source to River Mile 10.6	Powell	CAH [WAH] [GAH], PCR, SCR	
North Fork of Kentucky River	Source to Kentucky River	Lee	WAH, PCR, SCR, DWS	
Parched Corn Creek	Source to Red River	Wolfe	CAH, PCR, SCR	
Red River	Source to River Mile 68.6	Menifee/ Wolfe	WAH, PCR, SCR	
Red River	River Mile 68.6 to River Mile 49.2 [59.5]	Menifee/ Wolfe	WAH, PCR, SCR, OSRW	
Red River	River Mile 49.2 [59.5] to Kentucky River	Clark/Estill	WAH, PCR, SCR, DWS	
Ross Creek	Source to Kentucky River	Lee	WAH, PCR, SCR	
Silver Creek	Source to Kentucky River	Madison	WAH, PCR, SCR	
South Fork of Elkhorn Creek	Source to North Fork of Elkhorn Creek	Franklin	WAH, PCR, SCR	
South Fork of Kentucky River	Source to Kentucky River	Lee	WAH, PCR, SCR, DWS	
Swift Camp Creek	Source to Red River	Wolfe	CAH [WAH] [GAH], PCR, SCR	
Town Branch	Source to South Fork of Elkhorn Creek	Fayette	WAH, PCR, SCR	
War Fork of Station Camp Creek	Source to River Mile 8.5	Jackson	WAH, PCR, SCR	
War Fork of Station Camp Creek	River Mile 8.5 to River Mile 2.0	Jackson	CAH, PCR, SCR	
War Fork of Station Camp Creek	River Mile 2.0 to Station Camp Creek	Jackson	WAH, PCR, SCR	
LAKES AND RESERVOIRS				
Bert Combs	Entire Reservoir	Clay	WAH, CAH, PCR, SCR, DWS	
Buckhorn	Entire Reservoir	Perry	WAH, PCR, SCR, DWS	
Carr Fork	Entire Reservoir	Knott/Perry	WAH, PCR, SCR	

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Fishpond	Entire Reservoir	Letcher	WAH, CAH, PCR, SCR	
Herrington	Entire Reservoir	Gar-rard/Mercer	WAH, PCR, SCR, DWS	
Mill Creek	Entire Reservoir	Wolfe	WAH, CAH, PCR, SCR, DWS	
SALT RIVER BASIN				
Beech Fork of Salt River	Source to Salt River	Hardin/Bullitt	WAH, PCR, SCR, DWS	
Chenoweth Run	Source to Floyds Fork [(River Mile 24.3)]	Jefferson	WAH, PCR, SCR	
Currys Fork	Confluence of South and North Forks to Floyds Fork	Oldham	WAH, PCR, SCR	
Floyds Fork	Source to Salt River	Bullitt	WAH, PCR, SCR	
Mill Creek	Source to Salt River	Bullitt	WAH, PCR, SCR	
North Fork of Currys Fork	Source to South Fork of Currys Fork	Oldham	WAH, PCR, SCR	
Rolling Fork of Salt River	Source to Salt River	Bullitt	WAH, PCR, SCR, DWS	
Salt River	Source to River Mile 74.8 (Headwaters of Taylorsville Lake)	Anderson	WAH, PCR, SCR, DWS	
Salt River	River Mile 60.1 (Taylorsville Lake Dam) to Ohio River	Hardin/Jefferson	WAH, PCR, SCR, DWS	
[Beech Fork Salt River	Source to Salt River	Hardin/Bullitt	WAH, PCR, SCR	
Rolling Fork Salt River	Source to Salt River	Bullitt	WAH, PCR, SCR, DWS]	
Unnamed tributary to Mill Creek	Source to Mill Creek at River Mile 11.8	Bullitt	WAH, PCR, SCR	
LAKES AND RESERVOIRS				
Taylorsville	Entire Reservoir	Spencer	WAH, PCR, SCR	
GREEN RIVER BASIN				
Barren River	Source to River Mile 118.5 (Headwaters of Barren River Lake)	Allen	WAH, PCR, SCR	
Barren River	River Mile 79.1 (Barren River Lake Dam) to River Mile 15.0	Warren	WAH, PCR, SCR, DWS	
Barren River	River Mile 15.0 to Green River	But-ler/Warren	WAH, PCR, SCR, OSRW	
Beaverdam Creek	Source to Green River [Green River]	Edmonson	CAH [WAH] [GAH], PCR, SCR	
Big Pitman Creek	Source to Green River	Green	WAH, PCR, SCR	
Black Lick Creek	Source to Clear Fork	Logan	WAH, PCR, SCR, DWS	
Buck Horn Creek	Source to Little Pitman Creek	Taylor	WAH, PCR, SCR	
Buffalo Creek	Source to Green River (in Mammoth Cave National Park)	Edmonson	WAH [GAH], PCR, SCR	
Cypress Creek	Source to Pond River	McLean	WAH, PCR, SCR	
Drakes Creek	Confluence of West Fork and Middle Fork to Barren River	Warren	WAH, PCR, SCR	
Gasper River	Source to Barren River	Warren	WAH, PCR, SCR	
Green River	Source to River Mile 340.1 (Headwaters of Green River Lake)	Adair	WAH, PCR, SCR, DWS	
Green River	River Mile 305.6 (Green River Lake Dam) to River Mile 207.8 [291.0] [225.9]	Hart	WAH, PCR, SCR, OSRW, DWS [DWS]	
[Green River	River Mile 291.0 to River Mile 260.0	Hart	WAH, PCR, SCR, DWS]	
[Green River	River Mile 260.0 [225.9] to River Mile 207.8 [181.7]	Hart [Edmonson]	WAH, PCR, SCR, DWS, OSRW]	
Green River	River Mile 207.8 to River Mile 181.7	Edmonson	WAH, PCR, SCR, OSRW	
Green River	River Mile 181.7 to River Mile 168.0	Butler/Warren	WAH, PCR, SCR, DWS	
Green River	River Mile 168.0 to River Mile 148.0	Butler	WAH, PCR, SCR, OSRW	
Green River	River Mile 148.0 to Ohio River	Henderson	WAH, PCR, SCR, DWS	
Lick Creek	Source to West Fork of Drakes Creek	Simpson	CAH, PCR, SCR	
Little Pitman Creek	Source to Big Pitman Creek	Green	WAH, PCR, SCR	
Lynn Camp Creek	Source to Green River	Hart	CAH [WAH] [GAH], PCR, SCR	
Middle Pitman Creek	Source to Big Pitman Creek	Green	WAH, PCR, SCR	
Underground River System	Mammoth Cave National Park	Edmonson/Hart/Barren	CAH, PCR, SCR, OSRW	
Turnhole Spring	Basin Outside Mammoth Cave National Park Boundary	Edmonson/Barren	CAH, PCR, SCR, OSRW	
Echo River	Basin Outside Mammoth Cave National Park Boundary	Edmonson	CAH, PCR, SCR, OSRW	
Pike Spring	Basin Outside Mammoth Cave National Park Boundary	Edmonson	CAH, PCR, SCR, OSRW	
Mile 205.7 Spring	Basin Outside Mammoth Cave National Park Boundary	Hart	CAH, PCR, SCR, OSRW	

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McCoy Spring	Basin <u>Outside Mammoth Cave National Park Boundary</u>	Hart	CAH, PCR, SCR, OSRW	
Suds Spring	Basin <u>Outside Mammoth Cave National Park Boundary</u>	Hart/Barren	CAH, PCR, SCR, OSRW	
Double Sink Spring	Basin <u>Outside Mammoth Cave National Park Boundary</u>	Edmonson/ Barren	CAH, PCR, SCR, OSRW	
Ganter Spring	Basin <u>Outside Mammoth Cave National Park Boundary</u>	Edmonson	CAH, PCR, SCR, OSRW	
Running Spring	Basin <u>Outside Mammoth Cave National Park Boundary</u>	Edmonson	CAH, PCR, SCR, OSRW	
Mud River	Source to Green River	Butler/	WAH, PCR, SCR	
Nolin River	Source to River Mile 64.3 (Headwaters of Nolin Lake)	Hart/Grayson	WAH, PCR, SCR	
Nolin River	River Mile 7.6 (Nolin Lake Dam) to Green River	Edmonson	WAH [CAH], PCR, SCR	
Rough River	Source to River Mile 133.8 (Headwaters of Rough River Lake)	Hardin	WAH, PCR, SCR, DWS	
Rough River	River Mile 89.3 (Rough River Lake Dam) to River Mile 72.4	Ohio/ Grayson	WAH [CAH], PCR, SCR, DWS	
Rough River	River Mile 72.4 to Green River	McLean/Ohio	WAH, PCR, SCR, DWS	
Roundstone Creek	Source to Hwy 1140 (River Mile 3.5)	Hart	CAH [WAH] [CAH], PCR, SCR	
Sharp's Branch	Source to West Fork of Drakes Creek	Simpson	WAH, PCR, SCR	
Trammel Fork	River Mile 30.15 (Kentucky/Tennessee State Line) [Source] to Hwy 31E (River Mile 23.6)	Allen [Warren]	CAH, PCR, SCR	[HQ#]
Trammel Fork	River Mile 23.6 to Drakes Creek	Warren	WAH, PCR, SCR	
West Fork of Drakes Creek	Source to Confluence with Middle Fork of Drakes Creek	Warren	WAH, PCR, SCR, DWS	
Wiggington Creek	Source to Gasper River	Logan	WAH, PCR, SCR	
LAKES AND RESERVOIRS				
Barren River	Entire Reservoir	Barren/Allen	WAH, PCR, SCR, DWS	
Green River	Entire Reservoir	Taylor	WAH, PCR, SCR, DWS	
Nolin	Entire Reservoir	Edmonson	WAH, PCR, SCR, DWS	
Rough River	Entire Reservoir	Breckinridge/ Grayson	WAH, PCR, SCR, DWS	
LOWER CUMBERLAND RIVER BASIN				
Casey Creek	Source to Little River	Trigg	CAH [WAH] [CAH], PCR, SCR	
Cumberland River	River Mile 30.8 (Lake Barkley Dam) to Ohio River	Livingston	WAH, PCR, SCR, DWS	
Skinframe Creek	Source to Livingston Creek	Lyon	CAH [WAH] [CAH], PCR, SCR	
Sulphur Spring Creek	Source to Red River	Simpson	CAH [WAH] [CAH], PCR, SCR	
West Fork of Red River	River Mile 32.2 to Kentucky/Tennessee State Line (River Mile 14.5)	Christian	CAH, PCR, SCR	
Whipporwill Creek	Source to Red River	Logan	WAH, PCR, SCR, OSRW	
[Cumberland River	River Mile 30.8 (Lake Barkley Dam) to Ohio River	Livingston	WAH, PCR, SCR, DWS]	
LAKES AND RESERVOIRS				
Barkley	Entire Reservoir from [to] Kentucky/Tennessee State Line (River Mile 74.7)	Lyon/ Livingston	WAH, PCR, SCR, DWS	
TENNESSEE RIVER BASIN				
Tennessee River	River Mile 22.4 (Kentucky Lake Dam) to River Mile 12.0	Livingston/ McCracken	WAH, PCR, SCR, OSRW	
Tennessee River	River Mile 12.0 to Ohio River [Mile 0.0]	Livingston/ McCracken	WAH, PCR, SCR, DWS	
[Tennessee River	River Mile 22.4 (Kentucky Lake Dam) to River Mile 12.0	Livingston/ McCracken	WAH, PCR, SCR, OSRW]	
LAKES AND RESERVOIRS				
Kentucky	Entire Reservoir from [to] Kentucky/Tennessee State Line (River Mile 62.4)	Livingston/ Marshall	WAH, PCR, SCR, DWS	
TRADEWATER RIVER BASIN				
Crab Orchard Creek/Vaughn Ditch	Source to Tradewater River	Webster	WAH, PCR, SCR	
Montgomery Creek	Source to Tradewater River	Caldwell	WAH, PCR, SCR	

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Tradewater River	Source to Ohio River	Crittenden/ Union	WAH, PCR, SCR	
OHIO RIVER BASIN (Main Stem and Minor Tributaries)				
Doe Run Creek	Source to [KY] Hwy 1628 (River Mile 5.15)	Meade	CAH [WAH] [GAH], PCR, SCR	
Ohio River	Big Sandy River (River Mile 317.1) to River Mile 848.0 [940.7][H]	Union [McCracken]	WAH, PCR, SCR, DWS	
<u>Ohio River</u>	<u>River Mile 848.0 to River Mile 850.0</u>	<u>Union</u>	<u>WAH, PCR, SCR,</u> <u>OSRW</u>	
<u>Ohio River</u>	<u>River Mile 850.0 to River Mile 859.0</u>	<u>Union</u>	<u>WAH, PCR, SCR</u>	
<u>Ohio River</u>	<u>River Mile 859.0 to River Mile 861.0</u>	<u>Union</u>	<u>WAH, PCR, SCR,</u> <u>OSRW</u>	
<u>Ohio River</u>	<u>River Mile 861.0 to River Mile 865.0</u>	<u>Union</u>	<u>WAH, PCR, SCR</u>	
<u>Ohio River</u>	<u>River Mile 865.0 to River Mile 867.0</u>	<u>Union</u>	<u>WAH, PCR, SCR,</u> <u>OSRW</u>	
<u>Ohio River</u>	<u>River Mile 867.0 to River Mile 940.7</u>	<u>McCracken</u>	<u>WAH, PCR, SCR</u>	
Ohio River	River Mile 940.7 to River Mile 943.3	McCracken	WAH, PCR, SCR, DWS, OSRW	
Ohio River	River Mile 943.3 to River Mile 948.2 [966.3]	McCracken/ Ballard	WAH, PCR, SCR, DWS	
<u>Ohio River</u>	<u>River Mile 948.2 to River Mile 949.5</u>	<u>Ballard</u>	<u>WAH, PCR, SCR, DWS,</u> <u>OSRW</u>	
<u>Ohio River</u>	<u>River Mile 949.5 to River Mile 966.3</u>	<u>Ballard</u>	<u>WAH, PCR, SCR, DWS</u>	
<u>Ohio River</u>	<u>River Mile 966.3 to River Mile 969.5</u>	<u>Ballard</u>	<u>WAH, PCR, SCR, DWS,</u> <u>OSRW</u>	
<u>Ohio River</u>	<u>River Mile 969.5 to Mississippi River</u>	<u>Ballard</u>	<u>WAH, PCR, SCR, DWS</u>	
<u>Ohio River</u>	<u>River Mile 922.0 to River Mile 923.5</u> <u>(Channel East of Towhead Island)</u>	<u>Livingston</u>	<u>WAH, PCR, SCR,</u> <u>OSRW</u>	
Paddy's Run	Source to Ohio River	Jefferson	PCR, SCR	401 KAR 5:031, Section 2(1)(d) and (2) do not apply
[Section 2(1)(d) and 2(2) of 401 KAR 5:031 do not apply.]				
Sinking Creek	Source to Hwy 259 (River Mile 4.0)	Breckinridge	CAH, PCR, SCR	
White Oak Creek	River Mile 1.08 to Ohio River	Greenup	SCR	401 KAR 5:031, Section 2(1)(d) and (2) do not apply
LAKES AND RESERVOIRS				
Metropolis	Entire Lake	McCracken	WAH, PCR, SCR, OSRW	
Swan	Entire Lake	Ballard	WAH, PCR, SCR, OSRW	
MISSISSIPPI RIVER BASIN (Main Stem and Minor Tributaries)				
<u>Bayou de Chien</u>	<u>Source to River Mile 13.0</u>	<u>Hickman</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Cane Creek of Bayou de Chien</u>	<u>Basin</u>	<u>Graves</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Jackson Creek</u>	<u>Basin</u>	<u>Graves</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Sand Creek</u>	<u>Basin</u>	<u>Graves</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>South Fork of Bayou de Chien</u>	<u>Basin</u>	<u>Graves</u>	<u>WAH, PCR, SCR, OSRW</u>	
Mississippi River	Confluence with Ohio River to <u>River Mile 947.0 [Kentucky/Tennessee State Line]</u>	<u>Carlisle</u> <u>[Fulton]</u>	WAH, PCR, SCR	
<u>Mississippi River</u>	<u>River Mile 947.0 to River Mile 945.0</u>	<u>Carlisle</u>	<u>WAH, PCR, SCR,</u> <u>OSRW</u>	
<u>Mississippi River</u>	<u>River Mile 945.0 to Ken- tucky/Tennessee State Line</u>	<u>Fulton</u>	<u>WAH, PCR, SCR</u>	
Murphy's Pond	Entire Pond and Preserve Area	Hickman	WAH, PCR, SCR, OSRW	
UPPER CUMBERLAND RIVER BASIN				
<u>Adams Branch</u>	<u>Basin</u>	<u>Whitley</u>	<u>WAH, PCR, SCR,</u> <u>OSRW</u>	
<u>Archers Creek</u>	<u>Basin</u>	<u>Whitley</u>	<u>WAH, PCR, SCR,</u> <u>OSRW</u>	
<u>Bad Branch</u>	<u>Basin</u>	<u>Letcher</u>	<u>CAH, PCR, SCR, OSRW</u>	
<u>Bark Camp Creek</u>	<u>Basin</u>	<u>Whitley</u>	<u>CAH, PCR, SCR</u>	
<u>Beaver Creek</u>	<u>Basin</u>	<u>McCreary</u>	<u>CAH, PCR, SCR, OSRW</u>	
<u>Beaver Creek</u>	<u>Source to Lake Cumberland</u>	<u>Wayne</u>	<u>WAH, PCR, SCR</u>	
<u>Beck's Creek</u>	<u>Basin</u>	<u>Whitley</u>	<u>WAH, PCR, SCR, OSRW</u>	

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<u>Bens Fork of Little Clear Creek</u>	<u>Basin</u>	<u>Bell</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Big Branch</u>	<u>Basin Above River Mile 0.8</u>	<u>McCreary</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Big Lick Branch</u>	<u>Basin</u>	<u>Pulaski</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Big South Fork of Cumberland River</u>	<u>River Mile 55.2 to River Mile 45.0</u>	<u>McCreary</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Blacksnake Branch</u>	<u>Basin</u>	<u>Bell</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Breeden's Creek</u>	<u>Basin</u>	<u>Harlan</u>	<u>WAH [GAH], PCR, SCR, OSRW</u>	
<u>Brices Creek</u>	<u>Basin</u>	<u>Knox</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Brownies Creek</u>	<u>Basin to River Mile 10.0 [8.7]</u>	<u>Harlan</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Buck Creek</u>	<u>River Mile 53.3 to River Mile 10.5</u>	<u>Pulaski</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Buck Creek</u>	<u>Basin</u>	<u>Whitley</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Bucks Branch</u>	<u>Basin</u>	<u>Whitley</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Buffalo Creek</u>	<u>Basin to Kentucky/Tennessee State Line (River Mile 3.2)</u>	<u>Whitley</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Bunches Creek</u>	<u>Basin</u>	<u>Whitley</u>	<u>CAH [WAH] [GAH], PCR, SCR, OSRW</u>	
<u>Campbell Branch</u>	<u>Basin</u>	<u>Whitley</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Cane Creek</u>	<u>Basin</u>	<u>Laurel</u>	<u>WAH, PCR, SCR</u>	
<u>Caney Creek</u>	<u>Basin</u>	<u>Bell</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Cannon Creek</u>	<u>Basin above Cannon Creek Lake</u>	<u>Bell</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Clover Bottom Creek</u>	<u>River Mile 1.4 to Horselick Creek</u>	<u>Jackson</u>	<u>CAH, PCR, SCR</u>	
<u>Cogur Fork</u>	<u>Basin</u>	<u>McCreary</u>	<u>CAH [WAH] [GAH], PCR, SCR</u>	
<u>Coles Branch</u>	<u>Basin</u>	<u>Knox</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Colliers Creek</u>	<u>Basin</u>	<u>Bell</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Criscillis Branch</u>	<u>Basin</u>	<u>Whitley</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Cumberland River</u>	<u>River Mile 694.2 to River Mile 574.6</u>	<u>Whitley</u>	<u>WAH, PCR, SCR, DWS</u>	
<u>Cumberland River</u>	<u>River Mile 574.6 to River Mile 558.5 (Headwaters of Lake Cumberland)</u>	<u>McCreary/Whitley</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Cumberland River</u>	<u>River Mile 460.9 (Lake Cumberland Dam) to Kentucky/Tennessee State Line (River Mile 401.05) [(River mile 460.9) to Highway 90 bridge (River Mile 426.5)]</u>	<u>Monroe [Cumberland]</u>	<u>CAH, PCR, SCR, DWS</u>	
<u>[Cumberland River</u>	<u>River Mile 426.5 to Kentucky/ Tennessee State Line (River mile 401.05)</u>	<u>Monroe</u>	<u>WAH, PCR, SCR, DWS]</u>	
<u>Davis Branch</u>	<u>Basin</u>	<u>Bell</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Difficulty Creek</u>	<u>Basin</u>	<u>McCreary</u>	<u>WAH [GAH], PCR, SCR</u>	
<u>Dog Slaughter Creek</u>	<u>Basin</u>	<u>Whitley</u>	<u>CAH, PCR, SCR, OSRW</u>	
<u>Eagle Creek</u>	<u>Basin</u>	<u>McCreary</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Four Mile Creek</u>	<u>Basin above River Mile 2.5</u>	<u>Bell</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Four Mile Run</u>	<u>Basin above River Mile 1.0</u>	<u>Bell</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Fugitt Creek</u>	<u>Basin</u>	<u>Harlan</u>	<u>CAH, PCR, SCR</u>	
<u>Hale Fork</u>	<u>Basin</u>	<u>Knox</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Hawk Creek</u>	<u>Basin</u>	<u>Laurel</u>	<u>CAH, PCR, SCR</u>	
<u>Hinkle Branch</u>	<u>Basin</u>	<u>Knox</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Honeycutt Branch</u>	<u>Basin</u>	<u>Knox</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Horse Lick Creek</u>	<u>River Mile 12.3 to Middle Fork of Rockcastle River [Mile 0.0]</u>	<u>Jackson/ Rockcastle</u>	<u>WAH, PCR, SCR, OSRW</u>	

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<u>Hunting Shirt Branch</u>	<u>Basin</u>	<u>Knox</u>	<u>WAH, PCR, SCR, OSRW</u>
<u>Indian Creek</u>	Source to Barren Fork	<u>McCreary</u>	<u>CAH [WAH] [GAH], PCR, SCR</u>
<u>Jennys Branch</u>	<u>Basin</u>	<u>McCreary</u>	<u>WAH, PCR, SCR, OSRW</u>
<u>Kelly Branch</u>	<u>Basin</u>	<u>Harlan</u>	<u>WAH [GAH], PCR, SCR</u>
<u>Kennedy Creek</u>	River Mile 1.0 to <u>Little South Fork of Cumberland River [Mile 0.0]</u>	<u>Wayne</u>	<u>WAH, PCR, SCR, OSRW</u>
<u>Kilburn Fork of Indian Creek</u>	<u>Basin</u>	<u>McCreary</u>	<u>WAH, PCR, SCR, OSRW</u>
<u>Laurel Creek of Marsh Creek</u>	River Mile 9.0 to River Mile 3.4	<u>McCreary</u>	<u>CAH [WAH] [GAH], PCR, SCR, OSRW</u>
<u>Laurel Fork</u>	Source to Middle Fork of Rockcastle River	<u>Jackson</u>	<u>WAH, PCR, SCR, OSRW</u>
<u>Laurel Fork of Clear Fork</u>	<u>Basin above River Mile 16.0</u>	<u>Bell</u>	<u>WAH, PCR, SCR, OSRW</u>
<u>Laurel Fork of Clear Fork</u>	River Mile 16.0 to River Mile 4.25 (Kentucky/Tennessee State Line)	<u>Whitley</u>	<u>WAH, PCR, SCR, OSRW</u>
<u>Laurel Fork of Indian Creek</u>	<u>Basin</u>	<u>McCreary</u>	<u>WAH, PCR, SCR, OSRW</u>
<u>Laurel River</u>	<u>Laurel River Lake Dam (River Mile 2.1) to River Mile 0.9</u>	<u>Laurel</u>	<u>CAH, PCR, SCR</u>
<u>Lick Fork</u>	<u>Basin</u>	<u>Bell</u>	<u>WAH, PCR, SCR, OSRW</u>
<u>Little Clear Creek</u>	Basin from Confluence with Fuson Branch	<u>Bell</u>	<u>WAH, PCR, SCR, OSRW</u>
<u>Little Popular Creek</u>	<u>Basin above and including East Ridge Branch</u>	<u>Knox</u>	<u>WAH, PCR, SCR, OSRW</u>
<u>Little South Fork of Cumberland River</u>	River Mile 35.6 to River Mile 4.1	<u>Wayne</u>	<u>WAH, PCR, SCR, OSRW</u>
<u>Little Yellow Creek</u>	<u>River Mile 3.2 (Fern Lake Dam) to Yellow Creek [River Mile 0.0]</u>	<u>Bell</u>	<u>WAH, PCR, SCR, OSRW</u>
<u>Long Branch</u>	<u>Basin</u>	<u>Bell</u>	<u>WAH, PCR, SCR, OSRW</u>
<u>Looney Creek</u>	<u>Basin above River Mile 5.3</u>	<u>Harlan</u>	<u>CAH, PCR, SCR</u>
<u>Marsh Creek</u>	<u>Basin above River Mile 24.0</u>	<u>McCreary</u>	<u>WAH, PCR, SCR, OSRW</u>
<u>Marsh Creek</u>	<u>River Mile 24.0 to Confluence with Cumberland River</u>	<u>McCreary</u>	<u>WAH, PCR, SCR, OSRW</u>
<u>Martins Fork</u>	<u>Basin above River Mile 31.3</u>	<u>Harlan</u>	<u>CAH, PCR, SCR</u>
<u>Martin's Fork</u>	<u>River Mile 31.3 to [Basin above] River Mile 27.4</u>	<u>Harlan</u>	<u>CAH, PCR, SCR, OSRW</u>
<u>Meadow Fork</u>	<u>Basin</u>	<u>Letcher</u>	<u>WAH, PCR, SCR, OSRW</u>
<u>Middle Fork of Rockcastle River</u>	River Mile 61.1 to River Mile 53.3	<u>Jackson</u>	<u>WAH, PCR, SCR, OSRW</u>
<u>Mill Branch</u>	<u>Basin</u>	<u>Knox</u>	<u>WAH, PCR, SCR, OSRW</u>
<u>Mill Creek of Straight Creek</u>	<u>Basin</u>	<u>Bell</u>	<u>WAH, PCR, SCR, OSRW</u>
<u>Mill Creek</u>	<u>Basin</u>	<u>McCreary</u>	<u>WAH, PCR, SCR, OSRW</u>
<u>Moore's Creek</u>	<u>Basin</u>	<u>Knox</u>	<u>WAH, PCR, SCR, OSRW</u>
<u>Mud Creek</u>	<u>Basin above River Mile 6.5</u>	<u>Whitley</u>	<u>WAH, PCR, SCR, OSRW</u>
<u>Mud Lick</u>	<u>Basin</u>	<u>Knox</u>	<u>WAH, PCR, SCR, OSRW</u>
<u>Ned Branch</u>	<u>Basin</u>	<u>Laurel</u>	<u>WAH, PCR, SCR, OSRW</u>
<u>Patterson Creek</u>	<u>Basin above River Mile 7.4</u>	<u>Whitley</u>	<u>WAH, PCR, SCR, OSRW</u>
<u>Poor Fork of Cumberland River</u>	<u>Basin above River Mile 742.5 [7]</u>	<u>Letcher</u>	<u>CAH, PCR, SCR, OSRW</u>
<u>Poor Fork of Cumberland River</u>	<u>[Basin from] River Mile 742.5 [7] to Jefferson National Forest Boundary (River Mile 720.55)</u>	<u>Harlan [Letcher]</u>	<u>WAH [GAH], PCR, SCR</u>
<u>Poor Fork of Cumberland River</u>	<u>River Mile 720.55 to Clover Fork of Cumberland River</u>	<u>Harlan</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Razor Fork</u>	<u>Basin</u>	<u>Harlan</u>	<u>WAH [GAH], PCR, SCR</u>
<u>Richland Creek</u>	<u>Basin above River Mile 15.7</u>	<u>Knox</u>	<u>WAH, PCR, SCR, OSRW</u>
<u>Roaring Fork</u>	<u>Basin</u>	<u>Knox</u>	<u>WAH, PCR, SCR, OSRW</u>

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Rock Creek	Tennessee/Kentucky/Tennessee State Line (River Mile 21.9) to White Oak Creek	McCreary	CAH, PCR, SCR, OSRW	
Rock Creek	Basin from confluence with Jellico Creek	McCreary	WAH, PCR, SCR, OSRW	
Rockcastle River	River Mile 53.3 to River Mile 8.5	Laurel/ Pulaski	WAH, PCR, SCR, OSRW	
Ross Branch	Basin	Whitley	WAH, PCR, SCR, OSRW	
Roundstone Creek	Source to River Mile 13.5	Rockcastle	WAH, PCR, SCR	
Roundstone Creek	River Mile 13.5 to River Mile 4.7	Rockcastle	WAH, PCR, SCR, OSRW	
Roundstone Creek	River Mile 4.7 to Rockcastle River	Rockcastle	WAH, PCR, SCR, DWS	
<u>Ryans Creek</u>	<u>Basin</u>	<u>Whitley</u>	<u>WAH, PCR, SCR, OSRW</u>	
Sanders Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Shillalah Creek	Source to Cumberland Gap National Historical Park Boundary	Bell	CAH, PCR, SCR	
Shut-in Branch	Basin	McCreary	WAH, PCR, SCR, OSRW	
<u>Sinking Creek</u>	<u>Source to Rockcastle River</u>	<u>Laurel</u>	<u>WAH, PCR, SCR, OSRW</u>	
Sims Fork	Basin	Bell	WAH, PCR, SCR, OSRW	
<u>Smith Creek</u>	<u>Basin</u>	<u>Letcher</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>South Fork of Rockcastle River</u>	<u>River Mile 2.1 to Rockcastle River</u>	<u>Rockcastle</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Stevenson Branch</u>	<u>Basin</u>	<u>Bell</u>	<u>WAH, PCR, SCR, OSRW</u>	
Straight Creek	Basin [above River Mile 11.3]	Harlan	WAH, PCR, SCR, OSRW	
Sugar Run	Source to Cumberland Gap National Historical Park Boundary	Bell	<u>WAH</u> [GAH], PCR, SCR	
<u>Trace Branch</u>	<u>Basin</u>	<u>Knox</u>	<u>WAH, PCR, SCR, OSRW</u>	
Trammel Fork	Basin	McCreary	WAH, PCR, SCR, OSRW	
Troublesome Creek	Basin	McCreary	WAH [GAH], PCR, SCR	
<u>Turkey Creek</u>	<u>Basin</u>	<u>Knox</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Watts Creek</u>	<u>Basin above Camp Blanton Lake</u>	<u>Harlan</u>	<u>WAH, PCR, SCR, OSRW</u>	
White Oak Creek	Basin above River Mile 1.2 (includes Little White Oak Creek)	Laurel	CAH, PCR, SCR	
Wood Creek	River Mile 4.0 (Wood Creek Lake Dam) to Hazel Patch Creek	Laurel	CAH [WAH] [GAH], PCR, SCR	
Yellow Creek	Source to Cumberland River	Bell	WAH, PCR, SCR	
Youngs Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
LAKES AND RESERVOIRS				
Beulah (=Tyner)	Entire Reservoir	Jackson	WAH, CAH, PCR, SCR, DWS	
Cannon Creek	Entire Reservoir	Bell	WAH, CAH, PCR, SCR, DWS	
Cumberland	Entire Reservoir	Pulaski	WAH, PCR, SCR, DWS	
Dale Hollow	Entire portion of Reservoir within Kentucky	Clinton/ Cumberland	WAH, PCR, SCR	
Laurel River	Entire Reservoir	Laurel/ Whitley	WAH, CAH, PCR, SCR, DWS	
Martins Fork	Entire Reservoir	Harlan	WAH, PCR, SCR	
Wood Creek	Entire Reservoir	Laurel	WAH, CAH, PCR, SCR, DWS	

Section 6. Incorporation by Reference. (1) "Interim Economic Guidance for Water Quality Standards Workbook (EPA, March 1995)" Publication EPA-823-B-95-002. U.S. Environmental Protection Agency, Office of Water, Washington, D.C., is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Kentucky Division of Water, 14 Reilly Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES E. BICKFORD, Secretary
BARBARA A. FOSTER, General Counsel
APPROVED BY AGENCY: September 9, 1999
FILED WITH LRC: September 9, 1999 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact person: Jack A. Wilson

(1) Type and number of entities affected: This amended administrative regulation applies designated uses to the surface waters of the Commonwealth. It is being amended to change use designations for selected streams. The amendments to this regulation will affect point source discharges to outstanding state resource waters, warm water aquatic habitats, and cold water aquatic habitats. Approximately 100 residences, businesses, municipalities, schools, and federal and state government agencies are currently discharging into waters proposed for redesignation. Approximately 75 dischargers are currently discharging into waters whose designation has changed to a more restrictive designation. Approximately 25 dischargers are currently discharging into waters whose designation has changed from a more restrictive to a less restrictive designation. An unknown number of existing mines in watersheds of outstanding state resource waters will be affected. This amended administrative regulation also applies to persons served by domestic supplies, agricultural water users, recreational enthusiasts, and the tourism industry.

(2) Direct and indirect costs or savings: The stricter permit limits imposed on dischargers whose use designation has changed to a more restrictive designation, could result in additional treatment outlays, training costs, and operational changes. Savings may be realized by dischargers who discharge into waters whose designation has changed from a more restrictive to a less restrictive designation. Direct and indirect savings would be realized through reduced drinking water treatment costs, maintenance of good agricultural water, maintenance of fisheries, and healthy recreational waters.

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Comments received from the public referred to a study by Stephen M. Meyer, Professor in Political Science, Massachusetts Institute of Technology, entitled *Environmentalism and Economic Prosperity: Testing the Environmental Impact Hypothesis*, October 5, 1992. This study compared the relative strengths of environmental programs in the fifty states with economic performance measured in terms of gross state product and economic growth, total employment, construction employment, manufacturing labor, and overall labor productivity. The study found that "...average employment growth among the environmentally strong states was about 45% better than that of the environmentally weak states." It concluded that "...states with stronger environmental policies consistently out-performed the weaker environmental states on all the economic measures." Further, "...states with stronger environmental policies did not experience weaker gains in economic growth between the 1970s and 1980s. Here again, it was the states with strong environmental policies that showed the greater inter-decade improvement in economic performance."

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

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

1. First year following implementation: No comments received.

2. Second and subsequent years: No comments received.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Waters are being redesignated to both the more restrictive outstanding state resource waters and to the less restrictive warm water aquatic habitat use. The Division of Water assists with field assessments of waters for outstanding state resource water use.

1. First year: The division incurs part of the costs of determining designations. These costs depend on the number of waters to be considered and the number that require field assessments. These are not new costs since existing staff will be reassigned to conduct the assessments.

2. Continuing costs or savings: Same as (3)(a)1.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This amended admin-

istrative regulation will not significantly affect the cabinet's routine reporting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: Some localities will be affected because of the presence of outstanding state resource waters, causing tax-generating businesses to locate elsewhere. On the other hand, protection of outstanding state resource waters may have a positive influence on revenues derived from water-based tourism.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue will be the General Fund and federal funds, as appropriated by the Kentucky General Assembly.

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

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

(b) Kentucky: No comments received

(7) Assessment of alternative methods; reasons why alternatives were rejected: The amended administrative regulation designates uses of Kentucky's surface waters. Designation of uses is required by the Clean Water Act and 40 CFR 131.10. Therefore, no other alternatives were considered.

(8) Assessment of expected benefits of the administrative regulation: These designations will help sustain and enhance existing levels of aquatic recreation, fishing, and water-based tourism.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This amended administrative regulation serves to protect outstanding state resource waters. Nondegraded waters protect rare aquatic species and support a rich biodiversity of plants, fish, and macroinvertebrates. Waters redesignated to the less restrictive warm water aquatic habitat use will receive less stringent protection for dissolved oxygen and temperature but will be protected for their true existing use, that of warm water aquatic habitat.

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

(c) If detrimental effect would result, explain detrimental effect: Failure to implement this amended administrative regulation would allow less regulatory authority and less ability to protect those waters identified as outstanding state resource waters. Aquatic organisms sensitive to pollution may be impacted.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statutes, administrative regulations, or government policies are in conflict, overlap, or duplicate this amended administrative regulation.

(a) Necessity of proposed administrative regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: State water quality standards are required by federal law to be reviewed for possible changes at least every three years.

(11) TIERING: Is tiering applied? No. The regulation affects all discharges into surface waters of the Commonwealth, irrespective of ownership, capacity, process, or treatment employed. However, stream segments are identified depending on their quality and different standards apply to them.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation mandating that Kentucky implement a water pollution control program. For Kentucky to maintain its delegation over the NPDES permit program, however, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 CFR Part 131, including the requirement for redesignating uses.

2. State compliance standards. 401 KAR 5:002, 5:026, 5:029, 5:030, and 5:031, the water quality standards regulations.

3. Minimum or uniform standards contained in the federal mandate. The Clean Water Act requires designated uses, criteria, standards and antidegradation policies in water quality standards.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no stricter standard or additional or different responsibilities or requirements.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. This amended administrative regulation may affect the waste water treatment operations of local government if they will have new or expanded discharges into high quality waters, outstanding state resource waters, or outstanding national resource waters.

3. State the aspect or service of local government to which this administrative regulation relates. This amended administrative regulation relates to local governments' waste water treatment service.

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

Revenues (+/-): Cannot be determined.

Expenditures (+/-): Cannot be determined.

Other explanation: Waste water treatment costs may increase for those local governments that will have new or expanded discharges into high quality waters or outstanding state resource waters. Local governments withdrawing drinking water from these waters may have lower treatment costs, because these waters should have lower pollutant loads. Waste water treatment costs may decrease for those local governments discharging into waters that have changed to a less restrictive category.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Water (Amended After Hearing)

401 KAR 5:029. General provisions.

RELATES TO: KRS 146.200 to 146.360, 146.410 to 146.940, 224.01-100, 224.01-400, 224.16-050, 224.16-070, 224.40 to 224.43, 224.46, 224.50, 224.60, 224.70, 224.71, 224.73, [Chapter 224,] 40 CFR Part 136

STATUTORY AUTHORITY: KRS 146.200 to 146.360, 146.410 to 146.990, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 CFR Part 131, 136, 33 USC 1311, 1312, 1313, 1314, 1316, 1341

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation and 401 KAR 5:002, 5:026, 5:030, and 5:031, will operate to protect the surface waters of the Commonwealth, and thus protect water resources. These general provisions contain the Commonwealth's surface water antidegradation policy, provide for withdrawals of waters not meeting water quality standards, and address sample collection and analytical methodology, mixing zones, and variances for coal remining operations. [This administrative regulation contains a definition and abbreviation section applicable to 401 KAR 5:026, this administrative regulation, and 401 KAR 5:031. A nondegradation section and a section pertaining to withdrawal of waters not meeting water quality standards are included. A sample collection and

analytical methodology section is included to ensure reproducible analytical results. A provision relating to allowable conditions in mixing zones is also included. A procedure for issuing a variance from criteria for pH, iron and manganese is included for coal remining operations.]

Section 1. Antidegradation Policy. [Definitions and Abbreviations: (1) The following definitions describe terms used in 401 KAR 5:026; this administrative regulation, and 401 KAR 5:031. Terms not defined below shall have the meanings given to them in KRS 224.01-010 or, if not so defined, the meanings attributed by common use:

(a) "Acute-chronic ratio" means the ratio of the acute toxicity (expressed as an LG_{50} of an effluent or a toxic substance to its chronic toxicity (expressed as a NOEL). It is used as a factor to estimate chronic toxicity from acute toxicity data:

(b) "Acute criteria" means the highest instream concentration of a toxic substance or an effluent to which organisms can be exposed for a brief period of time without causing unacceptable harmful effects:

(c) "Acute toxicity" means lethality or other harmful effect sustained by either indigenous aquatic organisms or representative indicator organisms used in toxicity tests, due to a short-term exposure (ninety-six (96) hours or less) to a specific toxic substance or mixture of toxic substances:

(d) "Acute toxicity unit" means the reciprocal of the effluent dilution that causes the acute effect (LG_{50}) by the end of the acute exposure period:

(e) "Chronic criteria" means the highest instream concentration of a toxic substance or an effluent to which organisms can be exposed indefinitely without causing an unacceptable harmful effect:

(f) "Chronic toxicity" means lethality, reduced growth or reproduction or other harmful effect sustained by either indigenous aquatic organisms or representative indicator organisms used in toxicity tests due to long-term exposures (relative to the life span of the organisms or a significant portion of their life span) to toxic substances or mixtures of toxic substances:

(g) "Chronic toxicity unit" means the reciprocal of the effluent dilution that causes no observed unacceptable harmful effect (NOEL) on the test organisms by the end of the chronic exposure period:

(h) "Cold water aquatic habitat" means surface waters and associated substrate that will support indigenous aquatic life or self-sustaining or reproducing trout populations on a year-round basis:

(i) "Conventional domestic water supply treatment" means or includes coagulation, sedimentation, filtration, and chlorination:

(j) "Criteria" means specific concentrations or ranges of values, or narrative statements of water constituents which represent a quality of water expected to result in an aquatic ecosystem protective of designated uses of surface waters. Criteria are derived to protect legitimate uses such as aquatic life, domestic water supply, and recreation and to protect human health:

(k) "Division" means the Division of Water:

(l) "Domestic water supply (DWS)" means surface waters that with conventional treatment will be suitable for human consumption through a public water system as defined in 401 KAR 6:015, Section 1; culinary purposes; or for use in any food or beverage processing industry; and, meets state and federal regulations under the Safe Drinking Water Act, 42 USC 300f-300j, as amended:

(m) "Effluent ditch" means that portion of a treatment system which is a discrete, person-made conveyance, either totally owned, leased or under valid easement by the discharger, which transports a discharge to waters of the Commonwealth:

(n) "Epilimnion" means the thermally homogeneous water layer overlying the metalimnion (the region of the thermocline) of a thermally stratified lake or reservoir:

(o) "Eutrophication" means the enrichment of surface waters of the state by the discharge or addition of nutrients:

(p) "Existing uses" means those legitimate uses being attained in or on a surface water of the Commonwealth on or after November 28, 1975, irrespective of its use classification:

(q) "Fecal coliform" means the portion of the coliform group of bacteria which are present in the intestinal tract or the feces of warm-blooded animals. It generally includes organisms which are capable of producing gas from lactose broth in a suitable culture medium within twenty-four (24) hours at forty-four and five-tenths (44.5) degrees plus or minus two-tenths (0.2) degrees C:

(r) "Harmonic mean flow" means the reciprocal of the mean of the reciprocal daily flow values.

(s) "Hypolimnion" means the lower cold region of a thermally stratified lake or reservoir that extends from the metalimnion to the bottom.

(t) "Indigenous aquatic life" means naturally occurring aquatic organisms including but not limited to bacteria, fungi, algae, aquatic insects, other aquatic invertebrates, reptiles and amphibians, and fishes. Under some natural conditions one (1) or more of the above groups may be absent from any given surface water.

(u) "Intermittent water" means a stream that flows only at certain times of the year as when it receives water from springs or precipitation in its immediate watershed.

(v) "LC₅₀" means that concentration of a toxic substance or mixture of toxic substances which is lethal (or immobilizing, if appropriate) to fifty (50) percent of the species tested in a toxicity test during a specified exposure period.

(w) "LG₅₀" means that concentration of a toxic substance or mixture of toxic substances which is lethal (or immobilizing, if appropriate) to one (1) percent of the organisms tested in a toxicity test during a specified exposure period.

(x) "Maintain" means to preserve or keep in present condition by not allowing adverse permanent or long-term changes to water quality or to populations of aquatic organisms or their habitat.

(y) "Milligrams per liter (mg/l)" means the milligrams of substance per liter of solution, and is equivalent to parts per million in water assuming unit density.

(z) "Mixing zone" means a domain of a water body contiguous to a treated or untreated wastewater discharge of quality characteristics different from those of the receiving water. The discharge is in transit and progressively diluted from the source to the receiving system. The mixing zone is the domain where wastewater and receiving water mix.

(aa) "Natural temperature" means the temperature that would exist in waters of the Commonwealth without the change of enthalpy of artificial origin, as contrasted with that caused by climatic change or naturally occurring variable temperature associated with riparian vegetation and seasonal changes.

(bb) "Natural water quality" means those naturally occurring physical, chemical, and biological properties of waters.

(cc) "Net discharge" means the amount of substance released to a surface water by excluding the influent value from the effluent value if both the intake and discharge are from and to the same or similar body of water.

(dd) "No observed effect level (NOEL)" means the highest concentration of an effluent or a toxic substance that causes no observed harmful effects on either indigenous aquatic organisms or representative indicator organisms used in toxicity tests.

(ee) "Nonpoint" means any source of pollutants not defined by point source as used in this administrative regulation.

(ff) "Outstanding resource waters" means surface waters designated by the cabinet pursuant to 401 KAR 5:031, Section 7.

(gg) "Point source" means any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(hh) "Productive aquatic communities" means an assemblage of indigenous aquatic life capable of reproduction and growth.

(ii) "Propagation" means the continuance of species by successful spawning, hatching, and development or natural generation in the natural environment, as opposed to the maintenance of species by artificial culture and stocking.

(jj) "Standard or water quality standard" means an administrative regulation promulgated by the cabinet establishing the use to be made of a surface water and the water quality criteria necessary to maintain and protect that use.

(kk) "Surface waters" means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface. Effluent ditches and lagoons used for waste treatment which are situated on property owned,

leased, or under valid easement by a permitted discharger are not considered to be surface waters of the Commonwealth.

(ll) "Thermocline" means the plane in a body of water in which the maximum rate of decrease in temperature occurs with respect to depth.

(mm) "Toxic substances" means substances which are bioaccumulative, synergistic, antagonistic, teratogenic, mutagenic or carcinogenic and cause death, disease, behavioral abnormalities, physiological malfunctions or physical deformities in any organism or its offspring or interfere with normal propagation.

(nn) "Warm water aquatic habitat (WAAH)" means any surface water and associated substrate capable of supporting indigenous warm water aquatic life.

(oo) "Wetlands" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(2) Abbreviations:

(a) °C means degree(s) Celsius;

(b) EPA - See U. S. EPA;

(c) °F means degree(s) Fahrenheit;

(d) KPDES means Kentucky Pollutant Discharge Elimination System;

(e) mg/l means milligrams per liter (same as ppm);

(f) NPDES means National Pollutant Discharge Elimination System;

(g) pCi/l means picocuries per liter;

(h) ppb means part(s) per billion;

(i) ppm means part(s) per million (assuming unit density, same as mg/l);

(j) ug/l means micrograms per liter (same as ppb assuming unit density);

(k) U.S. EPA means the United States Environmental Protection Agency;

(l) 7Q₁₀ means that minimum average flow which occurs for seven (7) consecutive days with a recurrence interval of ten (10) years;

(m) POTW means public owned treatment works.

(3) Definitions for coal remining operations:

(a) "Coal remining operation" means a surface coal mining operation which begins after the effective date of this administrative regulation at a site on which a coal mining operation was conducted before August 3, 1977. "Coal remining operation" also means an existing surface coal mining operation which receives a permit revision from the Department for Surface Mining Reclamation and Enforcement (DSMRE) in accordance with 405 KAR 8:010, Section 20 for a site on which a coal mining operation was conducted before August 3, 1977.

(b) "Preexisting discharge" means any discharge at the time of applying for a KPDES permit under this administrative regulation.

(c) "Remined area" means only that area of any coal remining operation on which a coal mining operation was conducted before August 3, 1977.

Section 2. Nondegradation: (1) [It is] The purpose of 401 KAR 5:026 to 401 KAR 5:031 is [these administrative regulations] to safeguard the surface waters of the Commonwealth for their designated uses, to prevent the creation of any new pollution of these waters, [] and to abate any existing pollution.

(2) Where the quality of surface waters exceeds that necessary to support propagation of fish, shellfish, wildlife and recreation in and on the water, that quality shall be maintained and protected unless the cabinet finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the cabinet's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. **For point source discharges, water quality shall be maintained and protected in these waters according to the procedures specified in 401 KAR 5:030, Section 1(5) through (7).** In allowing [such] degradation or lower water quality, the cabinet shall assure water quality adequate to protect existing uses fully. Further, the cabinet shall [will] assure that there shall be achieved the highest statutory and regulatory requirements for waste treatment by all new and existing point sources and that nonpoint

sources of pollutants be controlled by application of all cost effective and reasonable best management practices.

(3) Water quality shall be maintained and protected in a water categorized as an outstanding national resource water according to the procedures specified in 401 KAR 5:030, Section 1(4). ~~[The implementation of this section shall conform to 40 CFR 131.12 to the extent allowed by KRS 224.70-100.]~~

(4) Water quality shall be maintained and protected in those waters designated as outstanding state resource waters according to the procedures specified in ~~[Section 7(2) of]~~ 401 KAR 5:031, Section 7.

(5) ~~If [in those cases where]~~ potential water quality impairment associated with a thermal discharge is involved, a successful demonstration conducted under Section 316 of the Clean Water Act, 33 USC 1326, shall be in compliance with ~~[all portions of]~~ this section.

Section 2. ~~[3.]~~ Withdrawal of Contaminated Water. ~~[It is recognized that]~~ Surface waters may ~~[will]~~, on occasion, not meet the ~~[standards and]~~ criteria established in 401 KAR 5:031. Withdrawal and subsequent discharge of these waters without alteration of the physical~~;~~ or chemical characteristics into the same or similar surface water shall ~~[will]~~ not be considered a violation of water quality standards. The cabinet shall ~~[will]~~ determine ~~[effluent criteria and]~~ KPDES permit limitations in these situations based on the quality of the raw and receiving waters. The cabinet retains the right to require modification under the provisions of 401 KAR 5:035, 401 KAR 5:065, 401 KAR 5:070, 401 KAR 5:075, and 401 KAR 5:080.

Section 3. ~~[4.]~~ Sample Collection and Analytical Methodology. All methods of preservation and analysis used to determine conformity or nonconformity with water quality standards shall be governed by 40 CFR Part 136, as amended, if ~~[when]~~ applicable. Sample collection and other methods not found in the above reference may be used where appropriate if they meet commonly accepted quality assurance and quality control principles, are within the accuracy required for determining conformity or nonconformity with water quality standards, and receive prior written approval by the cabinet. ~~[approved by the cabinet.]~~

Section 4. ~~[5.]~~ Mixing Zones. The following requirements shall apply to a mixing zone ~~[guidelines and conditions are applicable to all mixing zones]~~:

(1) The cabinet may ~~[will]~~ assign~~[- on a case-by-case basis;]~~ definable geometric limits for mixing zones for a discharge or a pollutant or pollutants within a discharge. Applicable limits shall include, but may not be limited to, the linear distances from the point of discharge, surface area involvement, volume of receiving water, and shall take into account other nearby mixing zones. Dilution provided by assigned mixing zones shall ~~[will]~~ not be allowed until applicable limits are assigned by the cabinet in accordance with this section.

(2) Concentrations of toxic substances ~~that~~ ~~[which]~~ exceed the acute criteria for protection of aquatic life ~~[set forth]~~ in 401 KAR 5:031 shall not exist ~~[at any point]~~ within an assigned mixing zone or in the discharge itself unless a zone of initial dilution is assigned. A zone of initial dilution may be assigned pursuant to subsection (3) of this section ~~[on a case-by-case basis at the discretion of the cabinet. Concentrations of toxic substances shall not exceed the acute criteria at the edge of the assigned zone of initial dilution]~~. Chronic criteria for the protection of aquatic life and criteria for the protection of human health from the consumption of fish tissue shall be met at the edge of the assigned mixing zone.

(3) The following requirements shall apply to a zone of initial dilution:

(a) The cabinet shall require an applicant to provide a technical evaluation for a zone of initial dilution;

(b) Concentrations of toxic substances shall not exceed the acute criteria for the protection of aquatic life at the edge of the assigned zone of initial dilution, however, numeric acute criteria may be exceeded within the zone if the frequency and duration of exposure of aquatic organisms are not sufficient to cause acute toxicity; and

(c) Unless assigned on or before the effective date of this administrative regulation, a new zone of initial dilution for a pollutant shall not be allowed in an exceptional water ~~[a publicly-~~

~~owned lake, or a publicly-owned reservoir]~~.

(4) Unless assigned on or before the effective date of this administrative regulation, a new zone of initial dilution for a pollutant shall be available only to a submerged high-rate multiport outfall structure and shall be limited in size to the most restrictive of the following:

(a) The acute criteria shall be met within ten (10) percent of the distance from the edge of the outfall structure to the edge of the regulatory mixing zone in a spatial direction;

(b) The acute criteria shall be met within a distance of fifty (50) times the square root of the cross-sectional area of a discharge port, in a spatial direction; or

(c) The acute criteria shall be met in a horizontal direction within a distance of five (5) times the natural water depth that prevails under mixing zone design conditions, and exists before the installation of a discharge outlet ~~[- or~~

~~(d) The acute criteria shall be met within a distance of ten (10) feet from the discharge port in a spatial direction].~~

(5) The location of a mixing zone shall not interfere with fish spawning or nursery areas, fish migration routes, public water supply intakes, or bathing areas, nor preclude the free passage of fish or other aquatic life.

(6) ~~[(4) Whenever possible]~~ Unless assigned on or before the effective date of this administrative regulation, an ~~[The]~~ assigned mixing zone, from the point of discharge in a spatial direction, shall not exceed one-third (1/3) of the width of the receiving stream or ~~[- and in no case shall exceed]~~ one-half (1/2) of the cross-sectional area.

(7) In a ~~[a]~~ publicly-owned lake or a ~~[a]~~ publicly-owned reservoir, unless assigned on or before the effective date of this administrative regulation, an ~~[the]~~ assigned mixing zone, from the point of discharge in any spatial direction, shall not exceed one-tenth (1/10) of the width of the lake, or reservoir at the discharge point ~~[and shall be kept to a minimum within this restricted area]~~. ~~[(5) In lakes and other surface impoundments, the volume of a mixing zone shall not affect in excess of ten (10) percent of the volume of that portion of the receiving waters available for mixing.]~~

(8) An assigned ~~[(6) A]~~ mixing zone shall be limited to an area or volume which will not adversely affect ~~[alter]~~ the designated ~~[legitimate]~~ uses of the receiving water, nor be so large as to adversely affect an established community of aquatic organisms.

(9) ~~For~~ ~~[(7) In the case of]~~ thermal discharges, a successful demonstration conducted under Section 316(a) of the Clean Water Act shall constitute compliance with ~~[all provisions of]~~ this section.

Section 5. ~~[6.]~~ Water Quality-based Variance for Coal Remining Operations. (1) Applicability. An applicant for a Kentucky pollutant discharge elimination system (KPDES) permit to discharge pollutants from or affected by a coal remining operation may request a variance from the water quality criteria for pH, iron and manganese set forth in 401 KAR 5:031.

(2) Application requirements.

(a) The applicant shall comply with all KPDES permit application requirements, as set forth in 401 KAR 5:060.

(b) The applicant shall submit documentation from the Department for Surface Mining Reclamation and Enforcement (DSMRE) that the proposed coal remining operation will be located on a remined area, and shall certify that the proposed coal remining operation will be located on a remined area.

(c) The applicant shall also:

1. Describe the hydrologic balance for the proposed coal remining operation, including:

a. Results of a detailed water quality and quantity monitoring program, including seasonal variations, variations in response to precipitation events, and modeled baseline pollution loads using the monitoring program; and

b. Monitoring for pH, alkalinity, acidity, total iron, total manganese, sulfates, total suspended solids, and any other water quality parameters requested by the cabinet ~~[director]~~;

2. Submit the application for a permit from DSMRE;

3. Submit, if not submitted in the application for a permit from DSMRE:

a. Plans, cross-sections, and schematic drawings describing the techniques for reducing the discharge of acid-forming materials, iron

and manganese;

b. A description and an explanation of the range of abatement levels that probably can be achieved, costs, and each step proposed to reduce the discharge of acid-forming materials, iron and manganese;

c. A description of the spoil handling practices necessary to reduce the discharge of acid-forming materials, iron and manganese;

d. A detailed topographic map of the proposed coal remining operation, including the locations of the preexisting and proposed discharges; and

4. Continue the water quality and quantity monitoring program described in subparagraph 1 of this paragraph, and submit the results to the cabinet [director] on a periodic basis until the cabinet [director] makes a final permit decision. The cabinet will evaluate the KPDES monitoring program and the DSMRE monitoring program for each applicant to avoid duplication and inconsistencies.

(d) The applicant may submit the information described in the document entitled "Coal Remining-Best Professional Judgment Analysis: Preexisting Pollutational Discharge Data Input Module, Baseline Statistical Calculation Module, Water Treatment Cost Calculation Module, Surface Mine Materials Handling and Cost Simulator, User Manual" and accompanying software published by the Pennsylvania Department of Environmental Resources, Mining Engineering Section; Pennsylvania State University and Kohlmann Ruggiero Engineers, P.C. (1988).

(e) An applicant with an existing surface coal mining operation seeking a permit revision from DSMRE pursuant to 405 KAR 8:010, Section 20 shall also demonstrate to the satisfaction of the cabinet [director] that:

1. The applicant discovered discharges within the proposed coal remining area after the applicant's DSMRE permit was issued; and

2. The applicant has not caused or contributed to the discharges.

(3) Treatment requirements. If the cabinet [director] issues a KPDES permit to discharge pollutants from or affected by a coal remining operation containing the variance described in subsection (1) of this section, the water quality-based effluent limitations for pH, iron and manganese will be established on a case-by-case basis. Compliance with those effluent limitations constitutes compliance with those water quality criteria for pH, iron and manganese set forth in 401 KAR 5:031. The cabinet [director] may employ the document entitled "Coal Remining-Best Professional Judgment Analysis: Preexisting Pollutational Discharge Data Input Module, Baseline Statistical Calculation Module, Water Treatment Cost Calculation Module, Surface Mine Materials Handling and Cost Simulator, User Manual" and accompanying software published by the Pennsylvania Department of Environmental Resources, Mining Engineering Section; Pennsylvania State University and Kohlmann Ruggiero Engineers, P.C. (1988).

(4) Prohibitions. In addition to the prohibitions contained in 401 KAR 5:055, [Section 2:] the following prohibitions apply to this section:

(a) No KPDES permit containing the water quality-based variance of subsection (1) of this section shall be issued unless the coal remining operation has applied for a permit from the Department for Surface Mining Reclamation and Enforcement, as set forth in 405 KAR Chapters 7 through 24, inclusive. The effective date of the KPDES permit shall be no sooner than the effective date of the permit issued by the Department for Surface Mining Reclamation and Enforcement.

(b) No KPDES permit containing the water quality-based variance of subsection (1) of this section shall be issued for a surface coal mining operation which is not a coal remining operation located on a remined area.

(c) No KPDES permit containing the water quality-based variance of subsection (1) of this section shall be issued which would allow the discharges of acid-forming materials, iron or manganese to exceed the levels being discharged from the remined area before the coal remining operation begins.

(d) No KPDES permit containing the water quality-based variance of subsection (1) of this section shall be issued if the applicant fails to demonstrate to the satisfaction of the cabinet [director] that the coal remining operation will result in the potential for improved water quality from the remining operation over that existing prior to the remining operation, and that the information provided in the application is adequate for the cabinet [director] to make an informed final permit decision.

sion.

(e) No KPDES permit containing the water quality-based variance of subsection (1) of this section shall be issued with effluent limitations less stringent than applicable technology-based effluent limitations, as set forth in 401 KAR 5:065, or 401 KAR 5:080 [Section 4(2), 401 KAR 5:080, Section 1(2)(a)2 or (c)].

(f) In addition to the prohibitions of paragraphs (a) through (e) of this subsection, no KPDES permit containing the water quality based variance of subsection (1) of this section shall be issued for an existing surface coal mining operation unless:

1. The applicant receives a permit revision from DSMRE in accordance with 405 KAR 8:010, Section 20;

2. The applicant discovered discharges within the proposed coal remining area after the applicant's DSMRE permit was issued; and

3. The applicant has not caused or contributed to the discharges since August 3, 1977.

Section 6. Federal Regulation Adopted Without Change. (1) The following federal regulation governs the subject matter of this administrative regulation and is adopted without change: "40 CFR Part 136 Guidelines Establishing Test Procedures for the Analysis of Pollutants, July 1, 1998", U.S. Environmental Protection Agency, U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D. C. 20402-9328.

(2) This federal regulation may be inspected, copied, or obtained at the Division of Water, 14 Reilly Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: September 9, 1999

FILED WITH LRC: September 9, 1999 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact person: Jack A. Wilson

(1) Type and number of entities affected: This amended administrative regulation provides general provisions under which water quality regulations operate to protect the surface waters of the Commonwealth. It is being amended to change mixing zone requirements and address zones of initial dilution. Approximately 100 municipalities, campgrounds, subdivisions, businesses, marinas, residences, and government agencies have permitted discharges into publicly-owned lakes. New zones of initial dilution are not allowed in publicly-owned lakes and reservoirs.

(2) Direct and indirect costs or savings: Stricter mixing zone and zone of initial dilution requirements may create additional costs to affected entities.

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

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

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

1. First year following implementation: No comments received.

2. Second and subsequent years: No comments received.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No significant additional costs are anticipated.

1. First year: No significant costs are anticipated.

2. Continuing costs or savings: No significant costs are anticipated.

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Stricter mixing zone and zone of initial dilution requirements

could cause businesses to site in another locality, resulting in local loss of jobs and revenue. On the other hand, maintaining existing water quality may have a positive influence on revenues derived from water-based tourism.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue will be the General Fund and federal funds, as appropriated by the Kentucky General Assembly.

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

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

(b) Kentucky: No comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives for mixing zones and zones of initial dilution ranged from prohibiting all mixing zones and zones of initial dilution to making no changes to the existing regulation. Since mixing zones and zones of initial dilution are allowed by federal regulations, the alternative to prohibiting them was rejected. The cabinet believes that clarification of the mixing zone and zones of initial dilution provisions is necessary to provide better guidance to dischargers. The alternative to not allowing zones of initial dilution in exceptional waters was to allow zones of initial dilution in these waters. That alternative was rejected because the cabinet determined that these waters deserved a higher level of protection. Mixing zones, however, are allowed in these waters according to provisions in this amended administrative regulation.

(8) Assessment of expected benefits of the administrative regulation: The quality of lakes, reservoirs and exceptional waters will be protected, consequently aquatic biodiversity and water-based recreational values will be maintained.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This amended administrative regulation ensures protection of streams, rivers, and publicly-owned lakes and reservoirs for recreation, fishing, drinking water, and biological communities inhabiting the lakes. Through limiting the size of mixing zones and zones of initial dilution, and by not allowing zones of initial dilution in exceptional waters this amended administrative regulation limits the discharge of waste waters.

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

(c) If detrimental effect would result, explain detrimental effect: Without this amended administrative regulation, drinking water treatment may have to be upgraded for some systems. Water-based recreation may be affected, and aquatic organisms sensitive to pollution may be impacted.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statutes, administrative regulations or government policies are in conflict, overlap, or duplicate this amended administrative regulation.

(a) Necessity of proposed administrative regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: State water quality standards are required by federal law to be reviewed for possible changes at least every 3 years.

(11) TIERING: Is tiering applied? No. The amended administrative regulation affects all discharges into surface waters of the Commonwealth, irrespective of ownership, capacity, processes, or treatment used. There are discharge restrictions, however, on certain waters.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation mandating that Kentucky implement a water pollution control program. For Kentucky to main-

tain its delegation over the NPDES permit program, however, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 CFR Part 131, including the requirement for an antidegradation policy. The federal regulations require the adoption of an antidegradation policy for delegated states and permit the adoption of certain general policies such as mixing zones. The U.S. Environmental Protection Agency does provide guidance to the states, but individual decisions concerning the states water quality programs are left to the states.

2. State compliance standards. 401 KAR 5:002, 5:026, 5:029, 5:030, and 5:031, the water quality standards regulations.

3. Minimum or uniform standards contained in the federal mandate. The Clean Water Act requires designated uses, criteria, standards and antidegradation policies in water quality standards.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no stricter standard or additional or different responsibilities or requirements.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. This amended administrative regulation may affect the wastewater treatment divisions of local government if they will have new or expanded discharges.

3. State the aspect or service of local government to which this administrative regulation relates. This amended administrative regulation relates to local governments' waste water treatment service.

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

Revenues (+/-): Cannot be determined.

Expenditures (+/-): Cannot be determined.

Other explanation: Waste water treatment costs may increase for those local governments that will have new or expanded discharges into streams, rivers, and publicly-owned lakes and reservoirs. On the other hand, local governments withdrawing drinking water from these waters may have lower treatment costs, because these waters should have lower pollutant loads.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Water (Amended After Hearing)

401 KAR 5:030. Antidegradation [Nondegradation] policy implementation methodology.

RELATES TO: KRS 146.200 to 146.360, 146.410 to 146.990, 224.01-100, 224.01-400, 224.16-050, 224.16-070, 224.40, 224.43, 224.46, 224.50, 224.60, 224.70, 224.71, 224.73 [Chapter 224]

STATUTORY AUTHORITY: KRS 146.200 to 146.360, 146.410 to 146.990, 224.10-100, 224.16-050, 224.16-060, 224.70-110, 40 CFR Part 131, 16 USC 1271 et seq., 1531 et seq., 33 USC 1311, 1313, 1314, 1316, 1341, 1342

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of all water pollution. KRS 224.70-100 declares that the policy of the Commonwealth is to conserve its waters for legitimate

uses and lists among the purposes of KRS Chapter 224: safeguarding from pollution the uncontaminated waters of the Commonwealth, preventing the creation of any new pollution in the waters of the Commonwealth, and abating any existing pollution. This administrative regulation and 401 KAR 5:002, 5:026, 5:029, and 5:031 will operate to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation sets forth a methodology to implement the antidegradation [nondegradation] policy contained in 401 KAR 5:029 by establishing procedures to control water pollution in waters affected by that policy.

Section 1. Implementation of Antidegradation [Nondegradation] Policy. The following procedures shall govern implementation of the antidegradation [nondegradation] policy of 401 KAR 5:029, Section 1, for a point source discharge [2].

(1) Surface waters shall be placed into one (1) of three (3) categories: outstanding national resource waters, exceptional waters [waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water], or use protected waters.

(2) Categorization of surface waters to outstanding national resource waters. The following procedures shall govern the categorization of surface waters to outstanding national resource waters.

(a) A surface water shall meet, at a minimum, the requirements for outstanding state resource water classification found in 401 KAR 5:031, Section 7; and [-]

(b) The water shall be demonstrated to be of national ecological or recreational significance.

(3) Categorization of surface water to exceptional waters [waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water]. Waterbodies in this category shall include [any of] the following:

(a) Surface waters designated as Kentucky Wild Rivers, unless they are categorized as outstanding national resource waters;

(b) Outstanding state resource waters other than those that support federally threatened or endangered aquatic species;

(c) ~~[Automatic inclusion shall be provided to]~~ Surface waters that fully support all applicable designated uses and that contain fish communities that are rated "excellent" by the use of the Index of Biotic Integrity, which is in "Methods for [of] Assessing Biological Integrity of Surface Waters", incorporated by reference in Section 4 of this administrative regulation; or macroinvertebrate communities that are rated "excellent" by the use of the Macroinvertebrate Bioassessment Index, which is in "A Macroinvertebrate Bioassessment Index for Streams of the Interior Plateau Ecoregion in Kentucky", incorporated by reference in Section 4 of this administrative regulation; and

(d) Waters in the cabinet's reference reach network.

(4) Procedure for implementing the antidegradation [nondegradation] policy in outstanding national resource waters [for point source discharges].

(a) Water quality shall be maintained and protected in outstanding national resource waters.

(b) The cabinet may approve temporary or short-term changes in water quality if the changes to the waters in question have no demonstrable impact on the ability of the waters to support their designated uses.

(5) Procedure for implementing the antidegradation [nondegradation] policy in exceptional waters [waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water for point source discharges].

(a) On or after the effective date of this administrative regulation [Applicants for a new unpermitted and expanded discharge shall conduct an alternatives analysis as contained in subsection (8) of this section:

~~(b)]~~ a KPDES permit for an [a new] unpermitted or expanded discharge shall contain effluent limitations for the entire effluent that are as follows:

1. Domestic discharges shall have an effluent quality of no greater than ten (10) mg/l five (5) day carbonaceous biochemical oxygen demand, two (2) mg/l ammonia-nitrogen, 0.010 mg/l total residual chlorine, ten (10) mg/l total suspended solids, one (1) mg/l total phosphorus, a minimum seven (7) mg/l dissolved oxygen, a chronic whole effluent toxicity limit unless an acute whole effluent toxicity limit is

more stringent, and a geometric mean value for fecal coliform bacteria not to exceed 200 colonies per 100 milliliters during a period of thirty (30) consecutive days nor 400 colonies per 100 milliliters during a period of seven (7) consecutive days, and the discharge shall not cause the average instream dissolved oxygen concentration to be less than six and zero-tenths (6.0) mg/l.

2. Chloride limits shall be based on the domestic water supply criterion of 250 mg/l.

3. Stormwater discharges shall be [are] exempt from antidegradation [nondegradation] implementation procedures for exceptional waters [waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water], but shall be [are] subject to control by existing cabinet programs.

4. Chronic whole effluent toxicity limits shall apply unless an acute whole effluent toxicity limit is more stringent.

5. ~~[Carcinogenic pollutants shall be limited as in use protected waters:~~

6.] All other waste discharges shall be restricted to **no more than** one-half (1/2) of the limitation that would have been permitted for use protected waters at standard design conditions.

6. [7.] KPDES permit renewals that result in less than a twenty (20) percent [no] increase in pollutant loading are exempt from implementation procedures for exceptional waters and shall be regulated by the requirements in subsections (6)(a) and (b) of this administrative regulation [waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water].

(b) ~~[(c)] [(b)]~~ If the permit applicant determines that it can meet limits required by paragraph (a) [(b)] of this subsection ~~[these limitations]~~, the KPDES permit shall be issued with these limitations without further antidegradation [nondegradation] review as described in subsection (6) of this section for use protected waters. If a KPDES permit applicant cannot meet those effluent limitations the applicant may request a less stringent limitation. In making this request, the applicant shall demonstrate to the satisfaction of the cabinet that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located following the guidelines in "Interim Economic Guidance for Water Quality Standards Workbook, (EPA, March 1995)" incorporated by reference in Section 4 of this administrative regulation and include an alternatives analysis that shall consider the following:

1. Discharge to other treatment facilities;

2. Use of other discharge locations;

3. Water reuse or recycle;

4. Process and treatment alternatives; and

5. On-site or subsurface disposal. [:

1. ~~The applicant has conducted a thorough alternative or enhanced treatment analysis that investigated other alternative or enhanced treatment options that were available, technically feasible, and cost-effective, including alternate discharge locations that would eliminate the need for less stringent limitations; and~~

2. ~~The applicant has conducted a thorough pollution prevention alternatives analysis that investigated any cost-effective pollution prevention alternatives and techniques that were available that would eliminate the need for less stringent limitations or significantly reduce the extent of the less stringent limitations;~~

3. ~~If the applicant satisfies the requirements of subparagraphs 1 and 2 of this paragraph, the applicant may then be permitted a less stringent level of treatment.] In allowing the resultant lowering of water quality, the cabinet shall assure water quality necessary to fully protect existing uses.~~

(c) ~~[(d)] [(e)]~~ [New] Zones of initial dilution are prohibited in these waters unless assigned before the effective date of this administrative regulation.

(6) Procedure for implementing the antidegradation [nondegradation] policy in use protected waters for point source discharges. All surface waters not categorized [listed in Section 3 of this administrative regulation] as outstanding national resource waters or exceptional waters [waterbodies whose quality exceeds that necessary to support fish, shellfish, and wildlife and recreation in and on the water] shall be categorized as use protected waters.

(a) All existing uses shall be protected and the level of water qual-

ity necessary to protect these uses shall be assured in these surface waters.

(b) The process to allow discharges to these surface waters and to assure their protection is regulated by the requirements in the Kentucky Pollution Discharge Elimination System Program.

(c) On or after the effective date of this administrative regulation, an applicant for an [a-new] unpermitted or expanded discharge shall conduct a socioeconomic demonstration, including an alternatives analysis that shall demonstrate to the cabinet the necessity to lower water quality and shall consider: [as contained in subsection (8) of this section.]

1. The effect of the facility on an existing environmental or public health problem;

2. The increase or avoidance of a decrease in employment;

3. The increase in production level;

4. An increase in efficiency;

5. Industrial, commercial, or residential growth;

6. Any other economic or social benefit to the community;

7. Discharge to other treatment facilities;

8. Use of other discharge locations;

9. Water reuse or recycle;

10. Process and treatment alternatives; and

11. On-site or sub-surface disposal.

(d) KPDES permit renewals that result in less than a twenty (20) percent increase in pollutant loading are exempt from implementation procedures of paragraph (c) of this subsection.

(7) These procedures shall not preempt the power or authority of a local government to provide by ordinance for a higher level of protection through antidegradation [nondegradation] implementation, for dischargers located within that local government's jurisdiction to surface waters of the Commonwealth.

[(8) An applicant for a new unpermitted or expanded point source discharge shall conduct an alternatives analysis that shall consider:

(a) Discharge to other treatment facilities;

(b) Use of other discharge locations;

(c) Water reuse or recycle;

(d) Process and treatment alternatives; and

(e) On-site or subsurface disposal.]

Section 2. Procedures for Recategorizing Waters. This section shall apply to the recategorization of surface waters to outstanding national resource waters and exceptional waters [waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water]. The redesignation [reclassification] of waters to outstanding state resource waters shall be governed by the procedures in 401 KAR 5:026.

(1) The cabinet may propose to recategorize certain waters to outstanding national resource waters and exceptional waters. [waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water.]

(a) If the cabinet proposes to recategorize these waters, it shall provide notice and an opportunity for public hearing.

(b) The cabinet shall provide the documentation for those surface waters it proposes to recategorize.

(2) A [Any] person may request recategorization of a surface water to an outstanding national resource water or exceptional water [a waterbody whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water] by filing a petition with the cabinet.

(a) The petition shall include the name and address of the petitioner and the information and documentation necessary to recategorize the particular water as required by subsection (4) of this section;

(b) The petitioner shall have the burden of proof that the recategorization is appropriate.

(c) The cabinet shall provide notice of the petition and an opportunity for a public hearing.

(d) The cabinet shall review the petition, supporting documentation, and any comments received from the public to determine if the proposed waters qualify for recategorization.

(e) The cabinet shall document the determination to grant or deny recategorization as a result of a petition, and shall provide a copy of the decision to the petitioner and other interested parties.

(3) If a water is to be recategorized the cabinet shall publish notice of the recategorization. Any permit issued after the date of publication shall be issued with limitations based on the new category. When the cabinet reviews its water quality standards pursuant to the provisions of Section 303 of the Clean Water Act, the cabinet shall propose to have all recategorized waters promulgated as an amendment to this administrative regulation.

(4) The following information, documentation, and data shall [are required-to] support a petition for recategorization:

(a) To support a petition for outstanding national resource waters:

1. A United States Geological Survey 7.5 minute topographic map or its equivalent as approved by the cabinet showing those surface waters to be recategorized, with a description consisting of a river mile index with any existing and proposed discharge points;

2. Existing uses and water quality data for the surface waters for which the recategorization is proposed. If adequate data are unavailable, additional studies may be required by the cabinet;

3. Descriptions of general land uses, [(e.g., mining, agricultural, recreation, low, medium, and high density residential, commercial-industrial, etc.)] and specific land uses adjacent to the surface waters for which the recategorization is proposed;

4. The existing and designated uses of the waters upstream and downstream of the proposed recategorized waters;

5. General physical characteristics of the surface water including, but not limited to width, depth, bottom composition, and slope;

6. The frequency of occasions when there is no natural flow in the surface water, and the 7Q₁₀ and harmonic mean flow values for the surface water and adjacent surface waters;

7. An assessment of the existing and potential aquatic life habitat in the surface waters under consideration and the adjacent upstream surface waters. The existing aquatic life shall be documented including the occurrence of individuals or populations, indices of diversity and well-being, and abundance of species of any unique native biota;

8. A documented rationale as to why the waters qualify for the recategorization; and

9. The rationale used to support the national significance of the water.

(b) To support a petition for exceptional waters [waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water]:

1. A United States Geological Survey 7.5 minute topographic map or its equivalent as approved by the cabinet showing the surface waters to be recategorized, with a description consisting of a river mile index with [any] existing and proposed discharge points;

2. Descriptions of general land uses, including mining, agricultural, recreational, low, medium, and high density residential, commercial, and industrial, and specific land uses adjacent to the surface waters for which the recategorization is proposed; and

3. The frequency of occasions when there is no natural flow in the surface water, and the 7Q₁₀ and annual mean flow values for the surface water;

4. Fish or benthic macroinvertebrate collection data and an Index of Biotic Integrity or Macroinvertebrate Bioassessment Index calculation from a waterbody if criteria [that criterion] specified in Section 1(3)(c) of this administrative regulation are [is] utilized.

Section 3. [List of] Surface Water Categories. [(+) Surface waters categorized for antidegradation [nondegradation] purposes are listed in the following tables. The county column indicates the county in which the mouth or outlet of the surface water is located.

[(2) Surface waters not specifically listed in this section are categorized as use-protected.]

[LIST OF] SURFACE WATERS CATEGORIZED AS OUTSTANDING NATIONAL RESOURCE WATERS		
Stream	Zone	County
Red River	River Mile 68.6 to River Mile 49.2	Menifee/Wolfe
Underground River System	Within Mammoth Cave National Park Boundary	Edmonson/Hart/Barren
Big South Fork of Cumberland River	River Mile 55.2 to River Mile 45.0	McCreary

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[LIST-OF] SURFACE WATERS CATEGORIZED AS EXCEPTIONAL WATERS [WATERBODIES WHOSE QUALITY EXCEEDS THAT NECESSARY TO SUPPORT PROPAGATION OF FISH, SHELLFISH, AND WILDLIFE AND RECREATION IN AND ON THE WATER]		
Stream	Zone	County
LITTLE SANDY RIVER BASIN		
Arabs Fork*	Source to [confluence with] Clay Fork	Carter
Big Caney Creek*	Source to Grayson Lake	Elliott
Big Sinking Creek*	Source to River Mile 10.7	Carter
Laurel Creek*	Source to River Mile 7.6	Elliott
LICKING RIVER BASIN		
Blackwater Creek	River Mile 11.4 to River Mile 3.8	Morgan
Bucket Branch*	Source to [confluence with] North Fork of Licking River	Morgan
Devils Fork*	Source to [confluence with] North Fork of Licking River	Morgan
Licking River	River Mile 165.0 to River Mile 154.5	Bath/Rowan
North Fork of Licking River*	Source to River Mile 13.0	Morgan
KENTUCKY RIVER BASIN		
Buffalo Creek*	River Mile 12.8 to River Mile 0.8	Owsley
Cavanaugh Creek	River mile 5.3 to South Fork of Station Camp Creek	Jackson
Clear Creek*	Source to River Mile 4.1	Woodford
Clemons Fork*	Source to Buckhorn Creek	Breathitt
Coles Fork*	Source to Buckhorn Creek	Breathitt
Drennon Creek*	River Mile 11.9 to River Mile 10.5	Henry
East Fork of Indian Creek*	Source to West Fork of Indian Creek	Menifee
Elisha Creek*	Source to River Mile 0.95	Leslie
Gladie Creek*	Source to Red River	Menifee
Goose Creek	Laurel Creek to Red Bird River	Clay
Hardwick Creek	Little Hardwick Creek to Red River	Powell
Indian Creek*	River Mile 4.7 to River Mile 0.55	Carroll
Line Fork	River Mile 27.5 to River Mile 17.3	Letcher
Lulbegrud Creek	Falls Branch to Red River	Clark/Powell
Middle Fork of Ken- tucky River	Upper Twin Creek to North Fork of Kentucky River	Lee
Middle Fork of Ken- tucky River	Greasy Creek to Buckhorn Reservoir backwaters	Leslie
Musselman Creek*	River Mile 8.4 to River Mile 2.6	Grant
Red Bird River	Big Creek to Goose Creek	Clay
Right Fork of Buffalo Creek*	Source to Buffalo Creek	Owsley
South Fork of Ken- tucky River	Sexton Creek to River Mile 11.3	Owsley
South Fork of Red River	Sand Lick Fork to Middle Fork of Red River	Powell
South Fork of Station Camp Creek*	Source to River Mile 5.3	Jackson
Station Camp Creek*	River Mile 22.3 to River Mile 19.0	Estill
Sturgeon Creek*	Source to River Mile 4.0	Lee
Sugar Creek*	Source to River Mile 0.8	Leslie
Wolfpen Creek*	Source to Red River	Menifee

SALT RIVER BASIN		
Salt Lick Creek*	Source to River Mile 5.3	Marion
Wilson Creek*	Source to River Mile 12.2	Bullitt
GREEN RIVER BASIN		
Beaverdam Creek*	Source to River Mile 7.6	Edmonson
Caney Fork*	Source to River Mile 0.85	Barren
Falling Timber Creek*	River Mile 16.0 to River Mile 11.5	Metcalfe
Gasper River*	Source to River Mile 32.3	Logan
Goose Creek*	Source to River Mile 5.6	Casey
Green River	River Mile 207.8 to River Mile 181.7	Edmonson
Lick Creek*	Source to River Mile 5.3	Simpson
Otter Creek*	Source, including East and Middle Fork, to River Mile 1.75	Larue
Peter Creek*	River Mile 18.05 to River Mile 13.05	Barren
Russell Creek*	Source to River Mile 23.8 [60-5]	Adair
Trammel Fork*	River Mile 30.15 (Ken- tucky-Tennessee State Line) to River Mile 19.4	Allen
LOWER CUMBERLAND RIVER BASIN		
West Fork of Red River*	River Mile 26.5 to River Mile 16.3	Christian
Whipporwill Creek*	Source to Red River	Logan
TENNESSEE RIVER BASIN		
Blood River*	River Mile 15.65 (Ken- tucky-Tennessee State Line) to River Mile 15.1	Calloway
Panther Creek*	Source to River Mile 1.2	Calloway
Soldier Creek*	River Mile 5.3 to River Mile 2.6	Marshall
TRADEWATER RIVER BASIN		
Sandlick Creek*	Source to River Mile 3.5	Christian
Tradewater River*	Source to River Mile 126.0	Christian
OHIO RIVER BASIN (Main Stem and Minor Tributaries)		
Yellowbank Creek*	Source to River Mile 4.4	Breckin- ridge
LAKES AND RESERVOIRS		
Metropolis	Entire Lake	McCracken
Swan	Entire Lake	Ballard
MISSISSIPPI RIVER BASIN (Main Stem and Minor Tributaries)		
Murphy's Pond	Entire Pond and Preserve Area	Hickman
UPPER CUMBERLAND RIVER BASIN		
Bad Branch*	Source to [confluence with] Poor Fork of Cum- berland River	Letcher
Bark Camp Creek*	Source to River Mile 2.6	Whitley
Buck Creek*	River Mile 62.6 to River Mile 28.9	Pulaski
Cane Creek*	Source to River Mile 7.0	Laurel
Cumberland River	River Mile 574.6 to River Mile 558.5 (Headwaters of Lake Cumberland)	McCreary/ Whitley
Eagle Creek*	Source to River Mile 3.0	McCreary
Horse Lick Creek*	Source to River Mile 12.3	Jackson
Little South Fork of Cumberland River	River Mile 35.6 to River Mile 4.1	Wayne
Marsh Creek*	Source to River Mile 12.6	McCreary
Martins Fork of Cumberland River	River Mile 31.3 to River Mile 27.4	Harlan
Rock Creek	Tennessee-Kentucky State Line (River Mile 21.9) to White Oak Creek	McCreary
Rockcastle River	River Mile 24.4 to River Mile 8.5	Laurel/ Pulaski

South Fork of Dog Slaughter Creek*	Source to Dog Slaughter Creek	Whitley
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*Waterbodies in the cabinet's reference reach network

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Methods for Assessing Biological Integrity of Surface Water, October 1993," Kentucky Division of Water, Natural Resources and Environmental Protection Cabinet;

(b) "A Macroinvertebrate Bioassessment Index for Streams of the Interior Plateau Ecoregion in Kentucky, June 1999," Kentucky Division of Water, Natural Resources and Environmental Protection Cabinet;

(c) "Interim Economic Guidance for Water Quality Standards Workbook (EPA, March 1995)" Publication EPA-823-B-95-002, U.S. Environmental Protection Agency, Office of Water, Washington, D.C. [Document Incorporated by Reference. The subject matter of this administrative regulation relating to biological assessments shall be governed by the document, "Methods for Assessing Biological Integrity of Surface Water", Kentucky Division of Water, Natural Resources and Environmental Protection Cabinet, October 1993, which is hereby incorporated by reference.]

(2) This material may be inspected, copied, or obtained [The document is available for inspection and copying, subject to copyright laws, during normal business hours of 8 a.m. to 4:30 p.m., excluding state holidays,] at the Division of Water, 14 Reilly Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: September 9, 1999

FILED WITH LRC: September 9, 1999 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact person: Jack A. Wilson

(1) Type and number of entities affected: This amended administrative regulation implements the antidegradation policy of amended 401 KAR 5:029 by establishing procedures to control water pollution in waters affected by that policy. No additional surface waters are categorized as outstanding national resource waters and 27 surface waters are categorized as exceptional waters. Individuals, businesses, organizations, and governments that will have new or expanded wastewater discharges into streams categorized as exceptional waters are affected by stricter discharge limits. Fewer than 10 sites have permits to discharge to these categorized waterbodies. Effluent limitations are set for carbonaceous biochemical oxygen demand, ammonia-nitrogen, residual chlorine, suspended solids, phosphorus, dissolved oxygen, fecal coliform bacteria, and a chronic whole effluent toxicity limit unless an acute whole effluent toxicity limit is more stringent. All other waste discharges will have limits twice as stringent as discharges into waters classified as use protected with some exceptions. This amended administrative regulation will affect new or expanded mining operations in watersheds of these newly categorized waters. This amended administrative regulation also applies indirectly to persons served by domestic water supplies, agricultural water users, recreational enthusiasts, and the tourism industry.

(2) Direct and indirect costs or savings: The stricter permit limits imposed on new or expanded point source dischargers into waterbodies categorized as exceptional waters could result in additional treatment outlays, training costs, and operational changes. New or expanded dischargers may incur costs of alternatives and pollution prevention analyses. Direct and indirect savings will be realized through reduced drinking water treatment costs, maintenance of good agricultural water, maintenance of fisheries, and healthy recreational waters. Of important note is that this requirement already exists in state and federal law. Therefore, the amended administrative regulation does not create additional obligations for dischargers. Any cost a discharger would incur would already be required under existing federal and state law. This amended administrative regulation sets forth specific implementation procedures to comply with already existing antidegradation requirements.

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Several comments received from the public referred to a study by Stephen M. Meyer, Professor in Political Science, Massachusetts Institute of Technology, entitled *Environmentalism and Economic Prosperity: Testing the Environmental Impact Hypothesis*, October 5, 1992. This study compared the relative strengths of environmental programs in the fifty states with economic performance measured in terms of gross state product and economic growth, total employment, construction employment, manufacturing labor, and overall labor productivity. The study found that "...average employment growth among the environmentally strong states was about 45% better than that of the environmentally weak states." It concluded that "...states with stronger environmental policies consistently out-performed the weaker environmental states on all the economic measures." Further, "...states with stronger environmental policies did not experience weaker gains in economic growth between the 1970s and 1980s. Here again, it was the states with strong environmental policies that showed the greater inter-decade improvement in economic performance."

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

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

1. First year following implementation: No known or expected impacts. No specific comments received.

2. Second and subsequent years: No known or expected impacts. No specific comments received.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: 3 categorizations of waters for antidegradation purposes are included: outstanding national resource waters, exceptional waters, and use protected waters. The Division of Water may perform field assessments of surface waters having potential for categorization and will make determinations based on its assessments and petitions submitted by the public. The cabinet's antidegradation implementation policy will involve additional reviews of socioeconomic demonstration. The permitting process itself will not change significantly.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Socioeconomic demonstration must be reviewed and determinations made as to their adequacy. Costs may increase if the division's findings are contested.

(b) Reporting and paperwork requirements: Implementing the antidegradation policy will involve minimal internal paperwork.

(4) Assessment of anticipated effect on state and local revenues: Some localities may be affected because of the presence of exceptional waters, causing tax-generating businesses to locate elsewhere. However, protection of these waterbodies may have a positive influence on revenues derived from water-based tourism. Again, it must be noted, this is already required under federal and state law so the promulgation of this amended administrative regulation which sets forth a procedure to implement the law itself will not impact revenue more than it is already impacted by the existing federal and state regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue will be the General Fund and federal funds, as appropriated by the Kentucky General Assembly.

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

(a) Geographical area in which administration regulation will be implemented: No known or expected impacts. No specific comments received.

(b) Kentucky: Comments received: "The cabinet's nondegradation rule must balance the need to protect the waters of Kentucky

against the separate but critical need to promote economic growth and development in Northern Kentucky and the rest of the state. The proposed revisions should not result in substantial delays or cause significant, unnecessary costs for local governments in Northern Kentucky as they strive to improve existing and extend new sewer service."

(7) Assessment of alternative methods; reasons why alternatives were rejected: This new amended administrative regulation implements Kentucky's antidegradation policy, which is contained in 401 KAR 5:029. Implementation of an antidegradation policy is required by the Clean Water Act and 40 CFR 131.12. Therefore, no alternatives were considered. The domestic discharge limits for new or expanded discharges to exceptional waters are stringent but technologically achievable.

(8) Assessment of expected benefits of the administrative regulation: This amended administrative regulation establishes 3 surface water categories: outstanding national resource waters, exceptional waters, and use protected waters. By categorizing certain streams as exceptional waters, this amended administrative regulation will lessen the degree of degradation of those waters. The quality of aquatic-based recreation (e.g., fishing, swimming, skiing, and boating) will be preserved. Drinking water treatment costs will be contained because of controlled pollutant amounts. Aquatic biodiversity will be maintained.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This amended administrative regulation reduces the amount of permissible point source pollutant loading into exceptional waters. Aquatic recreation, such as swimming, wading, skiing, and boating, depends on the maintenance of clean, safe water. Categorizing these waters protects rare aquatic species and the rich biodiversity of plants, fish, and macroinvertebrates.

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

(c) If detrimental effect would result, explain detrimental effect: Failure to implement this amended administrative regulation would allow the degradation of those streams and lakes identified as outstanding national resource waters and exceptional waters. Although these waters would meet designated uses, any increment of water quality greater than that necessary to support propagation of fish, shellfish, wildlife, and recreation in and on the water could be lost. Analysis of alternatives will assure that no feasible environmentally beneficial alternatives exist.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statutes, administrative regulations or government policies are in conflict, overlap, or duplicate this amended administrative regulation.

(a) Necessity of proposed administrative regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: State water quality standards are required by federal law to be reviewed for possible changes at least every three years. The U.S. Environmental Protection Agency disapproved: 1) excluding carcinogenic pollutants from twice as stringent limits in discharges to exceptional waters; and 2) the number of waters that would undergo an antidegradation review. The cabinet is addressing these issues in these proposed revisions by applying twice as stringent limits to carcinogenic substances for discharges to exceptional waters, and by requiring a socioeconomic demonstration for new and expanded discharges to exceptional and use protected waters.

(11) TIERING: Is tiering applied? No. The amended administrative regulation affects all discharges into surface waters of the Commonwealth, irrespective of ownership, capacity, processes, or treatment used.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

There is no federal statute or regulation mandating that Kentucky implement a water pollution control program. For Kentucky to maintain its delegation over the NPDES permit program, however, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 CFR Part 131, including the requirement for implementing an antidegradation policy. The federal regulations require the adoption of an antidegradation policy for delegated states. The U.S. Environmental Protection Agency does provide guidance to the states, but individual decisions concerning the states water quality programs are left to the states.

2. State compliance standards. 401 KAR 5:002, 5:026, 5:029, 5:030, and 5:031, the water quality standards regulations.

3. Minimum or uniform standards contained in the federal mandate. The Clean Water Act requires designated uses, criteria, standards and antidegradation policies in water quality standards.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no stricter standard or additional or different responsibilities or requirements.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. This amended administrative regulation may affect the wastewater treatment divisions of local government if they will have new or expanded discharges into outstanding national resource waters or exceptional waters.

3. State the aspect or service of local government to which this administrative regulation relates. This amended administrative regulation relates to local governments' waste water treatment service.

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

Revenues (+/-): Cannot be determined.

Expenditures (+/-): Cannot be determined.

Other explanation: Waste water treatment costs may increase for those local governments that will have new or expanded discharges into exceptional waters. However, local governments withdrawing drinking water from these waters may have lower treatment costs, because these waters should have lower pollutant loads. The basic requirement already exists in federal and state law. The cost associated with this amended administrative regulation will be procedural in nature.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Water (Amended After Hearing)

401 KAR 5:031. Surface water standards.

RELATES TO: KRS 146.200 to 146.360, 146.410 to 146.990, 224.01-100, 224.01-400, 224.16-050, 224.16-070, 224.40, 224.43, 224.46, 224.50, 224.60, 224.70, 224.71, 224.73 [Chapter 224]

STATUTORY AUTHORITY: KRS 146.200 to 146.360, 146.410 to 146.990, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 CFR Part 131, 16 USC 1271 et seq., 1531 et seq., 33 USC 1311, 1313, 1314, 1341

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct a comprehensive program for the man-

agement of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation and 401 KAR 5:002, 5:026, 5:029, and 5:030 will operate to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation sets forth water quality standards which consist of designated legitimate uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses. These water quality standards are minimum requirements that [criteria which] apply to all surface waters in the Commonwealth of Kentucky in order to maintain and protect them for designated uses. [Criteria for nutrients are recognized and included. These water quality standards are established to protect public health and welfare, protect and enhance the quality of water, and fulfill federal and state requirements for the establishment of water quality standards.] These water quality standards are subject to periodic review and revision in accordance with federal and state laws. Definitions for terms used in this administrative regulation are found in 401 KAR 5:002 [029. On May 31, 1990 the Interim Joint Committee on Agriculture and Natural Resources determined that this administrative regulation did not comply with KRS Chapter 13A. This administrative regulation is being amended to remove the portions that the Interim Joint Committee found deficient, so that the letter of attachment may be removed].

Section 1. Nutrient Limits. [(+) In [publicly-owned] lakes and [publicly-owned] reservoirs, [surface impoundments] and their tributaries, and other surface waters where eutrophication problems may exist, nitrogen, phosphorus, carbon, and contributing trace element discharges shall [will] be limited by the cabinet in accordance with the scope of the problem, the geography of the affected area, and relative contributions from existing and proposed sources. [as appropriate by the cabinet.

(2) The affected surface waters will be designated as nutrient limited.]

Section 2. Minimum Criteria Applicable to All Surface Waters. (1) The following minimum water quality criteria are applicable to all surface waters including mixing zones, with the exception that toxicity to aquatic life in mixing zones shall be subject to the provisions of 401 KAR 5:029, Section 4 [5]. Surface waters shall not be aesthetically or otherwise degraded by substances that:

- Settle to form objectionable deposits;
- Float as debris, scum, oil, or other matter to form a nuisance;
- Produce objectionable color, odor, taste, or turbidity;
- Injure, are chronically or acutely toxic to or produce adverse physiological or behavioral responses in humans, animals, fish and other aquatic life;
- Produce undesirable aquatic life or result in the dominance of nuisance species;
- Cause fish flesh tainting. [(The concentration of all phenolic compounds which cause fish flesh tainting shall not exceed five (5) µg/l as an instream value)];
- Cause the following changes in radionuclides:
 - The gross total alpha particle activity, [(including radium-226 but excluding radon and uranium,)] to exceed fifteen (15) pCi/l;
 - Combined radium-226 and radium-228 to exceed five (5) pCi/l. [(Specific determinations of radium-226 and radium-228 are not necessary if dissolved gross alpha particle activity does not exceed five (5) pCi/l)];
 - The concentration of total gross beta particle activity to exceed fifty (50) pCi/l;
 - The concentration of tritium to exceed 20,000 pCi/l;
 - The concentration of total Strontium-90 to exceed eight (8) pCi/l.

(2) The following criteria are applicable to all surface water at the edge of the [outside] assigned [designated] mixing zones except for those points where water is withdrawn for domestic water supply use. They are established for the protection of human health from the consumption of fish tissue, and shall not be exceeded. For those substances associated with a cancer risk, an acceptable risk level of no more than one (1) additional cancer case in a population of 1,000,000 people, or 1×10^{-6} shall [will] be utilized to establish the allowable concentration.

Table 1. Water Quality Criteria for Protection of Human Health from the Consumption of Fish Tissue	
Substances Not Linked to Cancer	Concentration (µg/l)
Metals¹	
Antimony	4,300 [45,000]
[Chromium (III)]	670,000
Mercury	0.051 [0-146]
Nickel	4,600
Thallium	6.3 [48]
Zinc	69,000
Organics	
Acenaphthene	2,700
Acrolein	780
Anthracene	110,000
Chlorobenzene	21,000
1,2,4,5-tetrachlorobenzene	2.9 [48]
Pentachlorobenzene	4.1 [85]
[1,1,1-trichloroethane	1,030,000]
bis(2-chloroisopropyl) ether	170,000 [4,360]
Cyanide	220,000
1,2-dichlorobenzene	17,000
1,3-dichlorobenzene	2,600
1,4-dichlorobenzene	2,600
1,3-dichloropropylene	1,700
1,2,4-trichlorobenzene	940
[Dichlorobenzenes	2,600]
Dichloropropenes	14,100]
alfa-Endosulfan	240 [159]
beta-Endosulfan	240
Endosulfan sulfate	240
Endrin	0.81
Endrin aldehyde	0.81
Ethylbenzene	29,000
Fluoranthene	370 [54]
Fluorene	14,000
Hexachloropsychlopentadine	17,000
2-chloronaphthalene	4,300
2-chlorophenol	400
2,4 dichlorophenol	790
2,4,5-trichlorophenol	9,800
2,4-dimethylphenol	2,300
[Isophorone	520,000]
2,4-dinitro-o-cresol, or 2-methyl-4,6-dinitrophenol	765
Butylbenzyl phthalate	5,200
2,4 dinitrophenol	14,000 [14,300]
Phenol	4,600,000
Di-n-butyl [Dibutyl] phthalate	12,000 [154,000]
Diethyl phthalate	120,000 [800,000]
Di-2-ethylhexyl phthalate	50,000]
Dimethyl phthalate	2,900,000
1,3-dichloropropene	1,700
Pyrene	11,000
Methyl bromide	4,000
Nitrobenzene	1,900
Toluene	200,000 [424,000]
Substances Linked to Cancer	
[Metals¹	
Beryllium	0-117]
Organics	
Acrylonitrile	0.65
Aldrin	0.00014 [-000079]
Benzene	71
Benzidine	0.00054 [-00053]
Benzo(a)anthracene	0.049
Benzo(a)pyrene	0.049
Benzo(b)fluoranthene	0.049
Benzo(k)fluoranthene	0.049

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Bromoform	360
Carbon tetrachloride	4.4 [6-94]
Chlordane	0.0022 [0.00048]
Chlorodibromomethane	34
Dichlorobromomethane	46
Hexachlorobenzene	0.00077 [0.00074]
1,2-dichloroethane	99 [243]
1,1,2-trichloroethane	41.8
1,1,2,2[-]-tetrachloroethane	10.7
Hexachloroethane	8.9 [8-74]
1,2-dichloropropane	39
2,4,6-trichlorophenol	6.5 [3-6]
Pentachlorophenol	8.2
bis(2-chloroethyl) ether	1.40 [1-36]
bis(2-ethylhexyl) phthalate	5.9
Chloroform	470
Chrysene	0.049
4,4'-DDE	0.00059
4,4'-DDD	0.00084
4,4'-DDT	0.00059 [0.000024]
Dibenzo(a,h)anthracene	0.049
3,3'-dichlorobenzidine	0.077 [0.02]
1,1-dichloroethylene	3.2 [1-85]
1,2-trans-dichloroethylene	140,000
Dieldrin	0.00014 [0.000076]
2,4-dinitrotoluene	9.1
Dioxin, 2,3,7,8-TCDD	0.000000014 [0.00000012]
1,2-diphenylhydrazine	0.54 [0-56]
[Halomethanes	15.7]
Heptachlor	0.00021 [0.00029]
Heptachlor epoxide	0.00011
Hexachlorobutadiene	50.0
alpha Hexachlorocyclohexane or BHC [HCH]	0.013 [0.031]
beta BHC [HCH]	0.046 [0.0547]
gamma BHC or [HCH-]lindane[)]	0.063 [0.0625]
[Technical HCH	0.0414]
Indeno(1,2,3-cd)pyrene	0.049
Isophorone	2,600
Methylene chloride	1,600
[N-nitrosodiethylamine	1-24]
N-nitrosodimethylamine	8.1 [16.0]
[N-nitrosodibutylamine	0.587]
N-nitrosodi-n-propylamine	1.4
N-nitrosodiphenylamine	16.0 [16.1]
[N-nitrosopyrrolidine	91.9]
Polychlorinated Biphenyls or [PCBs]	0.000079
[Polynuclear Aromatic Hydrocarbons (PAHs)	0.0311]
Tetrachloroethylene	8.85
Toxaphene	0.00075 [0.00073]
Trichlorethylene	81 [80-7]
Vinyl Chloride	525

Total recoverable form measured in an unfiltered sample

Section 3. Use Designations [Classifications] and Associated Criteria. (1) Surface waters may be designated as having one (1) or more [of the following] legitimate uses and associated [use] criteria protective of those uses. Those uses are listed in 401 KAR 5:026. [The classifications in Sections 4, 5, 6, and 7 of this administrative regulation include the most common usage of surface waters within the Commonwealth.] Nothing in this administrative regulation shall be construed to prohibit or impair the legitimate beneficial uses of these waters. The criteria in Sections 2, 4, 5, and 6 [Section 2] of this administrative regulation [and the following use criteria] represent minimum conditions necessary to protect surface waters for the indicated use and to provide for the protection of human health from fish consumption [or a combination of fish and water consumption].

(2) On occasion surface water quality may be outside of the limits

established to protect designated uses because of natural conditions. If [When] this condition occurs during periods when stream flows are below the flow that [which] is used by the cabinet to establish effluent limitations [limits] for wastewater treatment facilities, a discharger shall not be considered a contributor to instream violations of water quality standards, if [provided that] treatment results in compliance with permit requirements [is maintained].

(3) Governing flows for water quality-based permits. The following stream flows are to be utilized when deriving KPDES permit limitations for the protection of surface waters for the listed uses and purposes.

(a) Aquatic life protection - $7Q_{10}$.

(b) Water-based recreation protection - $7Q_{10}$.

(c) Domestic water supply protection - harmonic mean for cancer-linked substances, $7Q_{10}$ for noncancer-linked substances, determined at points of withdrawal.

(d) Human health protection from fish consumption only - harmonic mean for cancer-linked substances, $7Q_{10}$ for noncancer-linked substances.

(e) Protection of aesthetics and for changes in radionuclides - $7Q_{10}$.

Section 4. Aquatic Life. (1) Warm water aquatic habitat. The following parameters and associated criteria shall apply for the protection of productive warm water aquatic communities, fowl, animal wildlife, arboreous growth, agricultural, and industrial uses:

(a) Natural alkalinity as CaCO_3 shall not be reduced by more than twenty-five (25) percent. If [Where] natural alkalinity is below twenty (20) mg/l CaCO_3 , no reduction below the natural level is allowed. Alkalinity shall not be reduced or increased to a degree which may adversely affect the aquatic community.

(b) pH shall not be less than six and zero-tenths (6.0) nor more than nine and zero-tenths (9.0) and shall not fluctuate more than one and zero-tenths (1.0) pH [4] unit over a period of twenty-four (24) hours.

(c) Flow shall not be altered to a degree which will adversely affect the aquatic community.

(d) Temperature shall not exceed thirty-one and seven-tenths (31.7) degrees Celsius (eighty-nine (89) degrees Fahrenheit).

1. The normal daily and seasonal temperature fluctuations that existed before the addition of heat due to other than natural causes shall be maintained.

2. The cabinet may [will] determine allowable surface water temperatures on a site-specific basis utilizing available data which shall be based on the effects of temperature on the aquatic biota which utilize specific surface waters of the Commonwealth and which may be affected by person-induced temperature changes. Effects on downstream uses will also be considered in determining site-specific temperatures. As a guideline, the water temperature for all surface waters shall comply with the limitations [limits] shown in the following table:

Month/Date	Period Average (°F)	Instantaneous Maximum (°F)
January 1-31	45	50
February 1-29	45	50
March 1-15	51	56
March 16-31	54	59
April 1-15	58	64
April 16-30	64	69
May 1-15	68	73
May 16-31	75	80
June 1-15	80	85
June 16-30	83	87
July 1-31	84	89
August 1-31	84	89
September 1-15	84	87
September 16-30	82	86
October 1-15	77	82
October 16-31	72	77
November 1-30	67	72
December 1-31	52	57

3. A successful demonstration concerning thermal discharge limits carried out under Section 316(a) of the Clean Water Act shall constitute compliance with the temperature requirements of this subsection.

A successful demonstration assures the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in or on the water into which the discharge is made.

(e) Dissolved oxygen.

1. Dissolved oxygen shall be maintained at a minimum concentration of five and zero tenths (5.0) mg/l daily average; [at no time shall] the instantaneous minimum shall not be less than four and zero-tenths (4.0) mg/l.

2. The dissolved oxygen concentration shall be measured at mid-depth in waters having a total depth of ten (10) feet or less and at representative depths in other waters.

(f) Solids.

1. Total dissolved solids. Total dissolved solids shall not be changed to the extent that the indigenous aquatic community is adversely affected.

2. Total suspended solids. Total suspended solids shall not be changed to the extent that the indigenous aquatic community is adversely affected.

3. Settleable solids. The addition of settleable solids that may [adversely] alter the stream bottom so as to adversely affect productive aquatic communities is prohibited.

(g) Ammonia. The concentration of the un-ionized form shall not be greater than 0.05 mg/l at any time instream after mixing. Un-ionized ammonia shall be determined from values for total ammonia-N, in mg/l, pH and temperature, by means of the following equation:

$$Y = 1.2 (\text{Total ammonia-N}) / (1 + 10^{(pk_a - pH)})$$

$$pk_a = 0.0902 + (2730 / (273.2 + T_c))$$

Where:

T_c = temperature, degrees Celsius.

Y = un-ionized ammonia (mg/l).

(h) Toxics.

1. The allowable instream concentration of toxic substances, or whole effluents, containing toxic substances which are noncumulative or nonpersistent with a [(half-life of less than ninety-six (96) hours)] shall not exceed [the no-observed-effect level (NOEL) or] one-tenth (0.1) of the ninety-six (96) hour median lethal concentration (LC_{50}) of [a] representative indigenous or indicator aquatic organisms [organism(s)] or exceed a chronic toxicity unit of 1.00 utilizing the twenty-five (25) percent inhibition concentration, or LC_{25} [one (1), whichever is more appropriate].

2. The allowable instream concentration of toxic substances, or whole effluents, containing toxic substances which are bioaccumulative or persistent, including pesticides, when not specified elsewhere in this section, shall not exceed [the NOEL or] 0.01 of the ninety-six (96) hour median lethal concentration (LC_{50}) of [a] representative indigenous or indicator aquatic organisms [organism(s)] or exceed a chronic toxicity unit of 1.00 utilizing the LC_{25} [one (1), whichever is more appropriate].

3. In the absence of acute criteria for substances listed in Table 2 or for other substances known to be toxic but not listed in this administrative regulation, or for whole effluents which are acutely toxic, the allowable instream concentration shall not exceed the LC, or one-third (1/3) LC_{50} concentration derived from toxicity [bioassay] tests on [a] representative indigenous or indicator aquatic organisms [organism(s)] or exceed three-tenths (0.3) acute toxicity units [unit, whichever is more appropriate].

4. If [Where] specific application factors have been determined for a toxic substance or whole effluent such as an acute to [f] chronic ratio or water effect ratio, they may be used instead of the one-tenth (0.1) and 0.01 factors listed in this subsection upon approval by the cabinet.

5. Allowable instream concentrations for specific substances, [(acute and chronic criteria)] are listed in Table 2. These concentrations are based on protecting aquatic life from acute and chronic toxicity, and shall not be exceeded.

Table 2
Warm Water Aquatic Habitat Criteria¹

Metals		
Substance	Acute Criteria	Chronic Criteria
Arsenic		50 µg/l
Arsenic (III)	340 [360] µg/l	150 [190] µg/l
Beryllium		11 µg/l soft water ²
		1100 µg/l hard water ²

Cadmium (µg/l)	$e^{(1.128 (\ln \text{Hard}) - 3.687)}$ [828]	$e^{(0.7852 (\ln \text{Hard}) - 2.715 [3.490])}$
Chromium (III) (µg/l)	$e^{(0.8190 (\ln \text{Hard}) + 3.726)}$ [688]	$e^{(0.8190 (\ln \text{Hard}) + 0.685 [1.561])}$
Chromium (VI)	16 µg/l	11 µg/l
Copper (µg/l)	$e^{(1.8422 (\ln \text{Hard}) - 1.700)}$ [464]	$e^{(1.8545 (\ln \text{Hard}) - 1.702 [466])}$
Iron	4.0 mg/l	1.0 mg/l ^[2]
Lead (µg/l)	$e^{(1.273 (\ln \text{Hard}) - 1.460)}$	$e^{(1.273 (\ln \text{Hard}) - 4.705)}$
Mercury	1.7 [2.4] µg/l	0.91 [0.012] µg/l
Nickel (µg/l)	$e^{(0.8460 (\ln \text{Hard}) + 2.255)}$ [33612]	$e^{(0.8460 (\ln \text{Hard}) + 0.0584 [1.1645])}$
Selenium	20 µg/l	5 µg/l
Silver (µg/l)	$e^{(1.72 (\ln \text{Hard}) - 6.52)}$	
Zinc (µg/l)	$e^{(0.8473 (\ln \text{Hard}) + 0.884)}$ [604]	$e^{(0.8473 (\ln \text{Hard}) + 0.884 [7614])}$
Organics		
Aldrin	3.0 µg/l	
Chlordane	2.4 µg/l	0.0043 µg/l
Chlorpyrifos	0.083 µg/l	0.041 µg/l
4,4'-DDT	1.1 µg/l	0.001 µg/l
Dieldrin	0.24 [2.5] µg/l	0.056 [0.0019] µg/l
alpha-Endosulfan	0.22 µg/l	0.056 µg/l
beta-Endosulfan	0.22 µg/l	0.056 µg/l
Endrin	0.086 [0.18 µg/l]	0.036 [0.0023 µg/l]
Guthion		0.01 µg/l
Heptachlor	0.52 µg/l	0.0038 µg/l
Heptachlor epoxide	0.52 µg/l	0.0038 µg/l
Lindane or gamma BHC	0.95 [2.0] µg/l	[0.080 µg/l]
Melathion		0.1 µg/l
Mirex		0.001 µg/l
Methoxychlor		0.030 µg/l
Parathion	0.065 µg/l	0.013 µg/l
Pentachlorophenol (µg/l)	$e^{(1.005(pH) - 4.869 [830])}$	$e^{(1.005(pH) - 5.134 [290])}$
Phthalate esters		3 µg/l
Polychlorinated Biphenyls or [(PCBs)]		0.0014 µg/l
Toxaphene	0.73 µg/l	0.0002 µg/l
Others		
Chloride	1200 mg/l	600 mg/l
Chlorine, total residual	19 µg/l	11 [10] µg/l
Cyanide, free	22 µg/l	5.2 µg/l
Hydrogen sulfide (undissociated)		2 µg/l

¹Metal criteria, for purposes of this administrative regulation, are total recoverable metals to be measured in an unfiltered sample, unless it can be demonstrated to the satisfaction of the cabinet that a more appropriate analytical technique is available which provides a measurement of that portion of the metal present which causes toxicity to aquatic life.

²[Soft water has an equivalent concentration of calcium carbonate ($CaCO_3$) of zero to seventy-five (75) mg/l, and hard water has an equivalent concentration of calcium carbonate ($CaCO_3$) of over seventy-five (75) mg/l.]

³] The chronic criterion for iron shall not exceed three and five-tenths (3.5) mg/l if aquatic life has not been shown to be adversely affected [when it is established that there will be no damage to aquatic life].

*Hard = Hardness as mg/l $CaCO_3$.

(2) Cold water aquatic habitat. The following parameters and their associated criteria are for the protection of productive cold water aquatic communities and streams that [which] support trout populations, [(whether self-sustaining or reproducing,)] on a year-round basis. [All of] The criteria adopted for the protection of warm water aquatic life also apply to the protection of cold water habitats with the following additions:

(a) Dissolved oxygen.

1. A minimum concentration of six and zero-tenths (6.0) mg/l as a

daily average and five and zero-tenths (5.0) mg/l as an instantaneous minimum shall be maintained [at all times].

2. In [publicly-owned] lakes and [publicly-owned] reservoirs that [impoundments which] support trout, the concentration of dissolved oxygen in waters below the epilimnion shall be kept consistent with natural water quality.

(b) Temperature. Water temperature shall not be increased through human [man's] activities above the natural seasonal temperatures.

Section 5. Domestic Water Supply Use. Maximum allowable in-stream concentrations for specific substances, to be applicable at the point of withdrawal for use for domestic water supply from surface water sources are specified in Table 3 and shall not be exceeded.

Table 3 Domestic Water Supply Source Criteria	
Substances Not Linked to Cancer	Concentration
Metals¹	
Antimony	0.006 [0.146] mg/l
Barium	2.0 [†] mg/l
Beryllium	0.004 µg/l
Cadmium	0.005 [0.010] mg/l
Chromium	0.10 [0.05] mg/l
[Chromium (III)]	33 mg/l
Copper	1.0 mg/l
Lead	0.015 [0.05] mg/l
Manganese	0.05 mg/l
Mercury	0.000050 mg/l [0.144 µg/l]
Nickel	0.100 mg/l [610 µg/l]
Selenium	0.05 [0.01] mg/l
Silver	0.05 mg/l
Thallium	0.0017 [0.013] mg/l
Zinc	5.0 mg/l
Organics	
Acenaphthene	1.200 mg/l
Acrolein	0.320 mg/l
Anthracene	9.6 mg/l
Monochlorobenzene or Chlorobenzene	0.680 [0.488] mg/l
1,2,4,5-tetrachlorobenzene	0.0023 [0.038] mg/l
Pentachlorobenzene	0.0035 [0.074] mg/l
[1,1,1-trichloroethane	18.4 mg/l
2,4,5-trichlorophenol	2.6 mg/l]
Bis(2-chloroisopropyl) ether	1.4 [0.0347] mg/l
1,2-dichlorobenzene	0.600 mg/l
1,3-dichlorobenzene	0.400 mg/l
1,4-dichlorobenzene	0.075 mg/l
1,2,4-trichlorobenzene	0.070 mg/l
[Dichlorobenzenes	0.400 mg/l
2,4-dichlorophenol	3.090 mg/l
Dichloropropenes	0.087 mg/l]
alpha-Endosulfan	0.110 [0.074] mg/l
beta-Endosulfan	0.110 mg/l
Endosulfan sulfate	0.110 mg/l
Endrin	0.00076 [0.001] mg/l
Endrin aldehyde	0.00076 mg/l
Ethylbenzene	0.70 [3.1] mg/l
Fluoranthene	0.300 [0.042] mg/l
Fluorene	1.3 mg/l
Hexachlorocyclopentadiene	0.05 [0.206] mg/l
Methylbromide	0.048 mg/l
2-Chloronaphthalene	1.700 mg/l
[Isophorone	5.2 mg/l]
Nitrobenzene	0.017 [19.8] mg/l
2-chlorophenol	0.120 mg/l
2,4-dichlorophenol	0.093 mg/l
2,4,5-trichlorophenol	2.6 mg/l

2,4-dimethylphenol	0.540 mg/l
2-4-dinitro-o-cresol or 2-methyl-4,6-dinitrophenol	0.0134 mg/l
2,4-dinitrophenol	0.070 mg/l
[Pentachlorophenol	1.0 mg/l]
Phenol	21 [3.5] mg/l
Butylbenzyl phthalate	3.0 mg/l
Di-n-butyl [Dibutyl] phthalate	2.7 [34] mg/l
Diethyl phthalate	23 [350] mg/l
[Di-2-ethylhexyl phthalate	15 mg/l]
Dimethyl phthalate	313 mg/l
1,3-dichloropropene	0.010 mg/l
Pyrene	0.960 mg/l
Toluene	1.0 [14.3] mg/l
Others	
Chloride	250 mg/l
Color	75 Platinum Cobalt Color Units
Cyanide (free)	0.200 mg/l
Fecal Coliform	2000/100 ml (Geometric mean)
Fluoride	2.0 [1.0] mg/l
Methylene Blue Active Substances	0.5 mg/l
Nitrate (NO ₃ -N)	10 mg/l
Sulfate	250 mg/l
Total Dissolved Solids	750 mg/l
Substances Linked to Cancer	
[Metals (µg/l)]	
Beryllium	0.0068]
Organics (µg/l)	
Acrylonitrile	0.058
Aldrin	0.00013 [0.000074]
Asbestos (fibers/liter)	7,000,000 [30,000]
Benzene	1.2
Benzidine	0.00012
Benzo(a)anthracene	0.0044
Benzo(a)pyrene	0.0044
Benzo(b)fluoranthene	0.0044
Benzo(k)fluoranthene	0.0044
Bromoform	4.3
Carbon tetrachloride	0.25 [0.40]
Chlordane	0.0021 [0.00046]
Chlorodibromomethane	0.41
Dichlorobromomethane	0.56
Hexachlorobenzene	0.00075 [0.00072]
1,2-dichloroethane	0.38 [0.94]
1,1,1-trichloroethane	200
1,1,2-trichloroethane	0.60
1,1,2,2-tetrachloroethane	0.17
Hexachloroethane	1.9
1,2-dichloropropane	0.52
2,4,6-trichlorophenol	2.1 [1.2]
Pentachlorophenol	0.28
bis(2-chloroethyl) ether	0.031 [0.03]
bis(2-ethylhexyl) phthalate	1.8
Chloroform	5.7
Chrysene	0.0044
4,4'-DDT	0.00059 [0.000024]
4,4'-DDE	0.00059
4,4'-DDD	0.00083
Dibenzo(a,h)anthracene	0.0044
3-3'-dichlorobenzidine	0.04 [0.01]
1,1-dichloroethylene	0.057 [0.033]
Dieldrin	0.00014 [0.000071]
2,4-dinitrotoluene	0.11
Dioxin, 2,3,7,8-TCDD	0.000000013
1,2-diphenylhydrazine	0.040 [0.042]

[Halomethanes	0.19]
Heptachlor	0.00021 [0.00028]
Heptachlor epoxide	0.00010
Hexachlorobutadiene	0.44 [0.45]
alpha Hexachlorocyclohexane, or BHC [HCH]	0.0039 [0.009]
beta BHC [HCH]	0.014 [0.016]
gamma BHC or [HCH-γ] [Lindane{γ}]	0.019
Indeno (1,2,3-cd) pyrene	0.0044
Isophorone	36
Methylene chloride	4.7
[Technical HCH	0.012
N-nitrosodiethylamine	0.0008]
N-nitrosodimethylamine	0.00069 [0.0014]
[N-nitrosodibutylamine	0.0064]
N-nitrosodiphenylamine	5.0 [4.9]
N-nitrosodi-n-propylamine	0.005
[N-nitrosopyrrolidine	0.016]
Polychlorinated Biphenyls or {[PCBs{}}]	0.000079
[Polynuclear Aromatic Hydrocarbons (PAHs)	0.0028]
Tetrachloroethylene	0.8
Toxaphene	0.00073 [0.00074]
Trichloroethylene	2.7
Vinyl Chloride	2.0

¹Total recoverable form measured in an unfiltered sample.

Section 6. Recreational Waters. (1) Primary contact recreation water. [Primary contact recreation waters are waters suitable for full body contact recreation during the recreation season of May 1 through October 31.] Criteria for primary contact recreation waters are [listed below]:

(a) Fecal coliform content shall not exceed 200 colonies per 100 ml as a monthly geometric mean based on not less than five (5) samples per month; nor exceed 400 colonies per 100 ml in twenty (20) percent or more of all samples taken during the month. [;] These limits shall be [are] applicable during the recreation season of May 1 through October 31. Fecal coliform criteria listed in subsection (2)(a) of this section shall apply during the remainder of the year.

(b) pH shall be between six and zero-tenths (6.0) to nine and zero-tenths (9.0) and shall not change more than one and zero-tenths (1.0) pH unit within this range over a period of twenty-four (24) hours.

(2) Secondary contact recreation water. [Secondary contact recreation waters are waters suitable for partial body contact recreation, with minimal threat to public health due to water quality.] The following criteria shall apply to waters designated [classified] for secondary contact recreation use during the entire year:

(a) Fecal coliform content shall not exceed 1000 colonies per 100 ml as a monthly geometric mean based on not less than five (5) samples per month; nor exceed 2000 colonies per 100 ml in twenty (20) percent or more of all samples taken during the month.

(b) pH shall be between six and zero-tenths (6.0) to nine and zero-tenths (9.0) and shall not change more than one and zero-tenths (1.0) pH unit within this range over a period of twenty-four (24) hours.

Section 7. Outstanding State Resource Waters. This designation [classification] category includes certain unique waters of the Commonwealth.

(1) Water for inclusion.

(a) Automatic inclusion. The following surface waters shall automatically be included in this category:

1. Waters designated under the Kentucky Wild Rivers Act, KRS 146.200-146.360.

2. Waters designated under the Federal Wild and Scenic Rivers Act, 16 USC 1271 et seq. [and high quality waters constituting an outstanding national resource water.]

3. Waters identified under the Kentucky Nature Preserves Act, KRS 146.410-146.530, which are contained within a formally dedicated nature preserve or are published in the registry of natural areas in accordance with 400 KAR 2:080 and concurred upon by the cabinet.

4. Waters that support federally recognized endangered or threat-

ened species under the Endangered Species Act of 1973, as amended, 16 USC 1531 et seq.

(b) Permissible consideration. Other surface waters may be included in this category as determined by the cabinet if:

1. The surface waters flow through or are bounded by state or federal forest land, or are of exceptional aesthetic or ecological value or are within the boundaries of national, state, or local government parks, or are a part of a unique geological or historical area recognized by state or federal designation; or

2. They are a component part of an undisturbed or relatively undisturbed watershed that can provide basic scientific data and possess outstanding water quality characteristics; or two (2) of the following criteria:

a. Support a diverse or unique native aquatic flora or fauna.

b. Possess physical or chemical characteristics that provide an unusual and uncommon aquatic habitat.

c. Provide [Provides] a unique aquatic environment within a physiographic region.

(2) Outstanding state resource waters protection. [;] The designation [classification] of certain waters as outstanding state resource waters shall fairly and fully reflect those aspects of the waters for which the designation [classification] is proposed. The cabinet shall [will] determine water quality criteria for these waters as follows:

(a) At a minimum, the criteria of Section 2 of this administrative regulation and the appropriate criteria associated with the stream use designation [classification] assignments in 401 KAR 5:026, shall be [are] applicable to these waters.

(b) If [Where] the values identified for an outstanding state resource water are dependent upon or related to instream water quality, the cabinet shall [will] review existing water quality criteria and determine if [whether] additional criteria or more stringent criteria are necessary for protection, and evaluate the need for the development of additional data upon which to base the determination. Existing water quality and habitat shall be maintained and protected in those waters designated as outstanding state resource waters that [which] support federally threatened and endangered species of aquatic organisms, unless it can be demonstrated to the satisfaction of the cabinet, that lowering of water quality or a habitat modification will not have a harmful effect on the threatened or endangered species which the water supports.

(c) [Water quality shall be maintained and protected in waters which constitute an outstanding national resource. The cabinet may approve temporary or short-term changes in water quality if the changes to the waters in question have no demonstrable impact on the ability of the waters to support this use.]

(d) Adoption of more protective criteria in accordance with this section shall [will] be listed with the respective stream segment in 401 KAR 5:026, and will be promulgated as an administrative regulation pursuant to KRS Chapter 13A.

(3) Determination of designation [classification].

(a) Any person may present a proposal to designate [classify] certain waters under this section. Documentation requirements in support of an outstanding state resource water proposal shall contain those elements outlined in 401 KAR 5:026, Section 3(3)(a) through (h) [5(1) through (8)].

(b) The cabinet shall [will] review the proposal and supporting documentation to determine whether the proposed waters qualify as outstanding state resource waters within the criteria established by this administrative regulation. The cabinet shall [will] document the determination to deny or to propose redesignation [reclassification], and a copy of the decision shall [will] be served upon the petitioner and other interested parties.

(c) After considering all of the pertinent data, a redesignation [reclassification], if appropriate, shall [will] be made pursuant to 401 KAR 5:026.

Section 8. Water Quality Criteria for the Main Stem of the Ohio River. The following criteria apply to the main stem of the Ohio River from its juncture with the Big Sandy River at River Mile 317.1 to its confluence with the Mississippi River, and shall not be exceeded. [;] These waters are subject to all applicable provisions of 401 KAR 5:002, 5:026, 5:029, 5:030, and this administrative regulation.

(1) Dissolved oxygen. Concentrations shall average at least five

and zero-tenths (5.0) mg/l per calendar day and shall not be less than four and zero-tenths (4.0) mg/l except during the April 15-June 15 spawning season when a minimum of five and one-tenth (5.1) mg/l shall be [at any time provided that a minimum of five and one-tenth (5.1) mg/l at any time is] maintained [during the April 15--June 15 spawning season].

(2) Temperature.

(a) Allowable stream temperatures are:

Month/Date	Period Average (°F)	Instantaneous Maximum (°F)
January 1-31	45	50
February 1-29	45	50
March 1-15	51	56
March 16-31	54	59
April 1-15	58	64
April 16-30	64	69
May 1-15	68	73
May 16-31	75	80
June 1-15	80	85
June 16-30	83	87
July 1-31	84	89
August 1-31	84	89
September 1-15	84	87
September 16-30	82	86
October 1-15	77	82
October 16-31	72	77
November 1-30	67	72
December 1-31	52	57

(b) A successful demonstration conducted for thermal discharge limitations [limits] under Section 316(a) of the Clean Water Act shall [will] constitute compliance with these temperature criteria.

(3) [Total dissolved solids: not to exceed 500 mg/l as a monthly average, nor exceed 750 mg/l at any time. Equivalent twenty-five (25) degrees Centigrade specific conductance values are 800 and 1200 micromhos/cm respectively.]

(4) Maximum allowable instream concentrations for specific parameters for the protection of human health are given below. They shall be met at the edge of the assigned [outside the] mixing zone. Metal concentrations are total recoverable values except hexavalent chromium, which is dissolved.

Parameter	Concentration (mg/l)
Arsenic	.05
Barium	2.0 [1.0]
Chloride	250
Fluoride	2.0 [1.0]
Nitrite + Nitrate Nitrogen	10.0
Nitrite-Nitrogen	1.0
Phenolics	.005
Sulfate	250

(4) To provide protection of warm water aquatic life habitats, the following criteria shall be met at [outside] the edge of the assigned mixing zone.

Parameter	Chronic Criteria Concentration (µg/l)	Acute Criteria Concentration (µg/l)
Cadmium	$e^{(7852(\ln \text{Hard}-2.715)(3.490))}$	$e^{(1128(\ln \text{Hard}-3.687)(828))}$
Chromium (hexavalent)	11	16
Copper	$e^{(8545(\ln \text{Hard}-1.702)(465))}$	$e^{(9422(\ln \text{Hard}-1.700)(464))}$
Cyanide (free)	5.2	22
Lead	$e^{(1273(\ln \text{Hard}-4.705))}$	$e^{(1273(\ln \text{Hard}-1.460))}$
Mercury	0.91 [0.12]	1.7 [2.4]
Zinc	$e^{(8473(\ln \text{Hard}-884)(7614))}$	$e^{(8473(\ln \text{Hard}-884)(8604))}$

(5) The net discharge of aldrin, dieldrin, DDT, including DDD and DDE, endrin, toxaphene, benzidine, and PCBs is prohibited.

Section 9. Exceptions to Criteria for Specific Surface Waters. (1) The cabinet may grant exceptions to the criteria contained in Sections 2, 4, 5, 6, [and] 7, and 8 of this administrative regulation upon demonstration by an applicant that maintenance of applicable water quality

criteria is [are] not attainable or scientifically valid but the use designation [classification] is still appropriate. This determination shall [will] be made on a case-by-case basis with respect to a specific surface water following an analysis for each area.

(2) The analysis shall show that the water quality criteria cannot be reasonably achieved either on a seasonal or year-round basis due to natural conditions, or site-specific factors differing from the conditions used to derive criteria in Sections 2, 4, 5, 6, 7, and 8 of this administrative regulation [or a demonstration that meeting the criteria would cause substantial and widespread economic and social impact]. Site-specific criteria shall be developed by the applicant utilizing toxicity tests, indicator organisms, and application factors that are consistent with those outlined in Chapter 3 of "Water Quality Standards Handbook" (EPA, 1994 [1983]) incorporated by reference in Section 11 of this administrative regulation. In addition, an applicant shall supply the documentation listed in [Section 5 of] 401 KAR 5:026, Section 3.

(3) An exception to criteria listed in Section 2(2) of this administrative regulation for the protection of human health from the consumption of fish tissue may be granted if it can be demonstrated that natural, ephemeral, intermittent or low flow conditions or water levels preclude the year-round support of a fishery, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges.

(4) Before granting an exception to water quality criteria, the cabinet shall ensure that the water quality standards of downstream waters are attained and maintained.

(5) All exceptions to water quality criteria shall [will] be subject to review at least every three (3) years.

(6) [Upon completing a review and the procedures for promulgation under administrative rule-making, all] Exceptions to water quality criteria shall be adopted as an administrative regulation by listing them [listed] with the respective surface water [stream segment] in [Section 7 of] 401 KAR 5:026.

Section 10. Exceptions to Criteria for Individual Dischargers. (1) An exception to criteria may be granted to an individual discharger based on a demonstration by the discharger, following the guidelines in "Interim Economic Guidance for Water Quality Standards Workbook (EPA, March 1995)" incorporated by reference in Section 11 of this administrative regulation, that KPDES permit compliance with existing instream criteria shall result in substantial and widespread adverse economic and social impacts.

(2) The demonstration shall include an assessment of alternative pollution control strategies and biological assessments that indicated designated uses are being met.

(3) Before granting an exception, the cabinet shall ensure that the water quality standards of downstream waters are attained and maintained.

(4) All exceptions shall be submitted to the cabinet for review at least every three (3) years. Upon review, the discharger shall demonstrate to the cabinet that a reasonable effort has been made to reduce the pollutants in the discharge to levels that would achieve existing applicable water quality criteria.

(5) The highest level of effluent quality that can be economically and technologically achieved shall be ensured while the exception is in effect.

(6) The Kentucky Pollution Discharge Elimination System permitting program shall be the mechanism for the review and public notification of intentions to grant exceptions to criteria.

Section 11. Incorporation by Reference (1) The following material is incorporated by reference:

(a) "Water Quality Standards Handbook-Chapter 3 (EPA August 1994)", Publication EPA-823-B-94-005a, U.S. Environmental Protection Agency, Office of Water, Washington, D.C.

(b) "Interim Economic Guidance for Water Quality Standards Workbook (EPA March 1995)" Publication EPA-823-B-95-002, U.S. Environmental Protection Agency, Office of Water, Washington, D.C.

(2) This material may be inspected, copied, or obtained at the Division of Water, 14 Reilly Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES E. BICKFORD, Secretary
 BARBARA A. FOSTER, General Counsel
 APPROVED BY AGENCY: September 9, 1999
 FILED WITH LRC: September 9, 1999 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact person: Jack A. Wilson

(1) Type and number of entities affected: This amended administrative regulation sets forth water quality standards which consist of designated uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses. It is being amended to revise limits for chemical substances discharged to surface waters of the Commonwealth. Permitted facilities will not be affected until they apply for reissuance of their KPDES permits. The amended administrative regulation will also affect any new, previously unpermitted waste water dischargers: Municipalities with approved pretreatment programs set local limits for their industrial dischargers. These dischargers may be affected by this amended administrative regulation.

(2) Direct and indirect costs or savings: The revised water quality criteria will be implemented at the time of permit reissuance at existing facilities and new discharges and expanded facilities must comply with the revisions. Additional costs may be incurred where criteria are more stringent or new criteria are established. Savings may accrue where criteria have been relaxed or existing criteria are deleted.

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

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

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

1. First year following implementation: No comments received.

2. Second and subsequent years: No comments received.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: This amended administrative regulation does not change routine procedures involved in managing construction grants, permitting, compliance monitoring, or enforcement.

1. First year: No major costs are anticipated. The cabinet in implementing the requirements of this amended administrative regulation will internalize associated costs within normal budget appropriations.

2. Continuing costs or savings: Same as (3)(a)1 above.

3. Additional factors increasing or decreasing costs: None determined.

(b) Reporting and paperwork requirements: This amended administrative regulation will not affect routine reporting and paperwork requirements, however, the KPDES program will have an unknown number of requests for exceptions to water quality criteria to review and make public.

(4) Assessment of anticipated effect on state and local revenues: State and local revenues will not be affected in the short term. For the long term this amended administrative regulation should sustain revenues derived from water-based activities, such as sport fishing, commercial fishing, boating, and skiing. In addition, revenues may be saved at the local level where revenues used to treat drinking water may be less because source water is protected using more stringent finished drinking water criteria.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue will be the General Fund and federal funds, as appropriated by the Kentucky General Assembly.

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

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

(b) Kentucky: No comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet had the alternative to not update chemical criteria. However, that may have resulted in a federal action to cause the update. The cabinet rejected this alternative and proposed the changes in order to utilize the best current scientific information available.

(8) Assessment of expected benefits of the administrative regulation: This amended administrative regulation protects human health by revising numerical criteria for water consumption, fish consumption, and domestic water supply sources. This amended administrative regulation also protects aquatic life by revising numerical criteria for warm water aquatic habitat use. A healthy aquatic ecosystem will sustain quality recreation, fishing, and water-based tourism.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The purpose of this amended administrative regulation is to protect public health and environmental welfare. Surface drinking water supplies will be protected, and fish consumption will remain safe. Aquatic recreation, such as swimming, wading, skiing, and boating, will also remain safe. Warm water aquatic habitat criteria will safeguard aquatic life and support a biodiversity of plants, fish, and macroinvertebrates.

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

(c) If detrimental effect would result, explain detrimental effect: The revised water quality criteria in this amended administrative regulation are based on the recommended federal criteria, which addresses toxicity levels for aquatic and human life. If this amended administrative regulation is not implemented less protective concentrations of chemicals might be discharged into surface waters.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statutes, administrative regulations or government policies are in conflict, overlap, or duplicate this amended administrative regulation.

(a) Necessity of proposed administrative regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: State water quality standards are required by federal law to be reviewed for possible changes at least every 3 years. The U.S. Environmental Protection Agency (EPA) disapproved this administrative regulation because there was no criterion for dioxins. The cabinet has proposed a criterion in this amended administrative regulation. If it is not adopted, EPA will promulgate a federal criterion for Kentucky.

(11) TIERING: Is tiering applied? No. This amended administrative regulation affects all discharges into surface waters of the Commonwealth, irrespective of ownership, capacity, process, or treatment used.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation mandating that Kentucky implement a water pollution control program. For Kentucky to maintain its delegation over the NPDES permit program, however, the Clean Water Act requires that Kentucky review its water quality standards every 3 years and comply with the programmatic requirements of 40 CFR Part 131, including the requirement for reviewing water quality criteria for appropriate revisions.

2. State compliance standards. 401 KAR 5:002, 5:026, 5:029, 5:030, and 5:031, the water quality standards regulations.

3. Minimum or uniform standards contained in the federal mandate. The Clean Water Act requires designated uses, criteria, standards and antidegradation policies in water quality standards.

4. Will this administrative regulation impose stricter require-

ments, or additional or different responsibilities or requirements than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no stricter standard or additional or different responsibilities or requirements.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. This amended administrative regulation will affect the waste water treatment operations of local government if they will have new or expanded discharges into surface waters of the Commonwealth.

3. State the aspect or service of local government to which this administrative regulation relates. This amended administrative regulation relates to local governments' waste water treatment service.

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

Revenues (+/-): Cannot be determined.

Expenditures (+/-): Cannot be determined.

Other explanation: This amended administrative regulation sets forth protective criteria for instream uses designated by the cabinet (see 401 KAR 5:026). Local governments will be required to discharge effluents which assure attainment of the receiving surface water's designated uses. The costs or savings of this amended administrative regulation would ordinarily be passed through to users. However, a local government that owns a public waste water treatment system could elect to absorb some or all of the costs or savings.

CABINET FOR HEALTH SERVICES Office of Certificate of Need (Amended After Hearing)

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

RELATES TO: KRS 216B.010 to 216B.130, 216B.455, 216B.990

STATUTORY AUTHORITY: KRS [194A.030, 194A.060, 216B.040]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is required by statute to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary. This administrative regulation sets forth those administrative regulations necessary to the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Administrative escalation" means an approval from the cabinet to increase the capital expenditure authorized on a previously issued certificate of need.

(2) "Cabinet" means the Cabinet for Health Services.

(3) "Certificate of Need Newsletter" means the monthly newsletter published by the cabinet regarding certificate of need matters.

(4) "Days" means calendar days.

(5) "Division of Licensing and Regulation" means the Cabinet for Health Services, Office of the Inspector General, Division of Licensing and Regulation.

(6) "Emergency circumstances" means situations that pose an imminent threat to the life, health, or safety of a [any] citizen of the Commonwealth.

(7) "Formal review" means the review of [those] applications for certificate of need which are reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which are reviewed for compliance with the review criteria set forth at KRS 216B.040 and Section 6 [7] of this administrative regulation.

(8) "Improvement" means change or addition to the premises of an existing facility that enhances its ability to deliver the services that it is authorized to offer under its existing license or an approved certificate of need.

(9) "Industrial ambulance service" means a Class I specialized provider licensed by the cabinet to serve the employees, customers, or patrons of a business, race track, recreational facility or similar organization excluding a health care facility.

(10) "Long-term care beds" means nursing home beds, intermediate care beds, skilled nursing beds, nursing facility beds, and Alzheimer disease facility beds.

(11) "Nonsubstantive review" means an expedited review of an application for certificate of need which has been granted nonsubstantive review status pursuant to the provisions of KRS 216B.095 and [Section 8 of] this administrative regulation [if granted status pursuant to KRS 216B.095(3)(f)].

(12) "Owner" means the person as defined in KRS 216B.015 who is applying for the certificate of need and will become the licensee of the proposed health service or facility.

(13) "Proposed service area" means the geographic area [and population] the applicant proposes to serve.

(14) [(13)] "Public information channels" means the Office of Communications in the Cabinet for Health Services.

(15) [(14)] "Public notice" means notice given through:

(a) Public information channels; or

(b) The cabinet's Certificate of Need Newsletter.

(16) [(15)] "Show cause hearing" means a hearing before the cabinet at which a person is required to explain or demonstrate why the person should not be required to obtain a certificate of need or not be subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

Section 2. ~~[Letter of Intent. (1) The Certificate of Need Letter of Intent (Form #1) shall be filed with the cabinet by all applicants for a certificate of need. This shall:~~

~~(a) Include those applicants requesting nonsubstantive review under the provisions of Section 8 of this administrative regulation;~~

~~(b) Not include those applicants requesting nonsubstantive review under the provisions of KRS 216B.095(a) through (e);~~

~~(2) Upon receipt of a letter of intent, the cabinet shall provide the sender with written acknowledgment of receipt of the letter and shall publish notice of such receipt in the next published certificate of need newsletter;~~

~~(3) An application for a certificate of need shall not be processed until such time as the letter of intent has been on file with the cabinet for thirty (30) days;~~

Section 3. Certificate of Need Application. (1) An applicant [All applicants] for a certificate of need shall file an application with the cabinet on the appropriate Certificate of Need Application (forms 1A, 1B or 1C [2A, 2B, or 2C]).

(2) When filing an application for certificate of need, the applicant shall file an original and one (1) copy [two (2) copies] of the appropriate certificate of need application, together with the prescribed fee set forth in 900 KAR 6:020 with the cabinet on or before the deadlines established by Section 3 [4] of this administrative regulation.

(3) Neither formal nor nonsubstantive review of an application for a certificate of need shall begin until the application has been deemed complete by the cabinet.

(4) The cabinet shall not deem an application complete unless:

(a) The applicant has provided the cabinet with all of the information necessary to complete the application; or

(b) The applicant has declined to submit the requested information and has requested that its application be reviewed as submitted.

(5) Once an application has been declared complete, the applicant may not submit additional information regarding the application unless the information is introduced at a public hearing.

(6) Once an application has been declared complete, it shall not be amended to:

(a) Increase the scope of the project;

(b) Increase the amount of the capital expenditure;

(c) Expand the size of the proposed service area;

(d) Change the location of the health facility or health service; or

(e) Change the owner [legal applicant], unless the application involves a licensed health facility and a change of ownership with appropriate notice has occurred after the application was submitted.

(7) An application that has been declared complete, may only be amended at a public hearing, and may then only be amended to:

- (a) Decrease the scope of the project;
- (b) Decrease the amount of the capital expenditure; or
- (c) Decrease the proposed service area.

(8) Applicants who have had proposals for certificates of need approved under the nonsubstantive review provisions of Section 7 [8] of this administrative regulation may request the cabinet to change the specific location to be designated on the certificate of need provided that the location is within the county listed on the certificate of need application, and provided that the applicant file a written request with the cabinet within thirty (30) days of the date of approval. Such request shall include the reason why the change is necessary.

(9) [If an application is not filed with the cabinet within one (1) year of the date of the filing of a letter of intent, the letter of intent shall expire, and the applicant shall file a new letter of intent at least thirty (30) days prior to submitting an application.

(10) If an application is withdrawn, the applicant shall file a new letter of intent at least thirty (30) days prior to resubmitting an application.

(11) An application that is not declared complete within a year from the date that it is filed shall expire and shall not be placed on public notice or reviewed for approval.

Section 3. [4:] Timetable for Submission of Applications. (1) The cabinet's timetable for giving public notice for applications deemed complete for both formal review and for applications granted nonsubstantive review status pursuant to KRS 216B.095(3)(f) and Section 7 [8] of this administrative regulation shall be as follows:

(a) Public notice for organ transplantation, magnetic resonance imaging, lithotripter, megavoltage radiation equipment, cardiac catheterization, open heart surgery, and new technological developments shall be given on the third Thursday of the following months:

1. January; and

2. July. [Public notice for hospital, psychiatric, comprehensive physical rehabilitation, chemical dependency and psychiatric residential treatment facilities, ambulatory care centers, freestanding ambulatory surgical centers, and birthing centers shall be given on the third Thursday of the following months:

1. February; and

2. August.]

(b) Public notice for hospice and home health agencies shall be given on the third Thursday of the following months:

1. February [March]; and

2. August [September].

(c) [Public notice for mobile services shall be given on the third Thursday of the following months:

1. April; and

2. October.

(d) Public notice for ground ambulance providers, mobile services and rehabilitation agencies, [and day health care programs,] shall be given on the third Thursday of the following months:

1. March [May]; and

2. September [November].

(d) Public notice for day health care programs and personal care beds shall be given on the third Thursday of the following months:

1. April; and

2. October.

(e) Public notice for hospital, psychiatric, comprehensive physical rehabilitation, chemical dependency facilities, ambulatory care centers, freestanding ambulatory surgical centers, and birthing centers shall be given on the third Thursday of the following months:

1. May; and

2. November.

(f) Public notice for long-term care beds [personal care beds and rehab agencies] shall be given on the third Thursday of the following month: [months:

1.] June; and

2. December].

[(f) Public notice for long-term care beds and intermediate care beds for Mental Retardation and Developmentally Disabled facilities shall be given on the third Thursday of June.]

(g) Public notice for intermediate care beds for mental retardation and developmentally disabled facilities and psychiatric residential treatment facilities (PRTF) shall be given on the third Thursday of the following months:

1. June; and

2. December. [Public notice for organ transplantation, magnetic resonance imaging, lithotripter, megavoltage radiation equipment, cardiac catheterization, open heart surgery, and new technological developments shall be given on the third Thursday of the following months:

1. January; and

2. July.]

(h) A proposal [Any proposals] not listed above shall be placed in the cycle that the cabinet determines to be most appropriate.

(2) In order to have an application deemed complete and placed on public notice, an application shall [must] be filed with the cabinet at least fifty (50) days prior to the date of the desired public notice.

(3) Applications filed prior to the effective date of the amended administrative regulation, may be placed on public notice according to the Timetable for Submission of Applications in the administrative regulation in effect at the time the application was filed.

Section 4. [5:] Certificate of Need Review. (1) Prior to being reviewed for the approval or denial of a certificate of need, all applications for certificate of need shall be reviewed for completeness pursuant to Section 5 [6] of this administrative regulation.

(2) Unless granted nonsubstantive review status, an application for a certificate of need shall be reviewed for approval or denial of the certificate of need according to the formal review criteria set forth at Section 6 [7] of this administrative regulation.

(3) If granted nonsubstantive review status under Section 7 [8] of this administrative regulation, an application for a certificate of need shall be reviewed for approval or denial of the certificate of need according to the nonsubstantive review criteria set forth at Section 7 [8] of this administrative regulation.

Section 5. [6:] Completeness Review. (1) Fifteen (15) days prior to the deadline for deeming an application complete for the next appropriate batching cycle, the cabinet shall conduct an initial completeness review to determine whether the application is complete for applications for both formal review and nonsubstantive review granted pursuant to Section 7 [8] of this administrative regulation. Applications granted nonsubstantive review status pursuant to KRS 216B.095(3)(a) through (e) shall be reviewed within fifteen (15) days of receipt.

(2) If the cabinet finds that the application for formal review is complete, the cabinet shall:

(a) Notify the applicant in writing that the application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice in the next appropriate certificate of need newsletter that review of the application for approval or denial of a certificate of need has begun.

(3) If the cabinet finds that the application for nonsubstantive review is complete, the cabinet shall notify the applicant in writing that the application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given.

(4) A decision to grant or deny nonsubstantive review status shall be made within ten (10) days of the date the applicant is notified that the application has been deemed complete.

(5) The cabinet shall give public notice for applications granted nonsubstantive review status under Section 7 [8] of this administrative regulation in the next appropriate certificate of need newsletter that status has been granted and that review of the application for approval or denial of a certificate of need has begun. Public notice for applications granted nonsubstantive review status according to KRS 216B.095(3)(a) through (e) shall [will] be mailed to affected persons.

(6) Deeming an application complete means [only] that the applicant has minimally responded to the necessary items on the application. It is not determinative of the accuracy of, or weight to be given to, the information contained in the application and shall not imply that the application has met the review criteria for approval of a certificate of need.

(7) If the cabinet finds that the application is incomplete, the cabinet shall provide the applicant with written notice of the information necessary to complete the application and shall notify the applicant that the cabinet shall [will] not deem the application complete unless within ten (10) days of the date of the cabinet's request for additional information:

(a) The applicant submits the information necessary to complete the application by the date specified in the request; or

(b) The applicant requests in writing that the cabinet review its application as submitted.

(8) If, upon the receipt of the additional information, the cabinet finds that the application is complete, the cabinet shall, for applicants proceeding under formal review:

(a) Notify the applicant in writing that:

1. The application for formal review has been deemed complete; and

2. Review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice in the next appropriate certificate of need newsletter that review of the application for approval or denial of a certificate of need has begun.

(9) If, upon the receipt of the additional information requested, the cabinet finds that an application for nonsubstantive review is complete, the cabinet shall notify the applicant in writing that:

(a) The application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) A decision to grant or deny nonsubstantive review status shall be made within ten (10) days of the date that the application was deemed complete.

(c) The cabinet shall give public notice in the next appropriate certificate of need newsletter for applications granted nonsubstantive review status under Section 7 [8] of this administrative regulation, that status has been granted and that review of the application for approval or denial of a certificate of need has begun. Public notice for applications granted nonsubstantive review status according to KRS 216B.095(3)(a) through (e) shall [will] be mailed to affected persons.

(10) If the application, or if the information submitted is insufficient to complete the application, the cabinet shall:

(a) Request the information necessary to complete the application; and

(b) Inform the applicant that the application shall not be deemed complete and shall not be placed on public notice until:

1. The applicant submits the information necessary to complete the application; or

2. The applicant requests in writing that its application be reviewed as submitted.

(11) Once an application has been deemed complete, an applicant shall not submit additional information to be made part of the public record unless:

(a) The information is introduced at a hearing; or

(b) In the case of a deferred application, the additional information is submitted at least twenty-five (25) days prior to the date that the deferred application is placed on public notice.

(12) Deeming an application complete means [only] that the application is sufficiently complete to be reviewed for approval or disapproval. It is not determinative of the accuracy of, or weight to be given to, the information contained in the application and shall not imply that the application has met the review criteria for approval.

Section 6. [7:] Considerations for Formal Review. In determining whether to approve or deny a certificate of need, the cabinet's review of applications under formal review shall be limited to the following considerations:

(1) Consistency with plans.

(a) Whether the proposal is consistent with the current state health plan.

1. Applications proposing to relocate [transfer] surgical services from one (1) licensed health facility to a newly established or other health facility and either facility is owned by the existing facility with surgical services shall be considered consistent with the state health plan if the existing facility has not added to its complement of operating rooms within twelve (12) months prior to filing the application for relocation and the following conditions are met:

a. The newly established surgical services are located:

(i) On the existing facility's licensed premises; or

(ii) In the same county as the existing health facility and where there are no other licensed providers of surgical services in the county; and

b. The existing facility with surgical services which relocated the rooms and the newly established surgical service shall not add operating rooms for one (1) year following the date that the newly established surgical services commence operations.

2. An application by an acute care hospital to convert acute care beds to psychiatric beds shall be consistent with this plan if the following conditions are met:

a. The occupancy of acute care beds in the applicant's facility is less than seventy (70) percent in the latest published utilization report; and

b. All of the proposed psychiatric care beds are being converted from licensed acute care beds; and

c. All of the psychiatric care beds will be converted and implemented on site at the applicant's existing licensed acute care facility; and

d. All of the converted psychiatric care beds shall be dedicated exclusively to the treatment of geriatric patients, aged sixty-five (65) or older; and

e. The hospital shall establish distinct admission and discharge criteria for admitting only those patients who have both mental and physical conditions who would be excluded from treatment in a regular adult psychiatric unit; and

f. The staff of the unit shall include a multidisciplinary team of specialists involving psychiatry and internal medicine with specialization in the treatment of geriatrics and nursing personnel specially trained in psychiatric and medical geriatric patient care; and

g. The number of beds to be converted shall be based on the population age sixty-five (65) plus in the counties proposed to be served; and

h. The applicant agrees in writing not to seek Medicaid certification for the beds converted.

3. Applications proposing to add acute care beds shall be consistent with the State Health Plan if the following conditions are met:

a. The applicant shall document that utilization at its facility has reached functional capacity. In calculating functional capacity, consideration shall be given to factors such as the mix of private and semiprivate rooms, patient matching limitations such as gender or the need for isolation beds required to address emergency patient needs, and limits created by special purpose acute units, such as obstetrics.

b. The applicant shall document that the transfer of beds from special purpose acute units is not feasible because occupancy is greater than 65 percent or, if the occupancy is less than sixty-five (65) percent, the transfer of underutilized beds is not sufficient to meet the hospital's total additional acute care bed need.

c. The applicant shall document an overall acute care occupancy rate in the county of sixty-five (65) percent or greater for the twelve (12) prior months.

d. The applicant shall document that:

(i) A new service established in the last eight (8) years has resulted in increasing the number of inpatient days at the hospital by more than three (3) percent; or

(ii) A three (3) percent or greater increase in inpatient volume has occurred from out-of-state admissions.

e. The maximum number of acute care beds that may be approved shall be based on volume projected five (5) years from the CON filing. Approval shall be based on the higher of:

(i) The applicant's credible forecast of future utilization; or

(ii) A regression analysis projection of patient day trends over a five (5) year time frame.

4. An application proposing to convert psychiatric and/or CD

beds to acute care shall be consistent with the State Health Plan if the application meets the following conditions:

a. The most recently published data indicates that the occupancy for existing acute care beds for the applicant's facility was sixty-five (65) percent or greater; and

b. The applicant has existing licensed acute care and psychiatric care and/or chemical dependency beds; and

(i) All of the proposed acute care beds are being converted from licensed psychiatric and/or chemical dependency beds;

(ii) The occupancy of psychiatric and/or chemical dependency beds is less than sixty (60) percent as computed from the latest published data; and

(iii) The additional acute care beds will be converted and implemented on site at the applicant's existing licensed acute care facility. [shall not be reviewed for consistency with the state health plan but shall be reviewed under the nonsubstantive review provisions of Section 8 of this administrative regulation.]

(b) Whether the proposal is consistent with applicable biennial budget authorizations and limitations.

(c) Whether the proposal would adversely impact health care costs in the Commonwealth.

(d) In determining whether an application is consistent with the State Health Plan, the cabinet shall apply the latest inventories and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the cabinet's decision.

(2) Need.

(a) Whether the applicant has identified a need for the proposal in the geographic area defined in the application.

(b) Whether the applicant has demonstrated that it is able to meet the need identified in the geographic area defined in the application.

(3) Accessibility. Whether the health facility or health service proposed in the application will be accessible in terms of timeliness, amount, duration, and personnel sufficient to provide the services proposed.

(4) Interrelationships and linkages. Whether the proposal shall serve to accomplish appropriate and effective linkages with other services, facilities, and elements of the health care system in the region and state, and whether the proposal is accompanied by assurance of effort to achieve comprehensive care, proper utilization of services, and efficient functioning of the health care system.

[a) Whether it is necessary for the applicant to establish linkages with other health services, health facilities, and elements of the health care system within the region and the state in order to achieve comprehensive care, proper utilization of services, and efficient functioning of the health care system within the Commonwealth.

(b) If it is necessary for the applicant to establish linkages with other health services, health facilities, and elements of the health care system in the region and the state in order to achieve comprehensive care, proper utilization of services, and efficient functioning of the health care system within the Commonwealth, whether such linkages have been or will be established.]

(5) Costs, economic feasibility, and resource availability.

(a) Whether it is economically feasible for the applicant to implement and operate the proposal.

(b) If applicable, whether the cost of alternative ways of meeting the need identified in the geographic area defined in the application would be a more effective and economical use of resources.

(6) Quality of services.

(a) Whether the applicant is prepared to and capable of undertaking and carrying out the responsibilities involved in the proposal in a manner consistent with appropriate standards and requirements established by the cabinet.

(b) Whether the applicant has the ability to comply with applicable licensure requirements. The fact that there is not an applicable licensure category shall not constitute grounds for disapproving an application.

Section 7. [8:] Nonsubstantive Review. (1) In addition to the projects specified in KRS 216B.095(3)(a) through (e), the cabinet may grant nonsubstantive review status to an application for which a certificate of need is required in circumstances wherein:

(a) the proposal involves the establishment or expansion of a health facility or health service for which there are no standards or

review criteria in the state health plan. The proposal involves the establishment or expansion of an ambulatory surgery center by an ambulatory surgery center that was existing and operating by July 15, 1997, if such ambulatory surgery center was initially established as a private office or clinics of physicians.

[(b) The proposal involves the establishment or expansion of an ambulatory surgery center by an ambulatory surgery center that is existing and operating by July 15, 1997, if such ambulatory surgery center was initially established as a private office or clinics of physicians:

(c) The proposal involves the transfer of surgical services from one (1) licensed health facility to another licensed health facility or from one (1) licensed health facility to a newly established health facility.]

(2) If an application is denied nonsubstantive review status, the application shall automatically be placed in the formal review process.

(3) If an application is granted nonsubstantive review status, notice of the decision to grant nonsubstantive review status shall be given to the applicant and all known affected persons.

(4) If an application is granted nonsubstantive review status, any affected person other than the applicant may request a hearing by filing a request for a hearing within ten (10) days of the notice of the decision to conduct nonsubstantive review. The provisions of Section 15 [46] of this administrative regulation shall govern the conduct of all nonsubstantive review hearings.

(5) If an application for certificate of need is granted nonsubstantive review status there shall be a presumption that the facility or service is needed and applications granted nonsubstantive review status shall not be reviewed for consistency with the State Health Plan. The cabinet shall approve applications for certificate of need that have been granted nonsubstantive review status, unless the presumption of need is rebutted by clear and convincing evidence that there is not a need for the proposed facility or service in the geographic area defined in the application.

(6) The cabinet shall approve or disapprove an application which has been granted nonsubstantive review status within thirty-five (35) days of the date that notice is given that nonsubstantive review status has been granted.

(7) If a certificate of need is denied following nonsubstantive review, the applicant may:

(a) Request that the cabinet reconsider its decision pursuant to KRS 216B.090 and Section 16 [47] of this administrative regulation;

(b) Request that the application be placed in the next cycle of the formal review process; or

(c) Seek judicial review pursuant to KRS 216B.115.

Section 8. [9:] Notice of Decision. (1) The cabinet shall notify the applicant and any party to the proceeding of the final action on a certificate of need application.

(2) Notification of approval shall be in writing and shall include:

(a) Verification that the review criteria for approval have been met;

(b) Specification of any terms or conditions limiting any certificate of need approval, including but not limited to, limitations regarding certain services or patients. This specification shall be listed on the facility or service's certificate of need and license;

(c) Notice of appeal rights; and

(d) The amount of capital expenditure authorized, where applicable.

(3) Written notification of disapproval shall include:

(a) The reason for the disapproval; and

(b) Notice of appeal rights.

(4) An application for certificate of need that is disapproved shall not be refiled for a period of twelve (12) months from the original date of filing, absent a showing of a significant change in circumstances.

Section 9. [10:] Deferral of an Application. (1) An applicant may defer review of an application by notifying the cabinet in writing of its intent to defer review. If the application has been granted nonsubstantive review status, the notice to defer shall be filed no later than five (5) days prior to the date that the decision is due on the application unless a hearing has been scheduled. If a hearing has been scheduled, the notice to defer shall be filed no later than six (6) days prior to the date of the hearing. If the application is being reviewed

under formal review, the notice to defer shall be filed no later than ten (10) days prior to the date that the decision is due on the application unless a hearing has been scheduled. If a hearing has been scheduled, the notice to defer shall be filed eight (8) days prior to the date of the hearing. If a hearing has been scheduled, the applicant shall also notify all parties to the proceedings in writing of the applicant's intent to defer the application.

(2) If deferral is requested, the application shall be deferred to the next regular batching cycle and shall be placed on public notice pursuant to the timetables set forth at Section 3 [4] of this administrative regulation.

(3) If an application is deferred, an applicant may update its application by providing additional information to the cabinet at least twenty-five (25) days prior to the date that the deferred application is placed on public notice.

(4) In order for a hearing to be held on a deferred application, a hearing shall be requested by either the applicant or an affected person within:

(a) Ten (10) days of the deferred application being placed on public notice if the application has been granted nonsubstantive review status; or

(b) Fifteen (15) days of the deferred application being placed on public notice if the application is being reviewed under the provision of formal review.

(5) An application shall not be deferred more than one (1) time unless the applicant can document that state statute, administrative regulation, State Health Plan or the cabinet's utilization statistics affecting the application have changed in the applicant's favor. Under no circumstances shall an application be deferred more than twice.

Section 10. [11:] Withdrawal of an Application. (1) An applicant may withdraw an application for certificate of need prior to the entry of a decision to deny or approve the application by notifying the cabinet in writing of the decision to withdraw the application.

(2) If a hearing has been scheduled or held on the application, the applicant shall also notify all parties to the proceedings in writing of the applicant's decision to withdraw the application.

~~[(3) If an application is withdrawn, the applicant shall file a new letter of intent before resubmitting the application.]~~

Section 11. [12:] Emergency Circumstances. (1) If an emergency circumstance arises, a person may proceed to alleviate the emergency without first obtaining a certificate of need provided:

(a) The person is licensed by the cabinet to provide the service necessary to alleviate the emergency; and

(b) The cabinet is notified in writing within five (5) days after the commencement of the service required to alleviate the emergency.

(2) The notice to the cabinet shall contain the following information:

(a) A detailed description of the emergency;

(b) The steps taken to alleviate the emergency;

(c) The location or geographic area where the emergency service is being provided; and

(d) If applicable, the name and addresses of the person to whom emergency services are being provided.

(3) If the provision of service to meet the emergency circumstance is required to continue beyond thirty (30) days from the date that the notice is filed with the cabinet, the person providing the emergency service shall file an application for a certificate of need for the next appropriate public notice pursuant to Section 3 of this administrative regulation.

(4) The person providing the emergency service may continue to alleviate the emergency circumstances until such time as the emergency ceases to exist or the cabinet issues a final decision to approve or disapprove the application for certificate of need.

Section 12. [13:] Transfers of Certificates of Need. (1) Certificates of need issued to an existing facility for purposes other than replacement of the facility may be transferred to the new owner of the facility if the change of ownership occurs prior to implementation of the project for which the certificate of need was issued.

(2) The purchase of all capital stock or a controlling interest of capital stock of a person who is the holder of an approved certificate of

need for the establishment of a new health facility shall not constitute the sale, trade or transfer of a certificate of need to another person for purposes of KRS 216B.061(1)(h) and 216B.0615.

Section 13. [14:] Location of New and Replacement Facilities. A certificate of need approved for the establishment of a new facility or the replacement of an existing facility is valid only for the location stated on the certificate.

Section 14. [15:] Filings. (1) The filing of all documents required by this administrative regulation shall be made by filing such documents with the Office of Certificate of Need, HS1E-D, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621 on or before 4:30 p.m. eastern time on the due date.

(2) Filings of documents, other than certificate of need applications and proposed hearing reports, may be made by facsimile transmission provided that:

(a) The documents are received by the cabinet by facsimile transmission on or before 4:30 p.m. eastern time on the date due; and

(b) An original document is filed with the cabinet on or before 4:30 p.m. eastern time on the next working day after the due date.

(4) The Office of Certificate of Need shall endorse by file stamp the date that each filing is received and such endorsement shall constitute the filing of the document.

(5) In computing any period of time prescribed by these administrative regulations, the date of notice, decision or order shall not be included.

(6) The last day of the period so computed is to be included, unless it is a Saturday, a Sunday or legal state holiday, in which event the period runs until 4:30 p.m. eastern time of the first working day following a Saturday, Sunday, or legal state holiday.

Section 15. [16:] Hearings. (1) Hearings on certificate of need matters shall be held by hearing officers from the Cabinet for Health Service's Administrative Hearings Branch. A hearing officer shall not act on any matter in which the hearing officer has a conflict of interest as defined in KRS 45A.340. Any party may file with the cabinet a petition for removal based upon a conflict of interest supported by affidavit.

(2) The hearing officer shall preside over the conduct of each hearing and shall regulate the course of the proceedings in a manner which shall [will] promote the orderly and prompt conduct of the hearing.

(3) Notice of the time, date, place and subject matter of each hearing shall be:

(a) Mailed to the applicant and all known affected persons providing the same or similar service in the proposed service area, via the CON newsletter when applicable not less than ten (10) days prior to the date of the hearing; and

(b) Provided to members of the general public through public information channels.

(4) A public hearing shall be canceled if the person or persons who requested the hearing ~~withdraw~~ [withdrawn] their request [request(s)] by giving written notification to the Office of Certificate of Need that the hearing is no longer required. The consent of affected persons who have not requested a hearing shall not be required in order for a hearing to be canceled.

(5) Any dispositive motion made by a party to the proceedings shall be filed with the hearing officer three (3) working days prior to the scheduled date of the hearing.

(6) The hearing officer may convene a preliminary conference.

(a) The purposes of the conference are to:

1. Formulate and simplify the issues;

2. Identify additional information and evidence needed for the hearing; and

3. Dispose of pending motions.

(b) A written summary of the preliminary conference and the orders thereby issued shall be made a part of the record.

(c) The hearing officer may tape record the conference or if requested by a party to the proceedings arrange for a stenographer to be present at the expense of the requesting party.

(d) During the preliminary conference, the hearing officer may:

1. Instruct the parties to:

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a. Formulate and submit a list of genuine contested issues to be decided at the hearing;

b. Raise and address issues that can be decided before the hearing; or

c. Formulate and submit stipulations to facts, laws, and other matters.

2. Prescribe the manner and extent of the participation of the parties or persons who shall participate;

3. Rule on any pending motions for discovery or subpoenas; or

4. Schedule dates for the submission of prefiled testimony, further preliminary conferences, and submission of briefs and documents.

(7) At least five (5) days prior to the scheduled date of any non-substantive review hearings and at least seven (7) days prior to the scheduled date of all other hearings, all persons wishing to participate as a party to the proceedings shall file an original and one (1) copy [two (2) copies] of the following for each affected application with the cabinet and serve copies on all other known parties to the proceedings:

(a) Notice of Appearance, Form #2;

(b) Witness List, Form #3;

(c) [(b)] Exhibit List, Form #4 and attached exhibits[; and

(c) Notice of Appearance, Form #5].

(8) The hearing officer shall convene the hearing and shall state the purpose and scope of the hearing or the issues upon which evidence shall be heard. All parties appearing at the hearing shall enter an appearance by stating their names and addresses.

(9) Each party shall have the opportunity to:

(a) Present its case;

(b) Make opening statements;

(c) Call and examine witnesses;

(d) Offer documentary evidence into the record;

(e) Make closing statements; and

(f) Cross-examine opposing witnesses on:

1. Matters covered in direct examination; and

2. At the discretion of the hearing officer, upon other matters relevant to the issues.

(10) A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

(11) The hearing officer may:

(a) Allow testimony or other evidence on issues not previously identified in the preliminary order which may arise during the course of the hearing, including any additional petitions for intervention which may be filed;

(b) Act to exclude irrelevant, immaterial or unduly repetitious evidence; and

(c) Question any party or witness.

(12) The hearing officer shall not be bound by the Kentucky Rules of Evidence. Relevant hearsay evidence may be allowed, at the discretion of the hearing officer.

(13) The hearing officer shall have discretion to designate the order of presentation of evidence and the burden of proof as to persuasion.

(14) Witnesses shall be examined under oath or affirmation.

(15) Witnesses may, at the discretion of the hearing officer:

(a) Appear through deposition or in person; and

(b) Provide written testimony in accordance with the following:

1. The written testimony of a witness shall be in the form of questions and answers or a narrative statement;

2. The witness shall authenticate the document under oath; and

3. The witness shall be subject to cross-examination.

(16) The hearing officer may accept documentary evidence in the form of copies of excerpts if the original is not readily available, provided that upon request parties shall be given an opportunity to compare the copy with the original and provided that the documents to be considered for acceptance are listed on and attached to the party's Exhibit List (Form #4) and filed with the hearing officer and other parties at least seven (7) working days before the hearing for formal review applications and five (5) working days for nonsubstantive review applications.

(17) A document may not be incorporated into the record by reference without the permission of the hearing officer. Any referenced document shall be precisely identified.

(18) The hearing officer may take official notice of facts which are

not in dispute, or of generally-recognized technical or scientific facts within the agency's special knowledge.

(19) The hearing officer may permit a party to offer or request a party to produce additional evidence or briefs of issues as part of the record within a designated time after the conclusion of the hearing. During this period, the hearing record shall remain open, and the conclusion of the hearing shall occur when the additional information is filed.

(20) In the case of a hearing on an application for a certificate of need, the hearing officer shall [may], upon the agreement of the applicant, continue a hearing beyond the review deadlines established by KRS 216B.062(1) and 216B.095(1).

(21) The cabinet shall forward a copy of the hearing officer's final decision by U.S. mail to each party to the proceedings. The original hearing decision shall be filed in the administrative record maintained by the cabinet.

Section 16. [17:] Requests for Reconsideration. (1) In order to be considered, requests for reconsideration shall be filed within fifteen (15) days of the date of the notice of the cabinet's final decision relating to:

(a) Approval or disapproval of an application for a certificate of need;

(b) An advisory opinion entered after a public hearing; or

(c) Revocation of a certificate of need.

(2) A copy of the request for reconsideration shall be served by the requester on all parties to the proceedings.

(3) A party to the proceedings shall have seven (7) days from the date of service of the request for reconsideration to file a response to the request with the cabinet.

(4) The cabinet shall enter a decision to grant or deny a request for reconsideration within thirty (30) days of the request being filed.

(5) If reconsideration is granted:

(a) A hearing shall be held by the cabinet in accordance with the provisions of Section 15 [16] of this administrative regulation within thirty (30) days of the date of the decision to grant reconsideration; and

(b) A final decision shall be entered by the cabinet no later than thirty (30) days following the conclusion of the hearing.

(6) If reconsideration is granted on the grounds that a public hearing was not held pursuant to KRS 216B.085, the applicant shall have the right to waive the reconsideration hearing if the deficiencies in the application can be adequately corrected by submission of written documentation to be made a part of the record without a hearing.

Section 17. [18:] Show Cause Hearings. (1) The cabinet may conduct a show cause hearing on its own initiative or at the request of an affected [any] person, to include hearings requested pursuant to *Humana of Kentucky v. NKC Hospitals, Ky.*, 751 S.W.2d 369 (1988), in order to determine whether a person has established or is operating a health facility or health service in violation of the provisions of KRS Chapter 216B or these administrative regulations or is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(a) In order for a show cause hearing to be held, a request for a show cause hearing submitted by an affected person shall be accompanied by affidavit(s) or other documentation which demonstrate that there is probable cause to believe that a person has established or is operating a health facility or health service in violation of the provisions of KRS Chapter 216B or these administrative regulations or is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(b) If a show cause hearing is held, the person being charged shall have the burden of showing cause why that person should not be found to have established or to be operating a health facility or health service in violation of the provisions of KRS Chapter 216B or these administrative regulations, or should not be found to be subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(2)[(a)] The cabinet shall conduct a show cause hearing based on its own investigation pursuant to an annual licensure inspection or otherwise which reveals a possible violation of the terms or conditions which are a part of a certificate of need approval and license.

(3) [(b)] The cabinet shall also conduct a show cause hearing regarding terms and conditions which are a part of a certificate of need approval and license at the request of any person.

(4) [(c)] The show cause hearing regarding the terms and conditions shall determine whether a person is operating a health facility or health service in violation of any terms or conditions which are a part of their certificate of need approval and license.

(5) [(3)] Show cause hearings shall be conducted in accordance with the provisions of Section 15 [16] of this administrative regulation.

(6) [(4)] Prior to convening a show cause hearing, the cabinet shall give the person suspected or alleged to be in violation not less than twenty (20) days' notice of its intent to conduct a hearing.

(7) [(5)] The notice shall advise the person of:

(a) The allegations against him;

(b) Any facts determined to exist which support the existence of the allegation; and

(c) The statute or administrative regulation alleged to have been violated.

(8) [(6)] A hearing officer shall convene the hearing and shall allow the person to establish through testimony or other evidence any grounds in support of its position that no action should be taken by the cabinet.

(9) [(7)] Within thirty (30) days of the conclusion of the hearing, the hearing officer shall issue a final decision on the matter.

(10) [(8)] A copy of the final decision shall be mailed to the person or his legal representative with the original hearing decision filed in the administrative record maintained by the cabinet.

(11) [(9)] If a violation is found to have occurred as a result of a show cause hearing conducted pursuant to subsection (1) of this section, the cabinet shall take action as provided by KRS Chapter 216B.

(12) [(10)] If the person is found to have violated any of the terms or conditions of any certificate of need approval and license as a result of a show cause hearing conducted pursuant to subsection (2) of this section, the cabinet shall take the following action:

(a) If the person had not previously been found to be in violation of the terms and conditions which were made a part of their certificate of need approval and license, the person shall be given a reasonable period of time, not to exceed sixty (60) days after issuance of the cabinet's decision, in which to demonstrate that they have corrected the violation. At the conclusion of this period the cabinet shall verify that the facility or service is operating in compliance with the terms or conditions of the certificate of need and license at issue.

(b) If the cabinet is unable to verify that the facility or service has corrected the violation in accordance with paragraph (a) of this subsection, or if a person who had previously been found to be in violation of the terms and conditions which were a part of their certificate of need approval and license is found in a subsequent show cause hearing conducted pursuant to this section to be in violation of the terms and conditions again, the matter shall be referred to the Office of Inspector General for appropriate action.

Section 18. [19:] Administrative Escalations. (1) No person may obligate a capital expenditure in excess of the amount authorized by an existing certificate of need unless the person has received an administrative escalation or an additional certificate of need from the cabinet.

(2) Requests for administrative escalations shall be submitted to the cabinet on the Cost Escalation Form, Form #5 [6].

(3) The cabinet shall authorize administrative escalations for funds which have not been obligated and which do not exceed the following limits provided there is not a substantial change in the project:

(a) Twenty (20) percent of the capital expenditure authorized on the original certificate of need or \$100,000, whichever is greater, if the capital expenditure authorized on the certificate of need is less than \$500,000;

(b) Twenty (20) percent of the capital expenditure if the capital expenditure authorized on the certificate of need is \$500,000 to \$4,999,999;

(c) Ten (10) percent of the amount in excess of \$5,000,000, plus \$1,000,000, for projects where the capital expenditure authorized on the certificate of need is \$5,000,000 to \$24,999,999;

(d) Five (5) percent of the amount in excess of \$25,000,000, plus \$3,000,000, where the capital expenditure authorized on the certificate

of need is \$25,000,000 to \$49,999,999; and

(e) Two (2) percent of the amount in excess of \$50,000,000, plus \$4,250,000, where the capital expenditure authorized on the certificate of need is \$50,000,000 or more.

(4) If an administrative escalation is authorized, the certificate of need holder shall submit any additional certificate of need application fee required by the increased capital expenditure.

(5) The escalation of a capital expenditure in excess of the limits set forth in subsection (3) of this section, shall constitute a substantial change in a project and shall require a certificate of need pursuant to KRS 216B.061(1)(e).

(6) The unauthorized obligation of a capital expenditure in excess of the amount authorized on a certificate of need shall be presumed to be a willful violation of KRS Chapter 216B and shall be subject to the penalties set forth at KRS 216B.990(2).

Section 19. [20:] Timetables and Standards for Implementation.

(1) As a condition for the issuance of a certificate of need, a holder of a certificate of need shall submit progress reports on the Certificate of Need Six (6) Month Progress Report, Form #7, at the six (6) month intervals specified in this section.

(2) A notice specifying the date each progress report is due shall be sent to every holder of a certificate of need whose project is not fully implemented.

(3) The cabinet or its designee shall review a progress report and shall:

(a) Determine whether the required elements have been completed; and

(b) If the required elements have not been completed, whether sufficient reasons for failure to complete have been provided.

(4) A certificate of need shall be deemed complete when:

(a) The project has been approved for licensure or occupancy by the Division of Licensing and Regulation;

(b) A final cost breakdown has been submitted; and

(c) Documentation that services are being provided to all of the licensed service area has been submitted.

(5) Until a project is deemed complete by the cabinet, the cabinet may require:

(a) The submission of additional reports as specified in subsections (16) through (18) of this section; or

(b) Progress reports in addition to those required at six (6) month intervals under the provisions of this section.

(6) Except for long-term care bed proposals, a certificate of need shall not be revoked for failure to complete the items required during a six (6) month period, if the holder of the certificate of need establishes that the failure was due to emergency circumstances or other causes that could not reasonably be anticipated and avoided by the holder, or were not the result of action or inaction of the holder.

(7) If the cabinet determines that required elements have not been completed for reasons other than those set forth in subsection (5)(a) of this section, it shall notify the holder of the certificate of need, in writing, that it has determined to revoke the certificate of need.

(8) The revocation shall become final thirty (30) days from the date of notice of revocation, unless the holder requests a hearing pursuant to KRS 216B.086.

(9) The first progress report for all projects other than long-term care beds shall include:

(a) Projects for the addition of new services or expansion of existing services that do not involve construction, renovation or the installation of equipment; [shall provide] plans for implementation of the project;

(b) Projects for the purchase of equipment only: a copy of the purchase order;

(c) Projects involving the acquisition of real property: evidence of an option to acquire the site; and

(d) Construction or renovation projects: evidence that schematic plans have been submitted to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation.

(10) For projects other than long-term care beds not deemed complete, a second progress report shall include:

(a) Projects converting beds: documentation that all beds are licensed;

(b) Projects for addition of new services or expansion of existing services that do not involve construction, renovation, or the installation of equipment: documentation of approval for licensure and occupancy by the Division of Licensing and Regulation or the Emergency Medical Services Branch; and

(c) Construction or renovation projects: the schedule for project completion, evidence of preliminary negotiation with a financial agency, and evidence of preliminary negotiation with contractors.

(11) For projects other than long-term care beds not deemed complete, a third progress report shall include:

(a) Construction or renovation projects:

1. Copy of deed or lease of land;

2. Documentation of final enforceable financing agreement, where applicable;

3. Documentation that final plans have been submitted to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation; and

4. Enforceable contract with a construction contractor.

(b) Projects for purchase of equipment only: evidence of approval for licensure and occupancy by the Division of Licensing and Regulation.

(12) For projects other than long-term care beds not deemed complete, a fourth progress report shall include documentation of final plan approval by the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation and evidence that construction has begun.

(13) For projects other than long-term care beds not deemed complete, a fifth progress report shall include documentation that construction or renovation is progressing according to schedule.

(14) For projects other than long-term care beds not deemed complete, a sixth progress report shall include documentation that the project has been approved for licensure or occupancy by the Division of Licensing and Regulation and, if required, that the appropriate license has been approved for the health care service or facility.

(15) For projects other than long-term care beds not deemed complete after the sixth progress report, the certificate holder shall, upon request, provide the cabinet or its designee with a written statement showing cause why the certificate should not be revoked. The cabinet may defer revocation action upon a showing by the certificate holder that the project shall [will] be completed on a revised schedule. The cabinet or its designee may require additional progress reports.

(16) For projects involving long-term care beds:

(a) The first progress report shall include:

1. A copy of the deed or lease of land for projects requiring acquisition of real property; and

2. Evidence that final plans have been submitted to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation.

(b) For projects involving long-term care beds not deemed complete, a second progress report shall include:

1. For conversion of bed projects, documentation that the beds in the project are licensed; and

2. For construction projects:

a. Schedule for project completion with projected dates;

b. Documentation of final financing;

c. Documentation of final plan approval by the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation; and

d. Enforceable construction contract.

(17) For projects involving long-term care beds not deemed complete, a third progress report shall include documentation that construction or renovation is progressing according to the schedule for project completion.

(18) For projects involving long-term care beds not deemed complete, a fourth progress report shall include documentation that the project has been appropriately licensed and approved for occupancy by the Division of Licensing and Regulation.

(19) The cabinet or its designee may grant no more than three (3) additional extensions of six (6) months for good cause shown when the certificate holder of long-term care beds has failed to comply with the above relevant progress report requirements.

(20) Within six (6) months following licensure of a project for which

a certificate of need has been issued, the certificate holder shall submit documentation that services are being provided to all of the licensed service area. Failure to provide such documentation shall constitute grounds for revocation of the certificate of need and the license for those areas where service is not being provided.

(21) [(22)] If the project involves a capital expenditure, a final cost breakdown shall be included in the final progress report.

(22) [(23)] If the Office of Inspector General discovers a violation of terms and conditions listed on a certificate of need and license while it is conducting its annual licensure inspection it shall refer this violation for a show cause hearing in accordance with Section 17 [†8] of this administrative regulation.

Section 20. [24:] Biennial Review. (1) Certificate of need holders may be subject to biennial review to determine whether they are in compliance with the terms as listed on their certificate of need.

(2) Biennial review may be conducted within sixty (60) days of the second anniversary of the final progress report and at twenty-four (24) month intervals thereafter.

(3) The cabinet or its designee shall provide sixty (60) days' advance written notification to the subject of any biennial review, including the following:

(a) When the biennial review shall [will] be initiated;

(b) Request for information necessary for the review to which the cabinet does not have ready access; and

(c) A deadline for response to the request for information.

(4) If the cabinet finds that any of the terms and conditions of a certificate of need approval and license have been violated, the review of and any sanctions for this violation shall be conducted in accordance with Section 17 [†8](2) of this administrative regulation.

Section 21. [22:] Advisory Opinions. (1) The cabinet shall issue advisory opinions regarding matters related to certificate of need on its own initiative or upon request from any person.

(2) Requests for advisory opinions shall be filed with the cabinet and shall be accompanied by the Request for Advisory Opinion Form, Form [Number] #6 [8].

(3) In rendering an advisory opinion, a proposal shall be considered to constitute an improvement within the definition of a nonclinically related expenditure exempt from review if the proposed expenditure meets the definition of an improvement contained in Section 1 of this administrative regulation.

(4) The cabinet may require verification of information and request additional documentation at its discretion prior to issuing an advisory opinion.

(5) The cabinet shall issue a written advisory opinion within thirty (30) days of receipt of a completed request for an advisory opinion or of receipt of additional information.

(6) Public notice of the advisory opinion shall be published in the monthly certificate of need newsletter.

(7) An affected person may request a public hearing regarding an advisory opinion in writing within thirty (30) days of the public notice of the advisory opinion.

(8) The public hearing shall be held within forty-five (45) days of the date of the filing of the request and shall be conducted in accordance with the provisions of Section 15 [†6] of this administrative regulation.

(9) The cabinet shall enter a final decision regarding the advisory opinion, within forty-five (45) days of the completion of the public hearing.

(10) If a public hearing is not requested, the advisory opinion shall be the final action of the cabinet.

Section 22. [23:] Notification of the Addition of a Health Service.

(1) Health facilities that make additions to an existing health service for which there are review criteria in the state health plan but for which a certificate of need is not required, or add equipment for which there are review criteria in the state health plan but for which a certificate of need is not required, shall notify the cabinet that such a service or equipment has been added within ten (10) days of such addition.

(2) Notification of the Addition of a Health Service or Equipment (Form #9 [†10]) shall be used in making such notification.

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Section 23. [24:] Acquisition and Relocation of Nonconforming Nursing Facility. (1) Any person proposing to acquire a nursing facility in excess of 300 beds that is not in substantial compliance with 902 KAR 20:310 shall provide a notification of intent to acquire pursuant to KRS 216B.065.

(2) The nursing facility acquired pursuant to subsection (1) of this section may be relocated to more than one (1) location, provided that all the beds remain within the county of location of the original facility.

(3) Applications to relocate the nursing facility acquired pursuant to subsection (1) of this section, shall be filed pursuant to KRS 216B.095.

(4) Once relocated and licensed, any person proposing to acquire the relocated nursing facilities shall provide notifications of intent to acquire pursuant to KRS 216B.065.

Section 24. [25:] Material Incorporated by Reference. (1) The following forms necessary for the administration of the certificate of need program are hereby incorporated by reference:

- (a) [Letter of Intent (Form #1);
- (b)] Certificate of Need Application - Formal and Nonsubstantive Review (Form #1A) (6/15/99 [2A]);
- (b) [(c)] Certificate of Need Application for Ground Ambulance and Air Ambulance Service Providers (Form #1B) (6/15/99 [2B]);
- (c) [(d)] Certificate of Need Application for Change of Location, Replacement, or Cost Escalation (Form #1C) (6/15/99 [2C]);
- (d) Notice of Appearance (Form #2) (6/15/99);
- (e) Witness List (Form #3) (9/10/97);
- (f) Exhibit List (Form #4) (9/10/97);
- (g) [Notice of Appearance (Form #5);
- (h)] Administrative Escalation (Form #5) (6/15/99 [6]);
- (h) Advisory Opinion Request (Form #6) (6/15/99);
- (i) Six (6) Month Progress Report (Form #7) (7/15/97);
- (j) [Advisory Opinion Request (Form #8);
- (k)] Acquisition of a Health Facility, Notice of Intent (Form #8) (6/15/99 [9]);
- (k) [(f)] Notification of the Addition of a Health Service or Equipment (Form #9) (6/15/99 [10]).

(2) This material [These forms] may be inspected and copied at the Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

Section 25. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

JOHN H. GRAY, Executive Director

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY; September 14, 1999

FILED WITH LRC: September 15, 1999 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Gray, Executive Director

(1) Type and number of entities affected: All applicants for and holders of certificates of need.

(2) Direct and indirect cost or savings to those affected:

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

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

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

1. First year following implementation: There are no additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Person applying for certificates of need must complete and file applications. Persons receiving certificates of need must complete and file progress reports.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds have already been budgeted for the operation of the certificate of need process. The agency also collects fees for the filing of applications.

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

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

(b) Kentucky: No public comments were received on this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives are available because the certificate of need process is mandated by statute (KRS Chapter 216B).

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will enable the Cabinet for Health Services to check the proliferation of surgical services in the state, which members of the Legislative Health and Welfare Committee have identified as an issue needing emergency attention.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on public health will result if this administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Members of the Legislative Health and Welfare Committee have determined that the unchecked proliferation of surgical services will have a detrimental effect on public health by threatening the viability of rural hospitals.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied as the Certificate of Need Process is applied uniformly for all persons subject to the requirements of certificate of need.

CABINET FOR HEALTH SERVICES Office of Inspector General (Amended After Hearing)

902 KAR 20:275. Mobile health services.

RELATES TO: KRS 216B.010, 216B.015, 216B.040, 216B.042, 216B.045 to 216B.055, 216B.075, 216B.105 to [through] 216B.131, 216B.990, 311.560(4), 314.011(8)

STATUTORY AUTHORITY: KRS 216B.010, 216B.040, 216B.042; 314.011(8), EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 require that the Kentucky Cabinet for Health Services regulate health facilities and health services. This administrative regulation provides licensure requirements for the operation of and services provided by mobile health services. [The administrative regulation establishing standards for mobile health services, 902 KAR 20:270, was found deficient by the Interim Joint Committee on Health and Welfare at its November 15, 1995, meeting. The finding of deficiency resulted from the lack of guidelines to coordinate the relationship between home IV therapy service and home health agencies. Legislation to establish such guidelines was not enacted during the 1996 Regular Session of the General Assembly. Therefore, pursuant to KRS 13A.333(1), 902 KAR 20:270 expired. KRS 216B.042 requires the cabinet to establish standards for health facilities and services, and

authorizes it to promulgate administrative regulations. Without an administrative regulation establishing standards for mobile health services, the cabinet would be in violation of the legislative mandate expressed in KRS 216B.042. KRS 13A.333(6) prohibits an administrative body from promulgating an administrative regulation that is identical to or substantially the same as an administrative regulation that has expired. This administrative regulation is not identical to or substantially the same as 902 KAR 20:270, because:

(1) Only the lack of guidelines to coordinate the relationship between home IV therapy services and home health services was found deficient;

(2) This administrative regulation includes guidelines to coordinate the relationship between home IV therapy service and home health agencies; and

(3) It is required by the legislative mandate of KRS 216B.042: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.]

Section 1. Definitions. (1) "Certified radiation operator" means a person who has been certified pursuant to KRS 211.870 and 902 KAR 105:010 to 105:070 as an operator of sources or radiation.

(2) "Computed tomography (CT) scanning" means a radiological diagnostic imaging procedure that shows cross sectional images of internal body structures.

(3) "Diagnostic imaging service" means the production of an image, either through film or computer generated video, of the internal structure of a person.

(4) "Diagnostic service" means a service performed to ascertain and assess a person's physical health condition.

(5) "Governing authority" or "licensee" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.

(6) [(4)] "IV therapy" means the administration, by a registered nurse under the supervision of a licensed physician, of various pharmaceutical and nutritional products by intravenous, subcutaneous or epidural routes.

(7) [(5)] "IV therapy service" means pharmaceutical and nursing services, including direct hands-on care, limited to and necessary for the:

(a) Preparation, dispensing and delivery of pharmaceutical and nutritional products and equipment; and

(b) Related clinical consultation, training, and assessment or care incidental to initial start-up of IV therapy.

(8) [(6)] "License" means an authorization issued by the cabinet for the purpose of operating mobile health services.

(9) [(7)] "Lithotripter" means a noninvasive treatment technique that utilizes shock waves to shatter kidney stones.

(10) [(8)] "Magnetic resonance imaging (MRI)" means a diagnostic imaging modality which utilizes magnetic resonance, an interaction between atoms and electromagnetic fields, to project images of internal body structures.

(11) [(9)] "Other diagnostic and treatment services" means those health services which are determined to require licensure pursuant to KRS 216B.042 as a mobile health service.

(12) "Private duty nursing agency" means a person, firm, corporation, partnership or association engaged for hire in the business of providing continuous licensed nursing care to a patient in his home. It shall not include a registered nurse providing nursing services as an independent practitioner.

(13) [(10)] "Qualified anesthesiologist" means a [person who is a] doctor of medicine or a doctor of osteopathy licensed to practice medicine and surgery and [who is] board certified or in the process of being certified by the American Board of Anesthesiology or the American Osteopathic Board of Surgery and [who otherwise] meets the criteria established by the mobile health service's governing authority.

(14) [(11)] "Qualified urologist" means a [person who is a] doctor of medicine or a doctor of osteopathy licensed to practice medicine and surgery and [who is] board certified or [is] in the process of being certified by the American Board of Urology or the American Osteopathic Board of Surgery and [who otherwise] meets criteria established by the mobile health service's governing authority.

(15) [(12)] "Registered nurse" means a nurse who is licensed to

engage in registered nursing practice pursuant to KRS 314.041.

(16) "Treatment service" means a service provided to a person who, because of a physical health condition, is in need of medical assistance for the attainment of his maximum level of physical function.

Section 2. Scope of Operation and Services. Mobile health services provide medical services in various locations and in some instances utilize a specially equipped vehicle such as a van, trailer or mobile home. These services include mobile diagnostic imaging and examination services, mobile treatment services, private duty nursing agency services, and any other medical or dental services provided through the use of a mobile vehicle or performed at various locations.

Section 3. Administration. (1) Licensee.

(a) The licensee shall be legally responsible for the service and for compliance with federal, state and local laws and regulations pertaining to the operation of the service, limited to the scope of the service's certificate of need.

(b) The licensee shall establish lines of authority and designate an administrator who shall [will] be principally responsible for the daily operation of the service. In the case of a service whose governing authority is comprised of more than one (1) licensed hospital, a separate administrator may be designated from each hospital to serve as the administrator of the service when it is being provided at the hospital where the designee is employed.

(2) Policies. There shall be written administrative policies which the service follows covering all aspects of operation, including:

(a) A description of organizational structure, staffing and allocation of responsibility and accountability;

(b) A description of linkages with inpatient facilities and other providers;

(c) Policies and procedures for the guidance and control of personnel performances;

(d) A written program narrative describing in detail the service [service(s)] offered, methods and protocols for service delivery, qualifications of personnel involved in the delivery of the service [services], and goals of the service [service(s)];

(e) A description of the administrative and patient care records and reports; and

(f) Procedures to be followed in the storage, handling and administration of drugs and biologicals.

(3) Personnel.

(a) Medical director. The service shall have a medical director. The medical director shall be a licensed physician or, in the case of a mobile dental clinic a dentist, with specialized training and experience in, and responsibility for, all medical aspects of the service. In the case of a service whose governing authority is comprised of more than one (1) licensed hospital, a separate medical director may be designated from each hospital's medical staff to serve as the medical director of the service when it is being provided at the hospital where the physician is on staff. If a service operates only diagnostic examination equipment, and if the service is offered only to licensed hospitals, and if the employees of the service makes no medical assessment of the diagnostic patient data collected, then the service shall be exempt from the requirements of this paragraph.

(b) The service shall employ, or provide for through a written contractual agreement, sufficient number of qualified personnel to provide effective patient care and all other related services. The licensee shall provide written personnel policies which shall be available to all employees, reviewed on an annual basis, and revised as necessary. If the staff-to-patient ratio does not meet the needs of the patients, the Division of Licensing and Regulation shall determine and inform the program administrator in writing how many additional personnel are to be added and of what job classification, and shall give the basis for this determination.

(c) There shall be a written job description for each position which shall be reviewed and revised as necessary.

(d) There shall be an employee health program for mutual protection of employees and patients including provisions for preemployment and periodic health examination, tuberculin test, and other appropriate tests.

(e) Current personnel records shall be maintained for each em-

ployee which include the following:

1. Name, address and Social Security number;
2. Evidence of current registration, certification or licensure [of personnel];
3. Records of training and experience; [and]
4. Records of performance evaluation; [and]
5. Current negative tuberculin skin test or chest x-ray for an employee having direct contact with a patient; and
6. Preemployment criminal conviction information for private duty nursing agency personnel who provide nursing care to a patient in his home.

(4) In-service training. An employee [All personnel] shall participate in ongoing in-service training programs relating to his [their-respective] job activities including thorough job orientation for a new employee [employees].

(5) Medical records.

(a) The service shall maintain medical records which contain at least the following:

1. Medical and social history relevant to the service [service(s)] provided, including data obtainable from other providers;
2. Name [Names] of referring physician, if any, and physician's orders for special diagnostic services such as x-ray or CT scans;
3. Description of each medical visit or contact, to include condition or reason necessitating visit or contact, assessment diagnosis, services provided, medications and treatments prescribed, and disposition made;
4. Reports of [all] physical examinations, laboratory, x-ray, and other test findings relevant to the service [service(s)] provided; and
5. Documentation of [all] referrals made, including reason for referral, to whom the patient was referred, and any information obtained from referral source.

(b) Confidentiality of [all] patient records shall be maintained at all times.

(c) Transfer of records. The service shall establish systematic procedures to assist in continuity of care if [where] the patient moves to another source of care, and the service shall, upon proper release, transfer medical records or an abstract thereof when requested.

(d) Retention of records. After patient's death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is longer. Mammography and other radiology records shall be retained in accordance with federal requirements.

(e) A specific location shall be designated by the mobile health service for the maintenance and storage of the service's medical records.

(f) Provisions for storage of medical records in the event the mobile health service ceases to operate because of disaster, or for any other reason. The licensee shall safeguard the record and its content against loss, defacement and tampering.

Section 4. Vehicle Requirements. (1) A vehicle [All vehicles] used in the provision of a health service, as provided by the service's certificate of need, shall be kept [;] in optimum order with clean interiors and equipment.

(2) The following standards shall apply only to a vehicle [those vehicles] which the patient enters.

(a) There shall be adequate heating and air-conditioning capability in both the driver and patient compartments.

(b) There shall be a minimum of two (2) potential power sources for the vehicle. To insure an immediately available source of power in the event of a power failure, one (1) shall [must] be self-contained on the vehicle. The other source shall [must] be an exterior source of power hookup.

(c) The vehicle shall be accessible to a user [users] with a disability [disabilities] either through the use of a wheelchair lift or a ramp which complies with applicable American National Standards Institute (ANSI) requirements.

(d) The vehicle shall have adequate and safe space for staff and examination procedures, as determined by the cabinet.

(e) Equipment. A vehicle [Vehicles] used in the provision of a health service, as provided by the service's certificate of need, shall have the following essential equipment:

1. One (1) five (5) pound dry chemical fire extinguisher;
2. One (1) first aid kit;
3. Suction apparatus;
4. Pocket face mask for cardiopulmonary resuscitation; and
5. Oxygen equipment (portable) including:
 - a. One (1) "D" size oxygen cylinder;
 - b. One (1) pressure gauge and flow rate regulator;
 - c. Adaptor and tubing; [and]
 - d. Transparent masks for adults and children. Nasal cannulas may be substituted; and
 - e. Airway device to open or maintain air passageway to lungs.
- (f) Personnel. Each mobile health service vehicle shall [at-a-minimum] be staffed by at least one (1) person, who may also be the driver of the vehicle, who shall have the following qualifications:
 1. Red Cross Advanced and Emergency Care Certification, each with supplemental advanced emergency courses [CPR-instruction] certified by the American Red Cross or the American Heart Association; [or]
 2. EMT-first responder certification; [or]
 3. EMT-A certification; or
 4. Licensure as a registered nurse, physician or dentist.

Section 5. Requirements for Provision of Services. A licensed mobile health service shall comply with the requirements listed in Sections 3, 4, and 6 of this administrative regulation, the service's program narrative, and the additional requirements of this section which relate to the particular service [service(s)] offered by the licensee.

(1) Diagnostic services. [~~Diagnostic services are those services which are performed to ascertain and assess an individual's physical health condition.~~]

(a) A diagnostic service [services], except for mammography [services], shall be performed only on the order of a physician or other practitioner acting within his statutory scope of practice [advanced registered nurse practitioner as authorized in KRS 314.011(8)].

(b) A [The] service shall prepare a record for each patient to include the date of the procedure, name of the patient, description of the procedure [procedures] ordered and performed, the referring physician, the name of the person performing the procedure, the date and the name of the physician to whom the results were sent.

(c) Diagnostic imaging services.

1. [~~Diagnostic imaging services are those services which produce an image, either through film or computer-generated video, of the internal structures of a patient.~~] These services include:

- a. X-ray;
- b. MRI;
- c. CT scanning;
- d. Ultrasound;
- e. Mammography;
- f. Fluoroscopy; and
- g. Other modalities using directed energy to gain statistical, physiological or biological diagnostic imaging information.

2. Any mobile health service which provides a diagnostic imaging service [services] shall comply with the following:

- a. Equipment used for direct patient care shall be fully approved by the Federal Food and Drug Administration (FDA) for clinical use;
- b. There shall be a written preventive maintenance program which the service follows to ensure that imaging equipment is operative, properly calibrated, and shielded to protect the operator, patient, environment, and the integrity of the images produced. Recalibration of radiation producing and nonradiation producing instrumentation shall occur at least every six (6) months by biomedical service personnel and radiation producing instrumentation shall be recalibrated annually by a consulting health physicist.

c. A diagnostic imaging service [services] shall be provided under the supervision of a physician who is qualified by advanced training and experience in the use of the specific imaging technique for diagnostic purposes;

d. An imaging service [services] shall have a current license or registration pursuant to applicable Kentucky statutes and any administrative regulations promulgated thereunder;

e. [All] Personnel engaged in the operation of imaging equipment shall be currently licensed or certified in accordance with applicable Kentucky statutes and administrative regulations;

f. There shall be a written training plan for personnel in the safe and proper usage of [the] mobile imaging equipment and system;

g. There shall be a physician's signed order which specifies the reason the procedure is required, the area of the body to be examined, and a statement concerning the condition of the patient which indicates why mobile imaging services are necessary; and

h. There shall be [sufficiently] trained on-duty personnel with ~~necessary~~ [adequate] equipment to provide emergency resuscitation services in the event of a patient emergency.

(d) Other diagnostic services.

1. Other diagnostic services are [those services which are] provided through the use of diagnostic equipment, and physical examination. These services include:

- a. Electrocardiogram services;
- b. Electroencephalogram services;
- c. Holter monitor services;
- d. Disability determination services;
- e. Pulmonary function services;
- f. Aphresis services;
- g. Blood gas analysis services;
- h. Echosonography services; and
- i. Doppler services.

2. Equipment used for direct patient care shall comply with the following:

a. The licensee shall establish and follow a written preventive maintenance program to ensure that equipment shall be operative and properly calibrated;

b. [All] Personnel engaged in the operation of diagnostic equipment shall have [adequate] training and be currently licensed or certified in accordance with applicable Kentucky statutes and administrative regulations; and

c. There shall be a written training plan for the [adequate] training of personnel in the safe and proper usage of the equipment.

3. Physical examination services shall be nonabusive and provided in a manner which ensures the greatest amount of safety and security for the patient.

a. Protocols for diagnostic examinations shall be developed by the medical director.

b. Personnel performing physical examinations shall have [adequate] training and be currently licensed or certified in accordance with applicable Kentucky statutes and administrative regulations.

c. Personnel performing physical examinations shall be limited by his [the] relevant scope of practice of Kentucky licensure.

(2) Treatment services. [Treatment services are those services provided to an individual who, because of a physical health condition, is in need of medical assistance for the attainment of their maximum level of physical function.]

(a) Mobile health clinic. [A mobile health clinic is a health service providing both diagnostic and treatment services through the use of a mobile vehicle.] A mobile health clinic may provide a wide range of diagnostic and treatment services on an outpatient basis for a variety of physical health conditions through the use of a mobile vehicle.

1. Policies. The licensee shall develop patient care policies with the advice of a group of professional personnel that includes one (1) or more physicians and one (1) or more advanced registered nurse practitioners. At least one (1) member of the group shall not be a member of the mobile health clinic staff. The policies shall include:

a. A description of [the] services the mobile health clinic provides directly and those provided through agreement;

b. Guidelines for the medical management of health problems which include the conditions requiring medical consultation and/or patient referral, and the maintenance of health records; and

c. Procedures for the annual review and evaluation of the services provided by the clinic [at least annually].

2. Personnel. A [The] mobile health clinic shall have a staff that includes at least one (1) physician and at least one (1) advanced registered nurse practitioner. A [The] clinic shall employ such other staff or ancillary personnel that are necessary to provide the services essential to the clinic's operation.

a. The physician shall:

(i) Be responsible for all medical aspects of the clinic and shall provide direct medical services in accordance with [the Medical Practice Act,] KRS Chapter 311. In addition, the physician shall provide

medical direction, supervision, and consultation to the staff;

(ii) Participate [In conjunction] with the advanced registered nurse practitioner [practitioner(s), participate] in developing, executing, and periodically reviewing the mobile health clinic's written policies and services;

(iii) Periodically review the mobile health clinic's patient records, provide medical orders, and provide medical care services to patients of the mobile health clinic; and

(iv) Be present for weekly consultation [weekly,] and be immediately available [within one (1) hour,] through direct telecommunication, for consultation, assistance with medical emergencies, or patient referral.

b. The advanced registered nurse practitioner shall:

(i) Participate in the development, execution and periodic review of the written policies governing the services the mobile health clinic provides;

(ii) Participate with the physician in periodic review of patient health records;

(iii) Provide services in accordance with mobile health clinic policies, established protocols, KRS Chapter 314 [the Nurse Practice Act (KRS Chapter 314)], and with administrative regulations promulgated thereunder;

(iv) Arrange for, or refer patients to a needed service [services] not provided at the mobile health clinic; and

(v) Assure that adequate patient health records are maintained and transferred when patients are referred.

3. A [The] mobile health clinic shall have a linkage agreement or arrangement [agreements or arrangements] with each of the following:

a. Inpatient hospital care;

b. Physician services in a hospital, patient's home, or long-term care facility;

c. Additional and specialized diagnostic and laboratory services that are not available at the mobile health clinic;

d. Home health agency;

e. Emergency medical services;

f. Pharmacy services; and

g. Local health department.

4. A [The] mobile health clinic shall perform [carry out,] or arrange for an annual evaluation of its total program, shall consider the findings of the evaluation, and take corrective action, if necessary. The evaluation shall include:

a. The utilization of clinic services including [at least] the number of patients served and the volume of services;

b. A representative sample of [both] active and closed clinical records; and

c. The mobile health clinic's health care policies.

5. A [The] mobile health clinic shall develop and maintain written protocols, i.e., standing orders, rules of practice, and medical directives, which apply to services provided by the clinic and which explicitly direct the step-by-step collection of subjective and objective data from the patient. The protocols shall further direct data analysis, direct explicit medical action depending upon the data collected, and include rationale for each decision made. The protocols shall be signed by the staff physician.

6. [The] Mobile health clinic staff shall furnish those diagnostic and therapeutic services and supplies that are commonly furnished in a physician's office or at the entry point into the health care delivery system. These include medical history, physical examination, assessment of health status, and treatment for a variety of medical conditions.

7. A [The] mobile health clinic shall provide basic laboratory services, in compliance with 42 CFR 493 standards, that are essential to the immediate diagnosis and treatment of the patient, including:

a. Chemical examinations of urine by stick or tablet methods or both (including urine ketones);

b. Microscopic examinations of urine sediment;

c. Hemoglobin or hematocrit;

d. Blood sugar;

e. Gram stain;

f. Examination of stool specimens for occult blood;

g. Pregnancy tests;

h. Primary culturing for transmittal to a hospital laboratory or licensed laboratory; and

i. Test for pinworms.

8. ~~A [The]~~ mobile health clinic shall provide medical emergency procedures as a first response to common life-threatening injuries and acute illness, and have available the drugs and biologicals commonly used in lifesaving procedures, such as analgesics, local anesthetics [~~local~~], antibiotics, anticonvulsants, antidotes and emetics, serums and toxoids.

9. The clinic shall post in a conspicuous area at the entrance, visible from the outside of the clinic, the hours that emergency medical services are [~~will be~~] available in the clinic, the clinic's next scheduled visit, and where emergency medical services not provided by the clinic can be obtained during and after the clinic's regularly [~~regular~~] scheduled visits and hours of operation.

(b) Mobile dental clinic. A mobile dental clinic may provide [~~is a health service providing both~~] diagnostic and dental treatment services at different locations through the use of a mobile vehicle or equipment.

1. Policies. The licensee shall develop patient care policies with the advice of a group of professional personnel that includes at least one (1) licensed dentist. These policies shall include:

a. Guidelines which identify the dental problems which may not be performed in the mobile unit, and provisions for patient referral;

b. Guidelines for the review and evaluation of the services provided by the clinic at least annually; and

c. Guidelines for procedures to be followed in the event a patient has a medical emergency.

2. Personnel. ~~A [The]~~ mobile dental clinic shall have a staff that includes at least one (1) licensed dentist and at least one (1) dental assistant.

a. The dentist shall:

(i) Be responsible for all aspects of patient care in accordance with KRS Chapter 313 and any administrative regulations promulgated thereunder;

(ii) Be present in the clinic at all times that a patient is receiving dental care; and

(iii) Provide direct supervision to all staff involved in the delivery of services.

b. The dental assistant shall:

(i) Provide services in accordance with the mobile dental clinic policies and established protocols, KRS Chapter 313, and any administrative regulations promulgated thereunder; and

(ii) Provide services only under the direct supervision of a licensed dentist.

3. Equipment. The mobile dental clinics shall have the following equipment:

a. X-ray units;

b. Sterilizer;

c. High-speed suction;

d. Dental lights; and

e. Emergency kit with the following drug types:

(i) Antiallergenic;

(ii) Vasodilators;

(iii) Anticonvulsives; and

(iv) Vasopressors.

(c) Mobile lithotripter service. ~~[A mobile lithotripter service is a health service which provides for a noninvasive technique for removing kidney or ureteral stones through the use of a lithotripter at various hospital locations.]~~

1. Mobile lithotripter services shall [~~may only~~] be delivered on the grounds of a [~~the~~] hospital utilizing the mobile lithotripter service.

2. Lithotripsy services shall be performed [~~only~~] on the order of a physician.

3. Lithotripsy services shall be provided under the supervision of a physician who is qualified by advanced training and experience in the use of lithotripsy treatment.

4. The service shall prepare a record for each patient to include the date of the procedure, name of the patient, description of the procedures ordered and performed, the referring physician, and the name of the person performing the procedure.

5. There shall be an order signed by a physician or other practitioner acting within his statutory scope of practice [~~a physician's signed order~~] which specifies the reason the procedure is required, the area of the body to be exposed, and the anticipated outcome of treatment.

6. Policies. A mobile lithotripter service shall develop patient care

policies with the advice of a group of professional personnel that includes at least one (1) qualified urologist and one (1) qualified anesthesiologist. At least one (1) member of the group shall not be a member of the mobile lithotripter service staff. The policies shall include:

a. A description of how a patient will be transported between the hospital and the mobile lithotripter service;

b. Procedures to be followed in the event a patient has a medical emergency;

c. Guidelines for the annual review and evaluation of the service [~~on an annual basis~~]; and

d. Policies and protocols governing the utilization and responsibilities of hospital staff in the delivery of lithotripter services.

7. Personnel. ~~A [The]~~ mobile lithotripter service shall employ at least one (1) lithotripter technician, and shall employ or make arrangements with the hospital utilizing the service for at least one (1) registered nurse and [~~;~~] one (1) qualified urologist to be present in the unit during the delivery of lithotripsy services, and one (1) qualified anesthesiologist to be available for procedures requiring anesthesia.

8. Lithotripsy equipment used for direct patient care shall comply with the following:

a. Lithotripsy equipment shall be fully approved by the Federal Food and Drug Administration (FDA) for clinical use;

b. The licensee shall establish and follow a written preventive maintenance program to ensure that equipment shall be operative, properly calibrated, properly shielded, and safe for the patient, operator, and environment;

c. ~~[All]~~ Personnel engaged in the operation of diagnostic equipment shall have adequate training and be currently licensed, certified or registered in accordance with applicable Kentucky statutes and administrative regulations; and

d. There shall be a written training plan for the adequate training of personnel in the safe and proper usage of the equipment; and

e. There shall be sufficiently trained on-duty personnel with necessary adequate equipment to provide emergency resuscitation in the event of a patient emergency.

(d) Private duty nursing agency services.

1. Private duty nursing agency services shall be provided in accordance with a plan of treatment prescribed by a licensed physician or other ordering practitioner acting within his statutory scope of practice and as permitted by KRS Chapter 314. The plan of treatment shall be reviewed by the ordering practitioner in consultation with agency personnel at such intervals as the severity of the patient's illness requires, but in any instance, at least once every two (2) months.

2. Policies. The licensee shall develop patient care policies with the advice of a group of professional personnel that includes one (1) or more physician(s) and one (1) or more registered nurse(s). At least one (1) member of the group shall not be a member of the service's staff. The policies shall include:

a. A description of the services provided;

b. A requirement to inform the patient of other in-home services which can be provided only by other appropriately licensed agencies;

c. A requirement for a written common plan for treatment and coordination of treatment with other licensed health care providers servicing the patient, and immediate verbal communication between providers of revisions in the common plan shall be documented in the plan of treatment;

d. Guidelines for the medical management of health problems which include the conditions requiring medical consultation or patient referral, and the maintenance of health records;

e. Procedures for the annual review and evaluation of the services provided; and

f. Guidelines for patient and environment assessment.

(e) Other treatment services, including IV therapy services, shall be performed only on the order of a physician or other practitioner acting within his statutory scope of practice.

1. IV therapy shall only be performed by a registered nurse and shall be limited to nursing services which are required for the initial start-up of an IV therapy program.

2. If nursing services are required which exceed the initial start-up of IV therapy, they shall be provided by an appropriately licensed agency to provide care under a physician's plan of care.

3. All services provided shall be under the supervision of a licensed physician.

4. Policies. The licensee shall develop patient care policies with the advice of a group of professional personnel that includes one (1) or more physician(s) and one (1) or more registered nurse(s). At least one (1) member of the group shall not be a member of the service's staff. The policies shall include:

- a. A description of the services provided;
- b. A requirement to inform the patient [patients] of other in-home services which can be provided only by other appropriately licensed agencies;
- c. A requirement for a written common plan for treatment and coordination of treatment with other licensed health care providers servicing the patient, and immediate verbal communication between providers of revisions in the common plan shall be documented in the plan of treatment;
- d. Guidelines for the medical management of health problems which include the conditions requiring medical consultation or patient referral, and the maintenance of health records;
- e. Procedures for the annual review and evaluation of the services provided [at least annually]; and
- f. Guidelines for patient and environment assessment.

5. Personnel. A [The] service shall have a staff that includes at least one (1) registered nurse. A [The] service shall employ such other staff or ancillary personnel that are necessary and essential to the service's operation. The registered nurse shall:

- a. Participate in the development, execution and period review of the written policies governing the services provided;
- b. Participate with the physician in periodic review of patient health records;

c. Provide services in accordance with established policies, protocols, KRS Chapter 314 [the Nurse Practice Act (KRS Chapter 314)], and with administrative regulations promulgated thereunder;

(i) Arrange for or refer patients to needed services that cannot be provided by the service; and

(ii) Assure that adequate patient health records are maintained and transferred when patients are referred.

6. In-service training programs shall include instruction in:

- a. Use of equipment;
- b. Side effects and precautions of drugs and biologicals; and
- c. Infection control measures.

7. The service shall perform [carry out] or arrange for an annual evaluation of its total program, shall consider the findings of the evaluation, and take corrective action, if necessary. The evaluation shall include:

- a. The utilization of the service including [at least] the number of patients served and the volume of services;
- b. A representative sample of [both] active and closed records; and
- c. The service's health care policies.

Section 6. Waste Processing. (1) Sharp wastes, such as broken glass, scalpel blades, and hypodermic needles, shall be segregated from other wastes and aggregated in rigid disposable containers immediately after use. Needles and syringes shall not be cut, dismantled, or destroyed after use, but shall be placed intact into a rigid container. The rigid containers of sharp wastes shall either be incinerated or disposed of in a sanitary landfill [approved pursuant to 401 KAR 47:020].

(2) The mobile health service shall establish a written policy for the handling and disposal of all pathological and microbiologic laboratory waste. Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 or 401 KAR 61:010.

(a) Pathological and microbiologic laboratory waste shall be placed in double impervious plastic bags and each bag shall be two (2) mils in thickness. A bag, when full, shall not exceed twenty-five (25) pounds. All bags shall be securely closed and a tag, which reads "INFECTIOUS WASTE" and identifies the mobile health service from which the waste is being removed, shall be attached to the bag in a conspicuous manner. These wastes shall be sterilized before disposal or be disposed of by incineration if they are combustible.

- (b) All unpreserved tissue specimens shall be incinerated off site.
- (3) The following liquids shall be disposed of by incineration or by

sanitary sewer:

- (a) Blood;
- (b) Vaginal or cervical secretions or exudates;
- (c) Semen;
- (d) Cerebrospinal, synovial, pleural, pericardial, peritoneal, respiratory or amniotic fluids;
- (e) Saliva in dental procedures;
- (f) Fluids visibly contaminated with blood; and
- (g) Mixed fluids where any of the above may be involved.

ZACHARY S. RAMSEY, Interim Inspector General

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: September 3, 1999

FILED WITH LRC: September 3, 1999 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: There are presently 113 licensed mobile health services.

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

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

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

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

1. First year following implementation: No additional reporting requirements imposed.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No direct or indirect costs should be associated with this program beyond printing this new regulation.

1. First year: \$500 for printing regulation.

2. Continuing costs or savings: No additional costs or savings, since reprinting of regulations is provided for in the continuing budget.

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

(b) Reporting and paperwork requirements: No additional paperwork.

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

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

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

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

(b) Kentucky: No public comments addressing this issue were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 216B mandates that minimum standards be established for licensure.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: These are minimum health care standards intended to protect the public.

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

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

(9) Identify any statute, administrative regulation or government-

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tal policy which may be in conflict, overlapping, or duplication. No conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions?

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. This is a licensure program and, as such, applies to all licensed services.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, SEPTEMBER 15, 1999

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
(Amendment)

11 KAR 3:100. Administrative wage garnishment.

RELATES TO: KRS 164.744(1), 164.748(4), (10), (19) 164.753(2), 34 CFR 682.410(b)(10), 20 USC 1095a

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(2), 20 USC 1095(a)

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 164.744(1) and 164.748(2), the Kentucky Higher Education Assistance Authority has entered into agreements with the secretary to provide loan guarantees in accordance with 20 USC 1071 through 1087-2. 20 USC 1095a permits a student loan guarantee agency to garnish the disposable pay of a borrower to recover a loan guaranteed pursuant to 20 USC 1071 through 1087-2, notwithstanding a provision of state law. That section also permits the student loan guarantee agency to establish procedures for requesting and conducting a hearing related to the wage garnishment. KRS 164.748(19) authorizes the authority to collect from borrowers loans on which the authority has met its guarantee obligation, and KRS 164.748(10) authorizes the authority to conduct administrative hearings, exempt from KRS Chapter 13B, pertaining to wage garnishment. This administrative regulation establishes the procedures for implementing wage garnishment in accordance with requirements of the federal act.

Section 1. (1) Following payment of a claim by the authority to a participating lender by reason of the borrower's default in repayment of an insured student loan, the authority, acting through its executive director or other designee, may issue an administrative order for the withholding of the debtor's disposable pay, which order shall conform to the requirements of this section.

(2) This administrative regulation shall apply to a debtor who is either a borrower or an endorser of an insured student loan.

(3) An order for withholding of disposable pay shall not be issued under this section nor become effective less than thirty (30) days after the authority provides a written notice to the debtor by personal service or mail, addressed to the debtor at the residence or employment location last known to the authority. The notice shall include at least the following information:

- (a) The name and address of the debtor;
- (b) The amount of the debt determined by the authority to be due;
- (c) Information sufficient to identify the basis for the debt;
- (d) A statement of the intention of the authority to issue an order for withholding of disposable pay;
- (e) A statement of the right to dispute the existence or amount of the debt or the terms of a proposed repayment schedule under the garnishment order (other than a repayment schedule agreed to in writing pursuant to paragraph (g) of this subsection);
- (f) A statement of the right to inspect and copy any records relating to the debt open to inspection in accordance with KRS 61.870 through 61.884;
- (g) A statement of the opportunity to enter into a written agreement with the authority, on terms satisfactory to the authority, establishing a schedule for repayment of the debt;
- (h) A statement that, unless there is good cause determined by the authority for the debtor's failure to timely request a hearing, the debtor's acquiescence to the withholding of disposable pay shall be presumed; and

(i) A statement that if the debtor requests a hearing, but fails to appear without good cause determined by the hearing officer, the hearing officer shall affirm the issuance of an order for withholding of disposable pay.

(4) An amount shall not be withheld from the disposable pay of an individual during the first twelve (12) consecutive months of reemployment commenced within twelve (12) months following an involuntary separation from employment.

(5) Establishment of a written repayment schedule in accordance with subsection (3)(g) of this section shall be deemed, for purposes of subsection (3)(e) of this section, conclusive acknowledgement by the

debtor of the existence and amount of debt agreed to be paid.

(6) Service of the notice required by subsection (3) of this section shall be conclusively presumed to be effected five (5) days after mailing of the notice by the authority, unless the notice is returned to the authority undelivered by the postal service. The date of service of the notice shall otherwise be evidenced by affidavit of a person executing personal service or a delivery receipt.

Section 2. (1)(a) A hearing shall be provided if the debtor, on or before the 15th day following the date of service of the notice required by Section 1(3) of this administrative regulation, files with the authority a written request for a hearing in accordance with procedures prescribed by this administrative regulation. The timely filing of a request for a hearing (evidenced by a legibly dated U.S. Postal Service postmark or mail receipt) shall automatically stay further collection activity under this administrative regulation pending the outcome of the hearing.

(b) If the debtor requests a hearing, but the request is not timely filed, a hearing shall be provided, but the request shall not stay further action pending the outcome of the hearing.

(c) A hearing officer, appointed by the authority (who shall not be an individual under the supervision or control of the board other than an administrative law judge), shall conduct the hearing.

(d) A hearing officer shall voluntarily disqualify himself and withdraw from a case in which he cannot afford a fair and impartial hearing or consideration.

1. A party shall request the disqualification of a hearing officer by filing an affidavit, upon discovery of facts establishing grounds for a disqualification, stating the particular grounds upon which he claims that a fair and impartial hearing cannot be accorded.

2. The request for disqualification and the disposition of the request shall be a part of the official record of the proceeding.

3. Grounds for disqualification of a hearing officer shall include the following:

- a. Participating in an ex parte communication which would prejudice the proceedings;
- b. Having a pecuniary interest in the outcome of the proceeding; or

c. Having a personal bias toward a party to a proceeding which would cause a prejudgment on the outcome of the proceeding.

(e) A dispute hearing shall be conducted in Franklin County or another location agreed to by the parties.

(f) In lieu of an in-person hearing, upon request of the debtor, a hearing may be conducted by telephone or the hearing officer may conduct a review based solely upon submission of written material by both the debtor and the authority. An in-person or telephonic hearing shall be mechanically, electronically or stenographically recorded.

(g) Unless required for the disposition of an ex parte matter specifically authorized by this administrative regulation, a hearing officer shall not communicate off the record with a party to the hearing concerning a substantive issue, while the proceeding is pending.

(2)(a) The hearing officer's decision, reason therefore and an explanation of the appeal process shall be rendered in writing no more than sixty (60) days after receipt by the authority of the request for the hearing. The decision shall establish the debtor's liability, if any, for repayment of the debt and the amount to be withheld from the debtor's disposable pay.

(b) Subject to subsection (3)(b) of this section, the hearing officer's decision shall be final and conclusive pertaining to the right of the authority to issue an administrative order for the withholding of the debtor's disposable pay.

(c) A person, upon request, shall receive a copy of the official record at the cost of the requester. The party requesting a recording or transcript of the hearing shall be responsible for transcription costs. The official record of the hearing shall consist of:

- 1. All notices, pleadings, motions, and intermediate rulings;
- 2. Any prehearing order;
- 3. Evidence received and considered;
- 4. A statement of matters officially noticed;
- 5. Proffers of proof and objections and rulings thereon;

6. Ex parte communications placed upon the record by the hearing officer;

7. A recording or transcript of the proceedings; and

8. The hearing officer's decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation.

(3)(a) Following the issuance of the hearing officer's decision, the debtor or the authority may petition the board to review the decision.

(b) An adverse decision by the hearing officer shall be appealed in writing to the board not later than twenty (20) calendar days after the date of the hearing officer's decision. A petition for review of the hearing officer's decision shall be timely filed if received by the executive director within twenty (20) calendar days after the date of the hearing officer's decision. If there is no appeal to the board within twenty (20) days, the findings of the hearing officer shall be conclusive and binding upon the parties.

(c) A petition for review of the hearing officer's decision shall not stay a final order pending the outcome of the review. If the debtor's liability is established by the hearing officer's decision, an administrative order for withholding of disposable pay shall be issued by the authority within sixty (60) days after the date of the hearing officer's decision. If the debtor petitions the board to review the hearing officer's decision and obtains reversal, modification or remand of the hearing officer's decision, the authority shall return to the debtor any money received pursuant to the withholding order contrary to the final order of the board.

(d) The respondent may, within ten (10) calendar days from the date the petition was received by the executive director, provide a brief statement to the board responding to the petition for review. The response shall be timely filed if received by the executive director within ten (10) calendar days from receipt by the executive director of the petition for review.

(e) A petition for review of the hearing officer's decision shall contain the following information:

1. A concise statement of the reason that the petitioner asserts as the basis pursuant to paragraph (g) of this subsection for reversing, modifying or remanding the hearing officer's decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation;

2. A statement specifying the part of the official record that the petitioner relies upon to support reversing, modifying or remanding the hearing officer's decision pursuant to paragraph (g) of this subsection; and

3. A statement of whether the petitioner believes that oral argument to the board is necessary.

(f) The board shall review the hearing officer's decision at its next regularly scheduled meeting convened at least thirty (30) days after the petition for review of the hearing officer's decision is received or at a special meeting convened for that purpose within ninety (90) days after receipt of the petition for review of the hearing officer's decision, whichever first occurs.

(g) The board shall decide the dispute upon the official record, unless there is fraud or misconduct involving a party, and may consider oral arguments by the debtor and the authority. The board shall:

1. Not substitute its judgment for that of the hearing officer as to the weight of the evidence on questions of fact; and

2.a. Uphold the hearing officer's decision unless it is clearly unsupported by the evidence and the applicable law;

b. Reject or modify, in whole or in part, the hearing officer's decision; or

c. Remand the matter, including an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation, in whole or in part, to the hearing officer for further proceedings as appropriate if it finds the hearing officer's final order is:

(i) In violation of constitutional or statutory provisions;

(ii) In excess of the statutory authority of the agency;

(iii) Without support of substantial evidence on the whole record;

(iv) Arbitrary, capricious, or characterized by abuse of discretion; or

(v) Based on an ex parte communication which substantially prejudiced the rights of a party and likely affected the outcome of the hearing.

(h) The final order of the board shall be in writing. If the final order differs from the hearing officer's decision, it shall include separate statements of findings of fact and conclusions of law.

(4) The remedies provided in this section shall not:

(a) Preclude the use of other judicial or administrative remedies available to the authority under state or federal law; and

(b) Be construed to stay the use of another remedy.

Section 3. Hearing Procedure. (1) The debtor shall have the right to be heard by the hearing officer, be represented by counsel, present evidence, cross examine, and make both opening and closing statements.

(2)(a) Upon request of a party, the hearing officer may issue subpoena for the production of a document or attendance of a witness.

(b)1. Not more than ten (10) business days after the date of filing the request for a hearing or a review of written material, the debtor shall submit to the counsel for the authority a written statement specifically stating the basis of dispute.

2. Not less than fifteen (15) business days prior to the hearing, the parties shall:

a. Confer and jointly stipulate the issues that are in controversy to be resolved by the hearing officer;

b. Discuss the possibility of informal resolution of the dispute;

c. Exchange a witness list of the names, addresses, and phone numbers of each witness expected to testify at the hearing and a brief summary of the testimony of each witness that the party expects to introduce into evidence; and

d. Exchange an exhibit list identifying documents to be admitted into evidence at the hearing and provide a legible copy of all exhibits.

3.a. If the debtor is unavailable or otherwise fails to confer and jointly stipulate the issues pursuant to subparagraph 2 of this paragraph, the authority shall serve upon the debtor proposed stipulation of issues. If within five (5) calendar days, the debtor fails to respond to the proposed stipulation of issues, the debtor shall be precluded from raising an additional issue not identified in the proposed stipulation of issues.

b. If the debtor is unavailable or otherwise fails to cooperate in a timely manner for the exchange of the witness or exhibit lists, the debtor shall be precluded from admitting the information as part of the evidence at the hearing.

4. The authority shall provide to the hearing officer the documentation submitted in accordance with subparagraph 1 of this paragraph and shall report to the hearing officer the results of the discussions between the parties described in subparagraphs 2 and 3 of this paragraph.

5. Additional time for compliance with the requirements of this paragraph may be granted by the hearing officer, upon request, if it does not prejudice the rights of the authority or delay the rendering of a hearing decision within the time prescribed in subsection (2) of this section.

6. If the debtor requests a hearing, but the debtor's written statement and supporting documentation, considered from a viewpoint most favorable to the debtor, does not reflect a genuine issue of fact or prima facie defense to the legal enforceability of the authority's claim, the hearing officer, on petition of the authority and notice to the debtor, may enter an order dismissing the request for a hearing and authorizing issuance of the order described in Section 5 of this administrative regulation.

(c) Facts recited in the authority's notice pursuant to Section 1(3) of this administrative regulation that are not denied shall be deemed admitted. Each party shall remain under an obligation to disclose new or additional items of evidence or witnesses which may come to their attention as soon as practicable.

(d)1. Either party, without leave of the hearing officer, may depose a witness, upon reasonable notice to the witness and the opposing party, and submit to the opposing party interrogatories or request for admissions.

2. The party receiving interrogatories or request for admissions shall respond within fifteen (15) calendar days.

3. Each matter of which an admission is requested shall be deemed admitted unless, within fifteen (15) days after service of the request or a shorter or longer time that the hearing officer may allow,

the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter.

(e) Noncompliance with the requirements of this subsection, including failure of the authority to timely appoint a hearing officer or respond to a request for inspection of records or failure of the debtor to submit information in accordance with paragraph (b) of this subsection in a timely manner sufficient to permit the debtor, the authority, or the hearing officer to timely perform his obligations shall be sufficient grounds for entry of an appropriate order by the hearing officer, including postponement, exclusion of evidence, dismissal of the appeal, quashing the withholding order, or vacating the stay.

(3) Order of proceeding.

(a) The hearing officer shall:

1. Convene an in-person or telephonic hearing;
2. Identify the parties to the action and the persons participating;
3. Admit into evidence the notice required by Section 1(3) of this administrative regulation and the debtor's statement and the stipulations required by subsection (2)(b)1 and 2 of this section;
4. Solicit from the parties and dispose of any objections or motions;
5. Accept into evidence any documentary evidence not objected to;

6. Solicit opening statements; and
7. Proceed with the taking of proof.

(b) The taking of proof shall commence first by the debtor and then by the authority, with opportunities for cross-examination, rebuttal, and closing statements.

(4) Rules of evidence.

(a) All testimony shall be made under oath or affirmation.

1. The hearing officer shall not admit evidence that is excludable as a violation of an individual's constitutional or statutory rights or a privilege recognized by the courts of the Commonwealth.

2. Statutes or judicial rules pertaining to the admission of evidence in a judicial proceeding shall not apply to a hearing under this section.

3. The hearing officer may receive evidence deemed reliable and relevant, including evidence that would be considered hearsay if presented in court, except that hearsay evidence shall not be sufficient in itself to support the hearing officer's decision.

4. A copy of a document shall be admissible if:

(a) There is minimal authentication to establish a reasonable presumption of its genuineness and accuracy; or

(b) It is admitted without objection.

5. The hearing officer may exclude evidence deemed unreliable, irrelevant, incompetent, immaterial, or unduly repetitious.

(b) An objection to an evidentiary offer may be made by any party and shall be noted in the record.

(c) The hearing officer:

1. May take official notice of:

- a. Statutes and administrative regulations;
- b. Facts which are not in dispute; and
- c. Generally-recognized technical or scientific facts;

2. Shall notify all parties, either before or during the hearing of a fact so noticed and its source; and

3. Shall give each party an opportunity to contest facts officially noticed.

(d) At the discretion of the hearing officer, the parties may be allowed up to fifteen (15) days following the hearing to submit written arguments or briefs.

(5) Upon request of either party, the record of the hearing shall be transcribed, and shall be available to the parties at their own expense.

(6) Burden of proof.

(a) The authority shall have the burden to establish the existence and amount of the debt.

(b) The debtor shall have the burden to establish an affirmative defense.

(c) The party with the burden of proof on an issue shall have the burden of going forward and the ultimate burden of persuasion as to that issue. The ultimate burden of persuasion shall be met by a prima facie establishment of relevant, uncontroverted facts or, if relevant facts are disputed, a preponderance of evidence in the record.

(d) Failure to meet the burden of proof shall be grounds for a

summary order from the hearing officer.

Section 4. Defenses. (1) Except as provided in subsection (2) of this section, a debtor may assert a defense to the issuance of an administrative order to withhold the debtor's disposable pay, legal or equitable, pertaining to the existence or amount of the debt or the terms of a proposed repayment schedule under the garnishment order (other than a repayment schedule agreed to in writing pursuant to Section 1(3)(g) of this administrative regulation).

(2) The hearing officer shall not consider as a defense a question of law or fact that has previously been adjudicated by a court of competent jurisdiction or by an independent third-party trier of fact in an administrative proceeding involving the debtor and the authority pertaining to the existence, amount, or the debtor's liability on the particular debt in question or the terms of a prior repayment schedule.

(3) If the debtor asserts as a defense a question of law or fact that was previously raised in an administrative proceeding before the authority pursuant to 11 KAR 4:030 or 11 KAR 4:050, the hearing officer:

(a) Shall:

1. Consider the matter; and
2. Give deference to the prior decision by the authority in the same manner that a court would give deference in reviewing the decision of an administrative agency; and

(b) May reverse the prior decision if the debtor presents evidence that:

1. Circumstances have changed or new information is available; or

2. The prior decision:

- a. Substantially disregarded or ignored the defense; or
- b. Was arbitrary, capricious, not supported by the facts or made through fraud.

(4) If the debtor asserts as a defense a claim of entitlement to discharge of the particular debt pursuant to 34 CFR 682.402, except for reason of bankruptcy, but has not previously sought discharge by the authority for that specific reason, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to submit documentation to the authority for a determination of eligibility for entitlement to the discharge. At the expiration of the period of stay, the hearing officer shall review the circumstances and:

(a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to submit documentation to the authority for review of entitlement to discharge;

(b) Dismiss the request for hearing if the debtor has submitted documentation and the authority has approved discharge of the debt; or

(c) Proceed with the hearing if the debtor submitted documentation and the authority denied discharge, except that the hearing officer shall consider the defense of entitlement to discharge in accordance with subsection (3) of this section.

(5) If the debtor asserts as a defense a claim that the debt was dischargeable in a previous bankruptcy pursuant to 20 USC 523(a)(8)(B), but the debtor did not previously seek discharge by the bankruptcy court, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to reopen the bankruptcy case. At the expiration of the period of stay, the hearing officer shall review the circumstances and:

(a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to obtain the bankruptcy court's permission to reopen the bankruptcy case to seek discharge of the particular debt; or

(b) Dismiss the request for hearing if the bankruptcy court has reopened the bankruptcy case to consider discharge of the particular debt.

(6)(a) If the debtor asserts as a defense a claim that withholding of his disposable pay would constitute an extreme financial hardship, the debtor shall submit documentation of all available resources and actual expenses and shall have the burden of demonstrating the necessity of actual expenses.

(b) The hearing officer shall compare the debtor's available resources and the necessary expenses and current debt obligations of the debtor and debtor's dependents. The hearing officer shall deter-

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mine that extreme financial hardship exists if the debtor currently is not able to provide at least minimal subsistence for the debtor and debtor's dependents that could be claimed on a federal income tax return. The hearing officer shall consider as available resources of the debtor income of the debtor, the debtor's spouse, and debtor's dependents from all sources, including nontaxable income and government benefits, expenses paid on behalf of the debtor by another person, and the cash value of any current liquid assets, such as bank accounts and investments. The hearing officer shall consider the claim of extreme financial hardship in accordance with the following presumptions.

1. Withholding of an amount of disposable pay shall constitute an extreme financial hardship if:

a. The debtor resides in the District of Columbia or a state other than Alaska or Hawaii and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

Size of family unit	Poverty guideline
1	\$8,240
2	11,060
3	13,880
4	16,700
5	19,520
6	22,340
7	25,160
8	27,980
Each additional person	add \$2,800

Size of family unit	Poverty guideline
1	\$8,050
2	10,850
3	13,650
4	16,450
5	19,250
6	22,050
7	24,850
8	27,650
Each additional person	add \$2,800

b. The debtor resides in Alaska and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

Size of family unit	Poverty guideline
1	\$10,320
2	13,840
3	17,360
4	20,880

5	24,400
6	27,920
7	31,440
8	34,960
Each additional person	add \$3,500

Size of family unit	Poverty guideline
1	\$10,070
2	13,570
3	17,070
4	20,570
5	24,070
6	27,570
7	31,070
8	34,570
Each additional person	add \$3,500

c. The debtor resides in Hawaii and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

Size of family unit	Poverty guideline
1	\$9,490
2	12,730
3	15,970
4	19,210
5	22,450
6	25,690
7	28,930
8	32,170
Each additional person	add \$3,220

Size of family unit	Poverty guideline
1	\$9,260
2	12,480
3	15,700
4	18,920
5	22,140
6	25,360
7	28,580
8	31,800
Each additional person	add \$3,220

2.a. If the debtor resides in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, or Vermont, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Owned dwelling	917	1,070	1,829	2,579	2,835	3,170	5,185	6,775	10,690
Rented dwelling	2,325	2,311	2,713	2,514	2,679	2,917	2,213	1,564	1,507
Other lodging	164	101	118	326	216	355	396	555	1,586

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Utilities, fuels, and public services	1,137	1,482	1,841	2,151	2,266	2,484	2,719	2,919	3,711
Household services	107	107	327	212	261	467	431	683	1,231
Housekeeping and miscellaneous supplies	214	242	274	332	353	420	554	666	762
Household furnishing and equipment	629	628	502	974	741	1,431	1,363	2,216	3,178
Vehicle purchases (net outlay)	243	555	753	693	1,662	3,161	2,805	2,769	3,676
Gasoline and motor oil	349	321	483	609	783	1,033	1,165	1,459	1,621
Vehicle maintenance and repairs	149	159	307	412	510	575	686	792	1,225
Vehicle insurance	197	201	349	507	634	905	925	1,159	1,507
Vehicle lease, license, and other charges	195	109	200	364	248	471	567	724	1,631
Public transportation	301	200	272	349	406	501	534	631	1,392

Debtor's Available Resources	Less Than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Owned dwelling	1,250	1,155	1,665	1,832	2,519	3,641	4,321	6,767	10,568
Rented dwelling	2,352	2,408	2,694	2,441	2,569	2,463	2,225	1,407	1,335
Other lodging	209	105	218	244	311	333	400	569	1,779
Utilities, fuels, and public services	1,290	1,377	1,821	2,011	2,153	2,421	2,550	2,768	3,444
Household services	145	143	233	177	372	382	397	579	1,448
Housekeeping and miscellaneous supplies	232	184	268	339	413	448	594	664	914
Household furnishing and equipment	603	344	564	613	957	1,029	1,792	2,372	3,090
Vehicle purchases (net outlay)	853	370	713	665	1,704	2,517	3,853	3,161	4,103
Gasoline and motor oil	364	248	450	608	782	957	1,040	1,343	1,451
Vehicle maintenance and repairs	286	159	318	432	509	649	714	1,041	1,220
Vehicle insurance	274	200	440	536	621	778	935	1,112	1,364
Vehicle lease, license, and other charges	95	61	93	233	264	259	311	683	1,145
Public transportation	227	183	350	382	325	508	456	651	1,378

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:

	New York	Philadelphia	Boston	Pittsburgh
Owned dwellings	5,463	5,466	5,049	3,442
Rented dwellings	3,367	1,785	2,528	1,613
Other lodging	437	816	800	425
Utilities, fuels, and public services	2,470	2,637	2,514	2,724
Household services	562	401	592	498
Housekeeping, and miscellaneous supplies	455	371	407	435
Household furnishings and equipment	1,480	1,218	1,727	1,830
Vehicle purchases (net outlay)	1,225	1,755	2,656	3,108
Gasoline and motor oil	847	1,016	1,056	1,061
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,269	2,497	2,334	2,160

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Public transportation	861	464	653	440
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	[New-York	Philadel- phia	Boston	Pittsburgh	Buffalo
	Annual Expenditures				
Owned dwellings	5,027	3,952	4,838	3,063	3,386
Rented dwellings	3,311	1,855	2,367	1,099	1,323
Other lodging	608	415	639	308	276
Utilities, fuels, and public services	2,585	2,196	2,401	2,300	2,153
Household services	625	394	710	436	221
Housekeeping and miscellaneous supplies	437	443	518	416	329
Household furnishings and equipment	1,429	1,023	1,329	1,195	1,465
Vehicle purchases (net outlay)	1,253	2,154	2,278	2,093	1,225
Gasoline and motor oil	764	793	863	765	785
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,083	2,082	1,977	1,550	1,430
Public transportation	895	389	637	382	195

3.a. If the debtor resides in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, or Wisconsin, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Owned dwelling	1,710	861	1,382	1,822	2,162	3,153	4,401	5,851	8,691
Rented dwelling	1,369	1,705	1,613	1,846	1,872	1,897	1,363	982	613
Other lodging	369	142	108	199	238	313	412	553	1,205
Utilities, fuels, and public services	1,503	1,596	1,916	2,171	2,264	2,513	2,602	2,876	3,344
Household operations services	381	135	187	192	339	307	470	690	1,300
Housekeeping and miscellaneous supplies	190	275	272	367	478	468	584	719	808
Household furnishings and equipment	588	421	505	887	1,110	1,365	1,643	1,801	3,212
Vehicle purchases (net outlay)	1,047	1,125	1,191	2,057	2,195	3,354	3,085	4,079	5,663
Gasoline and motor oil	577	441	586	836	962	1,220	1,383	1,559	1,824
Vehicle maintenance and repairs	458	282	375	518	584	688	765	959	1,268
Vehicle insurance	290	253	383	546	632	742	837	940	1,151
Vehicle lease, license, and other charges	113	119	179	189	298	329	437	826	1,196
Public transportation	204	140	97	181	199	241	286	520	1,184

Debtor's Available Resources	Less Than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Owned dwelling	1,029	669	1,327	1,846	2,288	3,075	3,887	5,737	8,770
Rented dwelling	1,192	1,559	1,553	1,466	1,572	1,592	1,303	871	578
Other lodging	187	137	148	281	250	265	434	511	1,146
Utilities, fuels, and public services	1,244	1,385	1,752	2,005	2,026	2,173	2,430	2,583	3,097
Household operations services	493	189	195	266	337	393	449	567	985
Housekeeping and miscellaneous supplies	284	197	257	281	415	422	554	593	809
Household furnishings and equipment	711	918	652	692	1,202	1,535	1,825	2,138	3,321
Vehicle purchases (net outlay)	705	580	1,449	2,230	2,464	2,912	3,833	5,200	6,462
Gasoline and motor oil	454	467	621	719	915	1,129	1,324	1,480	1,714

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Vehicle maintenance and repairs	267	244	369	448	540	690	884	980	1,168
Vehicle insurance	228	243	379	528	587	694	870	1,063	1,191
Vehicle lease, license, and other charges	98	111	129	214	292	392	387	645	1,127
Public transportation	129	122	165	251	197	298	374	435	892]

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:

	Chicago	Detroit	Milwaukee	Minneapolis St. Paul	Cleveland	Cincinnati	St. Louis	Kansas City
Annual Expenditures								
Owned dwelling	5,222	4,190	4,913	5,164	3,779	3,943	3,463	3,557
Rented dwelling	2,012	1,552	2,008	1,830	1,551	2,134	1,493	1,706
Other lodging	451	448	433	759	497	378	336	282
Utilities, fuels, and public services	2,617	2,507	2,141	2,329	2,672	2,271	2,796	2,597
Household services	646	459	345	594	738	533	608	636
Housekeeping and miscellaneous supplies	560	453	450	490	506	423	476	483
Household furnishings and equipment	1,379	1,533	1,479	1,771	1,735	1,890	1,561	1,374
Vehicle purchases (net outlay)	2,454	2,240	1,926	3,241	2,828	3,339	2,640	2,399
Gasoline and motor oil	1,045	1,132	996	1,374	997	1,036	1,070	1,139
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	1,865	2,902	1,868	3,337	2,491	2,139	2,220	2,269
Public transportation	804	413	461	609	326	456	273	310

	Chicago	Detroit	Milwaukee	Minneapolis-St. Paul	Cleveland	Cincinnati	St. Louis	Kansas City
Annual Expenditures								
Owned dwelling	5,297	4,394	4,764	5,308	3,033	3,695	3,111	3,518
Rented dwelling	2,143	1,467	1,600	1,443	1,800	1,605	1,274	1,481
Other lodging	543	556	510	544	343	515	408	291
Utilities, fuels, and public services	2,295	2,464	1,956	2,019	2,304	2,292	2,416	2,288
Household services	450	432	348	693	328	467	756	548
Housekeeping and miscellaneous supplies	433	411	393	502	328	402	379	377
Household furnishings and equipment	1,903	1,299	1,625	1,778	1,338	1,488	1,090	1,510
Vehicle purchases (net outlay)	3,238	3,200	3,840	2,579	2,076	3,172	3,670	2,839
Gasoline and motor oil	992	1,072	1,055	1,185	853	1,087	987	1,079
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,104	2,869	1,949	2,602	1,978	2,109	1,877	2,219
Public transportation	561	372	476	513	284	386	413	432]

4.a. If the debtor resides in Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, or West Virginia, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									

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Owned dwelling	945	981	1,334	1,871	2,139	2,896	3,785	5,057	8,113
Rented dwelling	1,709	1,412	1,559	1,734	1,889	1,835	1,518	1,519	1,109
Other lodging	224	71	107	156	167	196	307	493	1,265
Utilities, fuels, and other charges	1,585	1,745	1,950	2,239	2,306	2,491	2,818	3,069	3,600
Household services	184	246	303	351	333	439	687	801	1,419
Housekeeping and miscellaneous supplies	290	228	282	362	386	458	496	588	828
Household furnishings and equipment	566	540	697	805	1,151	1,264	1,790	2,310	3,254
Vehicle purchases (net outlay)	2,358	1,149	1,389	2,327	3,199	3,373	4,566	5,618	5,952
Gasoline and motor oil	647	525	727	921	1,068	1,237	1,512	1,624	1,811
Vehicle maintenance and repairs	317	256	468	480	642	719	807	966	1,252
Vehicle insurance	239	280	389	637	670	823	931	1,092	1,312
Vehicle lease, license, and other charges	129	164	92	225	242	293	526	494	856
Public transportation	144	103	169	181	180	174	232	435	772

{Debtor's Available Resources	Less Than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Owned dwelling	1,274	810	1,310	1,587	1,943	3,033	3,872	4,981	8,671
Rented dwelling	1,512	1,463	1,559	1,692	1,921	1,998	1,606	1,238	702
Other lodging	181	45	104	139	208	244	360	487	1,032
Utilities, fuels, and public services	1,588	1,597	1,882	2,035	2,121	2,338	2,459	2,821	3,485
Household services	172	137	311	348	337	634	578	759	1,611
Housekeeping and miscellaneous supplies	155	234	314	320	351	469	442	523	755
Household furnishings and equipment	406	461	651	770	994	1,396	1,636	1,887	3,202
Vehicle purchases (net outlay)	954	834	1,264	2,034	3,227	2,809	3,795	4,719	5,937
Gasoline and motor oil	573	539	692	828	1,000	1,220	1,272	1,483	1,667
Vehicle maintenance and repairs	256	287	416	477	685	721	742	1,125	1,080
Vehicle insurance	292	252	427	575	699	802	889	1,076	1,237
Vehicle lease, license, and other charges	133	92	95	160	195	245	340	484	966
Public transportation	129	87	141	183	203	234	283	499	869

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:

	Washington D.C.	Baltimore	Atlanta	Miami	Tampa	Dallas- Fort Worth	Houston
Annual Expenditures							
Owned dwelling	7,034	4,737	5,073	3,694	3,739	3,616	3,586
Rented dwelling	2,903	1,742	2,114	2,896	1,440	2,599	2,462
Other lodging	990	246	559	266	418	442	318
Utilities, fuels, and public services	2,769	2,377	2,961	2,381	2,476	2,842	2,638
Household services	1,112	386	959	536	729	877	705
Housekeeping and miscellaneous supplies	557	442	382	422	488	476	452
Household furnishings and equipment	2,040	1,328	1,615	1,127	1,770	1,606	1,649
Vehicle purchases (net outlay)	3,184	2,401	3,235	1,815	2,931	5,814	4,225
Gasoline and motor oil	1,179	947	1,173	924	1,016	1,385	1,334

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Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,690	1,884	2,799	1,978	2,565	2,683	2,657
Public transportation	927	290	397	327	446	306	375

	Washington, D.C.	Baltimore	Atlanta	Miami	Dallas-Fort Worth	Houston
	Annual Expenditures					
Owned dwelling	6,000	5,447	4,600	3,630	3,058	3,013
Rented dwelling	2,580	1,744	2,097	2,411	2,874	2,152
Other lodging	680	520	481	206	317	424
Utilities, fuels, and public services	2,379	2,262	2,611	2,260	2,579	2,588
Household services	746	652	611	629	696	749
Housekeeping and miscellaneous supplies	424	360	383	316	414	437
Household furnishings and equipment	1,634	1,280	1,526	1,410	1,631	1,307
Vehicle purchases (net outlay)	2,799	2,392	4,235	2,438	3,508	4,151
Gasoline and motor oil	1,005	916	990	962	1,270	1,165
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,304	2,013	2,676	2,202	2,661	2,438
Public transportation	664	332	433	535	404	415

5.a. If the debtor resides in Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, or Wyoming, except for a metropolitan area listed in clause b of this paragraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
	Annual Expenditures								
Owned dwelling	1,367	1,022	1,783	1,601	2,261	3,548	4,803	6,800	12,076
Rented dwelling	2,181	2,489	2,801	2,902	3,342	3,157	3,045	2,100	1,800
Other lodging	245	163	163	187	282	231	445	462	1,438
Utilities, fuels, and public services	1,251	1,250	1,532	1,796	1,926	2,062	2,270	2,650	3,277
Household services	175	207	265	325	531	478	563	678	1,936
Housekeeping and miscellaneous supplies	314	222	383	523	417	455	620	620	1,116
Household furnishings and equipment	820	476	810	877	1,045	1,420	1,548	2,392	3,705
Vehicle purchases (net outlay)	1,407	1,043	987	1,646	1,991	3,322	3,758	2,942	5,606
Gasoline and motor oil	591	611	684	856	1,026	1,182	1,342	1,571	1,770
Vehicle maintenance and repairs	290	317	463	540	711	856	878	1,007	1,546
Vehicle insurance	307	247	426	507	634	793	953	1,084	1,380
Vehicle lease, license, and other charges	277	128	191	243	350	442	626	856	1,687
Public transportation	187	415	208	234	324	397	466	572	1,216

Debtor's Available Resources	Less Than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
	Annual Expenditures								
Owned dwellings	1,430	1,057	1,604	2,014	2,478	3,895	5,000	6,749	11,12
Rented dwellings	2,887	2,376	2,649	3,054	2,803	2,686	2,341	1,875	1,701
Other lodging	203	91	227	314	244	320	443	505	1,158

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Utilities, fuels, and public services	1,304	1,226	1,503	1,489	1,837	2,027	2,204	2,536	2,913
Household services	260	204	256	301	371	390	671	767	1,550
Housekeeping and miscellaneous supplies	255	215	301	294	414	467	557	662	863
Household — furnishings — and equipment	423	296	864	813	916	1,294	1,453	3,524	4,258
Vehicle purchases (net outlay)	557	954	1,194	1,939	2,394	2,634	4,922	3,074	3,808
Gasoline and motor oil	522	489	649	764	962	1,174	1,307	1,432	1,613
Maintenance and repairs	647	294	511	581	633	686	1,151	1,235	1,398
Vehicle insurance	389	228	439	513	575	776	932	1,094	1,326
Vehicle lease, license, and other charges	205	135	195	197	271	369	448	690	1,158
Public transportation	373	208	164	257	288	328	363	545	1,223

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:

	Los Angeles	San Francisco	San Diego	Portland	Seattle	Honolulu	Anchorage	Phoenix	Denver
Annual Expenditures									
Owned dwelling	5,500	5,785	5,772	5,302	5,969	5,458	5,591	4,275	5,332
Rented dwelling	3,677	3,584	3,669	2,099	2,241	3,584	3,619	2,198	2,269
Other lodging	500	541	486	547	609	329	499	551	488
Utilities, fuels, and public services	2,267	2,217	1,974	2,131	2,199	1,975	2,427	2,682	2,066
Household services	907	916	1,129	729	688	387	774	603	687
Housekeeping and miscellaneous supplies	557	491	525	413	469	526	484	402	544
Household furnishings and equipment	1,543	1,540	1,510	1,716	2,051	1,379	2,879	2,003	1,831
Vehicle purchases (net outlay)	2,270	2,684	1,967	3,598	3,521	3,521	5,136	2,833	3,286
Gasoline and motor oil	1,238	1,164	1,052	1,037	1,169	1,046	1,206	1,110	1,137
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,785	2,758	2,428	2,250	2,476	2,357	2,931	2,626	3,116
Public transportation	634	695	446	524	545	1,032	1,186	476	599

	Los Angeles	San Francisco	San Diego	Portland	Seattle	Honolulu	Anchorage
Annual Expenditures							
Owned dwellings	4,907	6,172	4,458	4,779	5,115	5,244	4,690
Rented dwellings	3,583	3,155	3,610	2,069	2,051	3,734	3,373
Other lodging	484	577	289	465	518	742	466
Utilities, fuels, and public services	2,075	2,023	1,833	1,893	1,852	1,837	2,308
Household services	710	695	526	617	575	653	531
Housekeeping and miscellaneous supplies	449	390	438	427	529	446	333
Household furnishings and equipment	1,453	2,976	1,066	1,450	1,291	1,511	1,756
Vehicle purchases (net outlay)	2,270	2,121	2,305	2,738	2,851	2,231	2,260
Gasoline and motor oil	1,078	1,081	1,116	971	997	911	1,054
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,353	2,692	2,511	1,908	2,232	2,329	2,393
Public transportation	413	564	463	474	698	879	1,010

6. If the debtor is the only member of the household, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

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Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Food	1,720	1,899	2,227	2,658	2,841	3,350	3,490	4,455	7,146
Apparel	567	586	678	1,035	1,006	1,315	1,354	2,151	1,827
Health insurance	219	546	744	636	518	537	519	805	725
Medical services	160	220	386	469	439	497	414	448	1,272
Prescription drugs	128	308	310	257	227	231	171	139	290
Medical supplies	36	57	90	60	71	77	103	80	205
Personal care products and services	160	191	294	324	405	437	434	442	481
Education	964	416	389	291	261	408	270	373	338
Life and other personal insurance	50	89	153	99	169	198	213	491	475

Debtor's Available Resources	Less Than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Food	1,676	1,900	2,216	2,404	2,884	3,021	3,653	4,804	5,115
Apparel	403	482	582	844	1,347	1,494	1,440	1,872	3,755
Health insurance	327	621	743	602	456	410	566	609	647
Medical services	293	241	326	360	327	431	426	499	978
Prescription drugs	128	281	273	206	165	193	205	174	169
Medical supplies	27	42	46	41	63	70	65	55	79
Personal care products and services	137	163	243	199	265	336	407	467	651
Education	693	281	267	215	183	145	199	302	689
Life and other personal insurance	76	103	119	97	174	222	207	262	619

7. If the debtor's household consists of two (2) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Food	3,512	3,247	3,377	3,891	4,261	4,875	5,396	5,516	7,249
Apparel	1,216	844	739	1,046	1,390	1,486	1,726	2,325	3,363
Health insurance	698	802	1,175	1,370	1,286	1,099	1,086	1,123	1,068
Medical services	294	467	366	636	564	505	720	590	774
Prescription drugs	324	438	608	571	581	477	418	375	342
Medical supplies	53	94	106	126	137	143	138	142	160
Personal care products and services	354	302	361	399	515	657	652	719	899
Education	468	248	133	195	222	248	478	609	683
Life and other personal insurance	175	180	248	298	359	336	433	510	858

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{Debtor's Available Resources	Less Than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Food	2,666	2,553	3,113	3,918	4,090	4,756	4,903	5,788	7,110
Apparel	1,024	797	601	1,090	1,353	1,429	1,865	2,269	3,369
Health insurance	495	857	1,232	1,316	1,267	1,029	1,127	948	1,181
Medical services	493	314	356	470	552	524	570	820	794
Prescription drugs	179	375	459	534	525	367	319	360	341
Medical supplies	63	44	99	93	89	89	127	118	147
Personal care products and services	186	200	264	313	377	517	553	652	745
Education	80	229	203	186	160	370	531	410	1,112
Life and other personal insurance	166	146	266	302	355	369	529	618	1,163

8. If the debtor's household consists of three (3) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Food	3,485	3,451	4,092	4,443	4,561	4,848	5,226	6,615	8,096
Apparel	1,127	1,198	968	1,645	1,761	1,615	1,632	2,759	3,677
Health insurance	490	399	481	750	903	890	1,036	1,095	1,276
Medical services	459	380	204	389	433	718	569	706	1,017
Prescription drugs	184	193	307	340	321	286	326	286	382
Medical supplies	28	40	51	60	95	119	114	110	206
Personal care products and services	289	363	420	459	481	603	610	662	988
Education	216	149	340	179	454	349	342	706	1,404
Life and other personal insurance	171	120	193	231	322	318	415	623	933

{Debtor's Available Resources	Less Than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Food	3,806	3,041	3,669	4,364	4,561	4,984	5,455	6,108	8,255
Apparel	974	1,241	1,263	1,502	1,617	1,960	2,297	2,266	4,134
Health insurance	444	287	505	783	772	844	879	950	1,076
Medical services	185	243	293	333	431	577	624	759	1,071
Prescription drugs	223	206	224	218	253	258	319	334	351
Medical supplies	40	30	53	81	86	71	119	159	174
Personal care products and services	279	257	312	374	458	502	488	651	737
Education	228	95	217	331	338	364	457	749	1,625
Life and other personal insurance	138	84	225	327	287	375	497	627	915

9. If the debtor's household consists of four (4) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$10,000	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures								
Food	4,829	4,607	4,560	4,899	6,148	6,669	7,167	8,874
Apparel	1,009	1,228	1,419	1,568	2,294	2,310	2,786	3,737

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Health insurance	386	342	431	616	950	1,090	1,096	1,110
Medical services	248	153	333	524	568	708	689	1,012
Prescription drugs	94	175	215	346	279	303	317	296
Medical supplies	37	31	32	75	99	110	153	187
Personal care products and services	333	338	394	463	549	662	703	1,120
Education	224	165	206	328	424	651	898	1,693
Life and other personal insurance	150	130	227	292	343	422	630	1,035

Debtor's Available Resources	Less Than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Food	4,529	4,209	5,377	4,650	5,299	6,428	7,046	8,723	
Apparel	1,272	1,739	1,643	1,656	2,003	2,218	2,739	3,952	
Health insurance	413	392	565	671	1,026	1,064	1,002	1,113	
Medical services	452	169	305	471	586	743	819	1,127	
Prescription drugs	160	155	151	209	179	307	289	382	
Medical supplies	27	47	86	69	87	102	119	194	
Personal care products and services	294	285	379	380	443	520	610	829	
Education	446	134	222	239	373	545	772	1,870	
Life and other personal insurance	178	220	228	287	417	490	719	1,103	

10. If the debtor's household consists of five (5) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$10,000	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Food	5,320	4,972	5,188	5,682	6,795	7,143	7,959	10,261
Apparel	1,868	1,396	1,740	2,029	2,061	2,156	3,349	5,556
Health insurance	431	298	311	668	850	1,025	955	1,236
Medical services	387	274	615	440	580	672	873	1,101
Prescription drugs	121	176	193	286	256	278	257	357
Medical supplies	47	85	55	72	105	115	160	225
Personal care products and services	384	320	423	541	628	712	871	1,126
Education	297	237	434	428	605	654	1,023	1,339
Life and other personal insurance	194	169	226	283	377	433	508	974

Debtor's Available Resources	Less Than \$10,000	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures								
Food	4,901	4,796	4,930	5,692	6,457	7,026	7,742	9,565
Apparel	1,654	1,521	1,192	1,779	1,769	2,217	3,114	4,383
Health insurance	376	290	381	643	823	974	1,164	1,220
Medical services	402	355	387	473	616	802	918	1,06
Prescription drugs	183	131	183	195	218	275	265	359
Medical supplies	35	46	40	62	93	92	115	212
Personal care products and services	392	297	340	391	433	574	706	716
Education	657	184	276	383	479	417	932	1,331
Life and other personal insurance	206	132	276	309	408	555	674	1,125

Section 5. (1) An administrative order issued by the authority to withhold disposable pay shall be served upon the debtor's employer personally or by mail. A notice of the issuance of the order shall be provided to the debtor by regular first class mail. The order shall require the withholding and delivery to the authority of not more than ten

(10) percent of the debtor disposable pay, except that a greater percentage may be deducted upon the written consent of the debtor.

(2) The order shall state the amount or percentage to be withheld and the amount of the debt, the statutory and regulatory basis therefor, and the time withholding is to begin.

(3) The order shall continue to operate until the debt is paid in full with interest accrued and accruing thereon at the prescribed rate in the promissory note or applicable law and collection costs that may be charged to the borrower under the promissory note or applicable law. The order shall have the same priority as provided to a judicially ordered garnishment prescribed in KRS 425.506.

(4) An employer who has been served with an administrative order for withholding of earnings shall answer the order within twenty (20) days, and shall provide a copy to the debtor the first time that withholding occurs and each time thereafter that a different amount is withheld. The employer shall be liable to the authority for a lawfully due amount which the employer fails to withhold from disposable pay due the debtor following receipt of the order, plus attorneys' fees, costs, and, in the discretion of a court of competent jurisdiction, punitive damages.

(5) A withholding under this section shall not be grounds for discharge from employment, refusal to employ or disciplinary action against an employee subject to withholding under this section.

(6) The employer shall have no liability or further responsibility after properly, completely, and timely fulfilling the duties under this section.

Section 6. (1) Whenever this administrative regulation requires delivery of a notice, subpoena, or other communication by personal service, the service shall be made by:

(a) An officer authorized under KRS 454.140 to serve process; or

(b) A person over the age of eighteen (18) years of age, who shall prove service by affidavit or by the signature of the person being served.

(2) Receipt of a notice or other communication by the debtor shall be rebuttably presumed if the person to be served or another adult with apparent authority at the place of residence or employment last known to the authority signs a receipt or refuses to accept the notice or communication after identification and offer of delivery to the person so refusing.

(3) In the case of an administrative order to withhold disposable pay served upon an employer, receipt shall be rebuttably presumed if:

(a) The person to whom the order is directed signs or refuses to sign a receipt; or

(b) His employee or agent with apparent authority signs or refuses to sign a receipt.

WAYNE STRATTON, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: June 30, 1999

FILED WITH LRC: September 15, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, October 21, 1999 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Thursday, October 14, 1999, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX (502) 696-7293.

REGULATORY IMPACT ANALYSIS

Agency Contact: Richard F. Casey

(1) Type and number of entities affected: The proposed amendment to this administrative regulation will affect borrowers who are in default on student loans guaranteed by KHEAA and who wish to raise a defense in an administrative hearing that garnishment of 10% of their wages would impose an extreme financial hardship. From January 1, 1999, to September 1, 1999, 1,779 bor-

rowers in default entered the administrative wage garnishment process and 50 have requested a hearing to contest the wage garnishment. From March 31 through September 1, 29 have alleged that administrative wage garnishment would impose an extreme financial hardship.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments were received; however, it is anticipated that there will be no appreciable changes in the cost of living and employment in areas where the regulation will be implemented. The proposed amendment to the administrative regulation reflect changes in poverty guidelines and consumer expenditure levels established by the federal government. These levels are used by the hearing officers as presumptions and criteria for determining whether an extreme financial hardship would result from withholding a borrower's wages under an administrative wage garnishment. There may be savings to individual borrowers who can successfully show an extreme financial hardship.

(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: No comments were received; however, it is anticipated that there will be no appreciable changes to the cost of doing business in areas where the regulation will be implemented.

(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 proposed regulatory amendment would have no change on the existing compliance, reporting or paperwork requirements of any borrower and is anticipated to have no effect on 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: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The proposed regulatory amendment creates no change in the existing reporting and paperwork requirements of the promulgating agency.

(4) Assessment of anticipated effect on state and local revenues: The proposed regulatory amendment is anticipated to have no effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The authority maintains a federally restricted trust fund pursuant to 20 USC Section 1072b for operation of the insured student loan program.

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

(a) Geographical area in which administrative regulation will be implemented: There is no anticipated economic impact to the geographical area where the amendment to the regulation will be implemented; however, individual borrowers seeking to raise this defense to an administrative wage garnishment may benefit from current figures for consumer expenditures and poverty levels.

(b) Kentucky: Same as (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered as the standardized figures established by the federal government reflect national averages.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The proposed regulatory amendment would have no effects on public health and environmental welfare.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: No

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

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

(a) Necessity of proposed regulation if in conflict: 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. This administrative regulation prescribes uniform procedures for administration of the wage garnishment process under the federal law. Accordingly, the notice provisions, hearing procedures and wage withholding requirements need to be uniformly applicable to all those effected. 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.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Cite the federal statute or regulation constituting the federal mandate. 34 CFR 682.410 (b) (10), 20 USCS 1095a.

2. State in sufficient detail the state compliance standards. This regulation provides for the garnishment of the disposable pay of a borrower who has defaulted in making payments on a loan guaranteed pursuant to Title IV, Part B of the federal act and procedures for requesting and conducting a hearing related to the garnishment of the disposable pay. At least 30 days before the initiation of garnishment proceedings, the authority shall mail to the borrower's last known address, a written notice of the nature and amount of the debt, the intention of the authority to initiate proceedings to collect the debt through deductions from the borrower's pay, and an explanation of the borrower's rights. In the absence of evidence to the contrary, a borrower shall be considered to have received the notice 5 days after it was mailed by the authority. The authority shall offer the borrower an opportunity to inspect and copy authority records related to the debt and an opportunity to enter into a written repayment agreement with the authority under terms agreeable to the authority. The authority shall offer the borrower an opportunity for a hearing concerning the existence or the amount of the debt and the terms of the repayment schedule under the garnishment order. The authority shall provide a hearing, which, at the borrower's option, may be oral or written, if the borrower submits a written request for such a hearing. The time and location of the hearing shall be established by the authority. An oral hearing may, at the borrower's option, be conducted either in person or by telephone conference. The authority shall provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures prescribed in the administrative regulation, to be rendered within 60 days after the authority's receipt of the borrower's hearing request. The hearing official appointed by the authority to conduct the hearing may not be under the supervision or control of the head of the authority. The hearing official shall issue a final written decision. If the borrower's written request is received by the authority on or before the 15th day following the borrower's receipt of the notice of the nature and amount of the debt, the intention of the authority to initiate proceedings, and an explanation of the borrower's rights, the authority may not issue a withholding order until the borrower has been provided the requested hearing. If the borrower's written request is received by the authority after the 15th day following the borrower's receipt of the notice, the authority shall provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures prescribed in the administrative regulation, may be rendered within 60 days, but shall not delay issuance of a withholding order. This administrative regulation further provides that if the debtor does not submit required documentation in a timely fashion, then he has not met his burden of substantiating his case. Additionally, if a defense has previously been raised and refuted by the authority, then the hearing officer must give deference to a prior decision of the authority. Also, if the debtor is raising for the first time in the administrative wage garnishment hearing a defense that should have been raised at the point of default or some prior action, then the debtor shall be deemed to have not exhausted his appropriate remedies, and the hearing officer may stay the hearing pending consideration of the dispute through the appropriate remedy. Finally, the administrative

regulation provides the hearing officer with guidelines to follow which allow him to consistently construe and apply the concept of "extreme financial hardship." In order to prove "extreme financial hardship," a debtor must show, if his income is above the poverty level, that his expenses are necessary to the health, safety, or continued employment of the debtor. If the expenses of the debtor exceed the standards derived from data published by the Bureau of Labor Statistics, then the excess expenses are presumed unnecessary and are not considered in the determination unless the debtor can demonstrate that the expenses are necessitated as the result of extraordinary circumstances beyond his control, such as the cost of unreimbursed medical care. The final decision of the hearing officer may be appealed to and reviewed by the authority board on request of either party. An appeal from the hearing officer's decision shall follow the standard that the board shall uphold the hearing officer's decision unless it is clearly unsupported by the evidence. The authority may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been reemployed continuously for at least 12 months. Unless the authority receives information that the authority believes justifies a delay or cancellation of the withholding order, it shall send a withholding order to the employer within 20 days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within 20 days after a final decision is made by the authority to proceed with garnishment. The employer shall deduct and pay to the authority from a borrower's wages an amount that does not exceed the lesser of 10% of the borrower's disposable pay for each pay period or the amount permitted by 15 USC 1673, unless the borrower provides the authority with written consent to deduct a greater amount.

3. State in sufficient detail the minimum or uniform standards contained in the federal mandate. The federal statute and regulation require the authority, as the designated state guarantee authority, to ensure by adoption of standards, policies and procedures that a borrower has an opportunity for a hearing to dispute the existence, amount or repayment of the debt and that the regulations and procedures for such a hearing meet the requirements of the applicable federal statute (20 USCS § 1095a) and the applicable federal regulation (34 CFR § 682.410(b)(10)). Specifically, the statute and regulation require that in order to issue an administrative order of wage garnishment under the authority of the federal statute: At least 30 days before the initiation of garnishment proceedings, the authority shall mail to the borrower's last known address, a written notice of the nature and amount of the debt, the intention of the authority to initiate proceedings to collect the debt through deductions from the borrower's pay, and an explanation of the borrower's rights. In the absence of evidence to the contrary, a borrower shall be considered to have received the notice 5 days after it was mailed by the authority. The authority shall offer the borrower an opportunity to inspect and copy authority records related to the debt and an opportunity to enter into a written repayment agreement with the authority under terms agreeable to the authority. The authority shall offer the borrower an opportunity for a hearing concerning the existence or the amount of the debt and the terms of the repayment schedule under the garnishment order. The authority shall provide a hearing, which, at the borrower's option, may be oral or written, if the borrower submits a written request for such a hearing. The time and location of the hearing shall be established by the authority. An oral hearing may, at the borrower's option, be conducted either in person or by telephone conference. The authority shall provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures that the authority may prescribe, to be rendered within 60 days after the authority's receipt of the borrower's hearing request. The hearing official appointed by the authority to conduct the hearing may not be under the supervision or control of the head of the authority. The hearing official shall issue a final written decision. If the borrower's written request is received by the authority on or before the 15th day following the borrower's receipt of the notice of the nature and amount of the debt, the intention of the authority to initiate proceedings, and an explanation of the borrower's rights, the authority may not issue a withholding order until the borrower has been provided the requested hearing. If the borrower's written request is received by the authority after the 15th day following the

borrower's receipt of the notice, the authority shall provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures that the authority may prescribe, may be rendered within 60 days, but shall not delay issuance of a withholding order. The authority may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been reemployed continuously for at least 12 months. Unless the authority receives information that the authority believes justifies a delay or cancellation of the withholding order, it shall send a withholding order to the employer within 20 days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within 20 days after a final decision is made by the authority to proceed with garnishment. The employer shall deduct and pay to the authority from a borrower's wages an amount that does not exceed the lesser of 10% of the borrower's disposable pay for each pay period or the amount permitted by 15 USC 1673, unless the borrower provides the authority with written consent to deduct a greater amount.

4. In detail, state whether this administrative regulation will impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. If the promulgating administrative body is permitted to select from within a range, state the reasons for the specific selection. Discuss each state requirement that is stricter than the federal mandate in a separate paragraph. The regulation does not impose stricter requirements than the federal mandate. The federal statute and regulation do not specify specific hearing procedures with the exception that the hearing must be conducted by an independent hearing officer and not an employee of the authority, the hearing must be conducted and a decision rendered within 60 days after the receipt of the request for a hearing, and that the hearing officer's decision is final (in contrast to KRS Chapter 13B that specifies that the hearing officer renders a "recommended" order subject to finalization by the board.) The regulation complies with these requirements. The remaining policies and procedures for requesting and conducting a hearing are left to the discretion of the guaranty agency under the language that the hearing must be conducted "in accordance with the procedures that the agency may prescribe." The authority provides the debtor with the opportunity for a hearing to dispute the existence, amount or repayment of the debt. The regulation sets out the procedures for requesting a hearing, the appointment of an impartial hearing officer, the time limits for requesting a hearing and the procedures for conducting a hearing, and the procedures for appealing the decision of the hearing officer to the board. This administrative regulation further provides that if the debtor does not submit required documentation in a timely fashion, then he has not met his burden of substantiating his case. Additionally, if a defense has previously been raised and refuted by the authority, then the hearing officer must give deference to a prior decision of the authority. Also, if the debtor is raising for the first time in the administrative wage garnishment hearing a defense that should have been raised at the point of default or some prior action, then the debtor shall be deemed to have not exhausted his appropriate remedies, and the hearing officer may stay the hearing pending consideration of the dispute through the appropriate remedy. Finally, the administrative regulation provides the hearing officer with guidelines to follow which allow him to consistently construe and apply the concept of "extreme financial hardship." In order to prove "extreme financial hardship," a debtor must show, if his income is above the poverty level, that his expenses are necessary to the health, safety, or continued employment of the debtor. If the expenses of the debtor exceed the standards derived from data published by the Bureau of Labor Statistics, then the excess expenses are presumed unnecessary and are not considered in the determination unless the debtor can demonstrate that the expenses are necessitated as the result of extraordinary circumstances beyond his control, such as the cost of unreimbursed medical care. The final decision of the hearing officer may be appealed to and reviewed by the authority board on request of either party. An appeal from the hearing officer's decision shall follow the standard that the board shall uphold the hearing officer's decision unless it is clearly unsupported by the evidence.

5. For each state requirement that is stricter than the federal mandate, state the justification for the imposition of the stricter stan-

dard, or additional or different responsibilities or requirements. There are no requirements in this regulation that are stricter than the federal mandate.

FINANCE AND ADMINISTRATION CABINET
Office of the Controller
(Amendment)

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

RELATES TO: KRS 44.060, 45.101

STATUTORY AUTHORITY: KRS 44.060, 45.101

NECESSITY, FUNCTION, AND CONFORMITY: The Finance and Administration Cabinet is directed by law to coordinate and supervise the fiscal affairs and procedures of the state and is authorized to adopt administrative regulations for that purpose. The purpose of this administrative regulation is to specify eligibility, requirements, rates and forms for reimbursement of travel expense and other official expenses out of the State Treasury.

Section 1. Definitions. As used in this administrative regulation, unless the context requires otherwise:

- (1) "Cabinet" means the Finance and Administration Cabinet.
- (2) "Division" means the Division of Statewide Accounting Services, Office of the Controller, [Accounts-of-the] Finance and Administration Cabinet.
- (3) "High rate area" means a city or metropolitan area in which it has been recognized that higher meal costs and lodging rates have historically prevailed, and that has been designated by the Secretary of the Finance and Administration Cabinet as a high rate area. The cabinet's policies and procedures manual contains a list of "high rate areas".
- (4) "Receipt" means any preprinted invoice, from a hotel, motel, restaurant or other establishment, showing the date of service, the amount charged for the service, the location where the service was performed and a description of the expenditure.
- (5) "Secretary" means the Secretary of the Finance and Administration Cabinet.
- (6) "Agency head" means the elected or appointed head of a budget unit.
- (7) "Others in the official service of the Commonwealth" means persons who are not state employees as defined in KRS Chapter 18A, but who are travelling on official business for the Commonwealth, or who officially represent a state agency, at the direction or request of a state official authorized to give the direction or make the request. This definition shall not include contractors who shall be entitled to reimbursement for travel and related expenses only as provided in their contracts with the Commonwealth.
- (8) "Subsistence" means amounts deemed to have been expended by a state officer, agent, employee, or other person authorized to receive reimbursement out of the State Treasury for meals, including tax and tips, while traveling on official state business, but shall not include any meals which may be included in charges for lodging or in registration fees paid by or on behalf of a state officer or employee.
- (9) "Residence" means address of the employee designated in the official records of the [Department-of] Personnel Cabinet.
- (10) "Agency" means a budget unit with an elected or appointed agency head.
- (11) "Authority/approval" means approval granted in either written or electronic format.
- (12) "Travel software" means the software used by the Commonwealth to process travel authorizations and travel reimbursement documents.

Section 2. General. (1) Affected agencies. Except as otherwise provided by law, this administrative regulation shall apply to all departments, agencies, boards, and commissions, and institutions of the Executive Branch of State Government, except state-supported universities. It shall not apply to the Legislative and Judicial branches and their employees.

(2) Enforcement.

(a) Each agency head shall be responsible for ensuring that travel

reimbursement conforms to the provisions of this administrative regulation and that all travel expense from that agency is as economical as is feasible.

(b) A person who travels on official state business shall:

1. Identify a travel policy [State on the travel voucher the purpose of each trip, if directed by the agency head];

2. Prior to trip, create a Travel Authorization (TE, TEO, or TEC), if required;

3. After travel, create a Travel Payment Voucher (TP) document for reimbursement of business related expenses;

4. Submit a travel expense claim on a Travel Payment Voucher (TP) document for reimbursement;

5. Maintain records and receipts to support his claim; and

6. [3-] Provide himself with sufficient personal funds to defray his travel expense.

(c) ~~A travel expense claim shall be submitted on Travel Voucher (DOA-34);~~

(d) The secretary or his designee may:

1. Disallow, or reduce the amount of a claim that violates the provisions of this administrative regulation; or

2. Require written justification for amounts claimed by an agency for its employee.

(d) [(e)] The secretary or his designee may authorize reimbursement for an employee's actual and necessary expenses for authorized travel if the head of the agency, or his designee, submits a written determination that establishes such reimbursement is:

1. Required to avoid an undue economic hardship on the employee; or

2. Economically advantageous for the Commonwealth.

(3) Eligibility. Except as provided by state law or by this administrative regulation, reimbursement shall not be claimed for expenses of any person other than state officers, members of boards and commissions, employees, bona fide wards, or other persons in the official service of the Commonwealth. Only necessary expenses of official travel shall be reimbursed.

(4) Interpretation. All final interpretations of this administrative regulation shall be made by the secretary. These determination shall be final and conclusive.

Section 3. Work Station. (1) The official work station of an employee assigned to an office shall be the street address where the office is located.

(2) The official work station of field employees shall be established by the agency head, based solely on the best interests of the Commonwealth.

(3) If an employee is permanently reassigned, or is stationed at a new place two (2) months, the new place shall become that employee's official work station.

Section 4. Authorizations. (1) For travel in Kentucky, or outside Kentucky, but within the United States or its possessions, or Canada, the person requesting reimbursement shall obtain authorization from the agency head or a designated representative as authorized by Secretary's Order S97-451.

(2) Travel expenses shall be reimbursed if travel was authorized in advance as provided by subsections (3), ~~and~~ (4), ~~and~~ (5) of this section.

(3) If direct billing is to be utilized for state park and motor pool expenses, authorization shall be requested on a Travel Authorization (TE) document.

(4) For travel outside of Kentucky, authorization shall be requested on Travel Authorization (TEO) document.

(5) For travel outside the United States, its possessions or Canada the person requesting reimbursement shall have obtained authorization from:

(a) The agency head; and

(b) The secretary; and

(c) The governor; or

(d) Their designated representatives.

(e) Authorization shall be requested on Travel Authorization (TEC) document ["Request for Out-of-Country Travel (DOA-28(A))"].

(6) [(4)] A travel request for travel specified in subsection (3) of this section shall be received by the agency or cabinet at least five (5)

working days before start of travel.

Section 5. Transportation. (1) Economy required.

(a) State officers, agents, employees, and others in the official service of the Commonwealth shall use the most economical, standard transportation available and the most direct and usually-traveled routes. Expenses added by use of other transportation or routes shall be assumed by the individual.

(b) Round-trip, excursion or other negotiated reduced-rate rail or plane fares shall be obtained if practical. Tickets shall be purchased through agency business travel accounts provided by a major charge card company and established with commercial travel agencies. Exceptions may be made with the approval of the agency head if other arrangements will be in the best interest of the Commonwealth. Agencies shall be billed monthly by the charge card company. Related payments shall be processed on Vendor Payment Voucher (P1) document [Purchase Orders (DOA-19)].

(2) State vehicles. State-owned vehicles with their credit cards shall be used for state business travel if ~~when~~ available and feasible. Mileage payment shall not be claimed if state-owned vehicles are used.

(3) Privately-owned vehicles. Mileage claims for use of privately-owned vehicles shall be allowed if a state vehicle was not available or feasible.

(4) Buses, subways. For city travel, employees are encouraged to use buses and subways. Taxi fare may be allowed when more economical transportation is not feasible.

(5) Airline travel. Commercial airline travel shall be the lowest negotiated coach or tourist class. Additional expense for first-class travel shall not be reimbursed by the state. Reference subsection (1)(b) of this section for payment instructions.

(6) Special transportation.

(a) The cost of hiring cars or other special conveyances in lieu of ordinary transportation shall be allowed if written justification from the employee is submitted and approved by the agency head or his designated representative.

(b) Privately-owned aircraft may be used if it is determined to be to the advantage of the state, measured both by travel costs and travel time.

Section 6. Accommodations. (1) Lodging shall be the most economical, as determined by considering location of the lodging.

(2) Facilities providing special government rates or commercial rates shall be used if feasible.

(3) State-owned facilities shall be used for meetings and lodging if available, practicable and economical.

(4) Location. Cost for lodging within forty (40) miles of the claimant's official work station or home shall not be reimbursed unless approved in advance by the agency head, or a designated representative.

(5) Group lodging, by contract.

(a) State agencies and institutions may contract with hotels, motels and other establishments for four (4) or more employees to use a room or rooms on official business. Group rates shall be requested.

(b) The contract may also apply to meals and gratuities. The contract rates and the costs of rooms and meals per person shall not exceed limits set in Section 7 of this administrative regulation.

(c) The traveler [agency] shall not claim [certify that the person is not claiming individual] reimbursement or subsistence for room and meals paid direct to an establishment providing these services. [the same costs.]

(d) ~~["Contract for Rooms and Meals (Form B120-16)"] shall be used to contract for group lodging;~~

(e) ~~For payment, an agency shall forward to the division:~~

1. ~~Receiving report "Purchase Order Authorization for Payment (Form DOA-19)";~~

2. ~~The vendor's bill;~~

3. ~~The names of the employees or others in the official service of the Commonwealth; and~~

4. ~~A copy of the contract.~~

(f) Payment shall be made on a Vendor Payment Voucher (P1) document and shall not include personal charges of employees or others in the official service of the Commonwealth.

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(e) [(g)] Payment shall be made to the hotel, motel, or other establishment.

(f) [(h)] Contracted group meeting rooms and lodging and meal charges are exempt from Kentucky sales tax and the agency sales-use tax number assigned by the Revenue Cabinet shall be specified on the payment document.

(g) [(f)] Tax exempt numbers shall not be used by individual employees to avoid point of sale payment of Kentucky sales tax connected with lodging costs. Sales tax payments shall be reimbursed on ["]Travel Payment Voucher (TP) document [(DOA-34)"].

(6) [(a)] State parks. A state agency or institution using state park facilities may pay for rooms and meals by Internal Travel Voucher (ITV) document to transfer funds ["]Interaccount Bill (Form DOA-7)"], within the limits of this administrative regulation.

[(b) Payment shall include preapproved Department of Parks "Interaccount Authorization Form (P1-1)"]]

Section 7. Reimbursement Rates. (1) The following persons shall be exempted from the provisions of this section:

- (a) Governor;
- (b) Governor's staff;
- (c) Lieutenant governor;
- (d) State employees traveling on assignment with the governor or lieutenant governor;
- (e) Elected constitutional officers;
- (f) Cabinet secretaries;
- (g) State officers and employees authorized to travel outside the United States, its possessions or Canada;
- (h) Members of statutory boards and commissions; and
- (i) Others in the official service of the Commonwealth.

(2) Lodging.

(a) Except as provided in paragraph (b) of this subsection, a state officer, or employee shall be reimbursed for the actual cost of lodging if the:

1. Lodging is determined to be the most economical; and
2. State officer, or employee has provided [attached] the hotel, motel, or other establishment's receipt to be reimbursed for his travel expenses [expense voucher].

(b) Reimbursement for lodging shall not exceed the cost of a single room rate, except that if employees share lodging, each employee shall be reimbursed the lesser of single rate or one-half (1/2) the double rate.

(3) Subsistence.

(a) A state officer, or employee shall be eligible for reimbursement for subsistence for breakfast or lunch expenses while traveling in Kentucky, if his authorized work requires an overnight absence:

1. At a destination more than forty (40) miles from his work station and home;
2. During the mealtime hours established by paragraphs (d) and (e) of this subsection.

(b) A state officer, or employee shall be eligible for reimbursement for dinner expenses while traveling in Kentucky, if his authorized work requires an absence:

1. At a destination more than forty (40) miles from his work station and home;
2. During the mealtime hours established by paragraphs (d) and (e) of this subsection.

(c) A state officer or employee shall be eligible for reimbursement for meals while on authorized travel outside Kentucky, but within the United States, its possessions or Canada, at the reimbursement rates established in paragraphs (d) and (e) of this subsection. Employees must be in travel status during the entire time (i.e., to be eligible for breakfast reimbursement you must leave on or before 6:30 a.m. and return at or after 9 a.m.). This requirement applies to all meal times.

(d) Reimbursement for nonhigh rate areas:

1. Breakfast: authorized travel 6:30 a.m. through 9 a.m. - seven (7) [six (6)] dollars;
2. Lunch: authorized travel 11 a.m. through 2 p.m. - eight (8) [seven (7)] dollars;
3. Dinner: authorized travel 5 p.m. through 9 p.m. - fifteen (15) [fourteen (14)] dollars.

(e) Reimbursement for high rate areas.

1. Breakfast: authorized travel 6:30 a.m. through 9 a.m. - eight (8)

[seven (7)] dollars;

2. Lunch: authorized travel 11 a.m. through 2 p.m. - nine (9) [eight (8)] dollars;

3. Dinner: authorized travel 5 p.m. through 9 p.m. - nineteen (19) [eighteen (18)] dollars.

(f) State officers or employees authorized to travel outside the United States, its possessions, or Canada shall be reimbursed for their actual and necessary expenses for subsistence.

(g) A state officer or an employee may, with prior approval of the agency head or designee, be reimbursed for the actual cost charged for meals, if he is assigned to attend meetings and training sessions.

(h) Lodging receipts, or other credible evidence, shall be attached to the travel voucher.

(4) Transportation expenses.

(a) Reimbursement for authorized use of a privately-owned vehicle shall:

1. Be made at the rate of thirty (30) [twenty-seven (27)] cents per mile; and

2. Not exceed the cost of airplane coach fare.

(b) Mileage for instate travel shall be based on the "Kentucky Official Highway Map". Out-of-state mileage shall be based on the calculation from an accepted software mileage program or the most recent edition of the "Rand McNally Road Atlas".

(c) Reimbursement for the actual cost of commercial transportation shall be made upon submission of receipts with the travel voucher.

(d) Reimbursement for use of privately-owned aircraft shall be made if, prior to use, written justification was submitted to and approved by the agency head, or a designated representative.

(e) 1. A maximum of twelve (12) dollars per night for parking or camping charges for camping vehicles shall be reimbursed.

2. A receipt for parking or camping charges shall be submitted with the travel voucher.

(f) 1. Actual parking, bridge and highway toll charges shall be reimbursed.

2. A toll receipt for authorized in-state travel by two (2) axle vehicles shall not be required.

(g) Reimbursement shall be made for reasonable charges for:

1. Baggage handling;
2. Delivery of baggage to or from a common carrier, lodging or storage; and
3. Overweight baggage charges, if the charges relate to official business.

(5) (a) Registration fees required for admittance to meetings shall be reimbursed.

(b) If a registration fee entitles the registrant to meals, claims for meals shall be reduced accordingly.

(6) (a) Telephone and telegraph costs for necessary official business shall be reimbursed.

(b) Telephone calls to agency central offices shall be made through:

1. Agency 800 and 888 numbers, when available; or
2. A state government telephone credit card; or
3. Lowest available service.

(7) Other expenses may be allowed by the agency head or his designee if they are determined to be necessary expenses of official travel.

Section 8. Actual and Necessary Expenses. (1) The following persons are eligible for actual and necessary expenses:

- (a) Governor;
 - (b) Governor's staff;
 - (c) Lieutenant governor;
 - (d) Elected constitutional officers;
 - (e) Cabinet secretaries;
 - (f) State employees traveling on assignment with the governor, lieutenant governor, elected constitutional officers, or cabinet secretaries;
 - (g) State officers and employees authorized to travel outside the United States, its possessions or Canada;
 - (h) Members of statutory boards and commissions; and
 - (i) Others in the official service of the Commonwealth.
- (2) (a) Actual and necessary expenses of official business travel

shall be reimbursed upon submission of receipts for items over ten (10) dollars.

(b) Actual and necessary expenses for official business travel shall include:

1. Lodging;
2. Meals;
3. Commercial transportation;
4. Taxes related to actual and necessary expenses; and
5. Reasonable gratuities.

(c) A credit card receipt shall be accepted for a meal if the receipt prepared by the establishment clearly shows that it is a receipt for a meal.

(d) Reimbursement for official use of a privately-owned vehicle shall:

1. Be ~~thirty (30)~~ ~~[twenty-seven (27)]~~ cents per mile; and
2. Not exceed airplane coach fare.

(e) 1. The governor and cabinet secretaries may be reimbursed for actual and necessary costs of entertaining official business guests, upon certification of these expenses to the secretary or his designee.

2. The secretary or his designee may:

- a. Question a claim for reimbursement; and
- b. Reduce the amount to be reimbursed, if he determines that it is excessive.

(f) An employee of the Economic Development Cabinet and the Tourism Cabinet shall be reimbursed for actual and necessary costs of entertaining official business guests of the Commonwealth if the costs were:

1. Related to the promotion of industry, travel, or economic development;
2. Substantiated by receipts; and
3. Certified by the head of the cabinet.

Section 9. Mileage. (1) Mileage commuting between home and work station shall not be paid.

(2) If an employee's point of origin for travel is the employee's residence, mileage shall be paid for the shorter of mileage between:

- (a) Residence and travel destination; or
- (b) Work station and travel destination.

(3) Vicinity travel, and authorized travel within a claimant's work station shall be listed on separate lines on the Travel Payment Voucher (TP) document. ~~[expense voucher.]~~

Section 10. Travel Documents. (1) ADVANTAGE Travel has three (3) types of authorizations:

- (a) TE for in-state travel;
- (b) TEO for out-of-state travel; and
- (c) TEC for foreign travel.

(2) A traveler shall create a Travel Authorization (TE, TEO, or TEC) document.

(a) A traveler shall create a Travel Authorization (TE) document if a state park facility or a motor pool vehicle will be used.

(b) A traveler shall create a Travel Authorization (TEO) document for an out-of-state trip.

(c) A traveler shall create a Travel Authorization (TEC) document for an out-of-country trip. [Forms: (1) A request for authorization for out-of-state travel shall be made on "Request for Authorization of Out-of-State Travel Form (DOA-28)";

(2) A request for authorization for travel out-of-country shall be made on a "Request for Authorization for Out-of-County Travel (DOA-28A)";

(3) A contract for group accommodations shall be made on the standard form used by the establishment providing the services. ["Contract for Rooms and Meals Form (B120-16)";]

(4) Authorization for reimbursement of others in the official service of the Commonwealth shall be requested on:

- (a) A Vendor ["Purchase Authorization For] Payment Voucher (P1) document; or (DOA-19)"; and]
- (b) A ["Travel Payment Voucher (TP) document (Form (DOA-34)"].

(5) A ["Travel Payment Voucher (TP) document (Form (DOA-34)"] shall be used to claim reimbursement for travel expenses.

(6) The Travel Payment Voucher (TP) document shall be limited to the expenses made by one (1) person for:

(a) Himself; and

(b) If applicable, another person:

1. Who is a ward of the Commonwealth; or
2. For whom he is officially responsible.

(7) A Travel Payment Voucher (TP) document for expenses made for a person specified in subsection (6)(b) of this section shall include the person's:

(a) Name; and

(b) Status or official relationship to the claimant's agency.

(8)(a) A Travel Payment Voucher (TP) document shall be submitted [for]:

1. For one (1) major trip; or
2. Every two (2) weeks for employees that are in travel status for an extended period. [One (1) month of travel;]

(b) A Travel Payment Voucher (TP) document shall include:

1. Social Security number of the claimant; and
2. Purpose of each trip.

(c) A Travel Payment Voucher (TP) document shall be signed and dated, or entered electronically and approved by the:

1. Claimant; and
2. ~~[Claimant's supervisor; and~~
3. ~~Agency head or authorized representative.~~

(d) If monthly expenses total less than ten (10) dollars, a travel voucher may include expenses for six (6) months of a fiscal year.

(9)(a) Preparation of a Travel Payment Voucher (TP) document. A Travel Payment Voucher (TP) document shall be:

1. Legibly printed in ink or typed; [or]
2. Processed electronically through ADVANTAGE Travel; or
3. Processed electronically through WEB Travel. [Legibly printed in ink;]

(b) A receipt shall provide the following information for each expense:

1. Amount;
2. Date;
3. Location; and
4. Type.

(c) Receipts shall be maintained at the agency if documents are processed electronically [stapled to the back of the travel voucher at the upper-left corner].

(d) A Travel Payment Voucher (TP) document, after approval, may be paid through ADVANTAGE Travel or, if manually prepared, sent to the Division of Statewide Accounting Services [agency imprest cash funds, if authorized, or forwarded to the cabinet] for payment.

(e) If leave interrupts official travel, the dates of leave shall be stated on the travel voucher.

Section 11. (1) Material incorporated by reference. The following material is incorporated by reference:

(a) ["Travel Payment Voucher (TP) document (1999) ["(DOA-34) (1997)"];

(b) Travel Authorization (TE) document for in-state travel (1999);

(c) Travel Authorization (TEO) for out-of-state travel (1999);

(d) Travel Authorization (TEC) document for out-of-Country travel (1999);

(e) Vendor Payment Voucher (P1) (1999);

(f) Internal Travel Voucher (IIT) document (1999);

(g) Kentucky Official Highway Map (1998); and

(h) Rand McNally Road Atlas (1998). ["Request For Authorization Of Out-Of-Country Travel" (DOA-28(A)) (1992);

(c) "Purchase Order Authorization For Payment" (Form DOA-19) (1994);

(d) "Interaccount Bill" (DOA-7) (1992);

(e) "Contract For Rooms And Meals" (Form B120-16) (1992);

(f) "Interaccount Authorization (P1-1) (12/88), Department Of Parks";

(g) "Request For Authorization Of Out-of-state Travel" (DOA-28) (1997);

(h) "Kentucky Official Highway Map" (1997);

(i) "Travel Voucher Continuation (DOA-35) (1997)";

(j) "Rand McNally Road Atlas (1996)";]

(2) This material may be inspected, obtained, or copied at the Division of Statewide Accounting Services, Office of the Controller [Accounts], Finance and Administration Cabinet, Capitol Annex Build-

ing, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

JOHN MCCARTY, Secretary

ANGELA C. ROBINSON, Assistant General Counsel

APPROVED BY AGENCY: September 1, 1999

FILED WITH LRC: September 15, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on October 26, 1999, at 10 a.m. in Room 386, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 19, 1999, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Ed Ross, Controller, Finance and Administration Cabinet, Division of Statewide Accounting Services, Office of the Controller, Room 384, Capitol Annex, Frankfort, Kentucky 40601, (502) 564-2210, FAX (502) 564-6597.

REGULATORY IMPACT ANALYSIS

Contact Person: Ed Ross

(1) Type and number of entities affected: All departments, agencies, boards and commissions, and institutions of the executive branch of state government.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No direct or indirect costs or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No direct or indirect costs or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation.

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

1. First year following implementation: None

2. Second and subsequent years: Significant reduction of paperwork.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: Processing cost savings.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Second year and thereafter, there will be paperwork reductions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Various governmental sources.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation. However, no impact is expected.

(b) Kentucky: No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation. However, no impact is expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Does not apply.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects on public health and environmental welfare are expected in the geographical area in which the regulation will be implemented or in Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on the environment and public health would result if the regulation was not implemented.

(c) If detrimental effect would result, explain detrimental effect: Does not apply.

(9) Identify any statute, rule, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, administrative regulations or government policies which are in conflict, overlap, or duplicate the proposed administrative regulation.

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. This regulation applies equally to all regulated entities.

KENTUCKY BOARD OF PHARMACY (Amendment)

201 KAR 2:020. Examinations.

RELATES TO: KRS Chapter 315

STATUTORY AUTHORITY: KRS 315.050(2), 315.191(1), (2), (4)

NECESSITY, FUNCTION, AND CONFORMITY: The Kentucky Board of Pharmacy is directed by KRS 315.191(4) to prescribe the time, place, method, manner, scope and subjects of examination of applicants for license to practice pharmacy in the Commonwealth. This administrative regulation will establish continued fair and impartial examinations.

Section 1. No license to practice pharmacy, other than one issued by reciprocity, shall be issued except upon the successful passage of an examination prescribed by the Kentucky Board of Pharmacy.

Section 2. All examinations held by the Kentucky Board of Pharmacy shall be conducted at such locations within the state as may be designated by the board and shall be held at least twice annually. Detailed information as to the time and place of examinations may be procured from the executive director of the board.

Section 3. Examinations shall be adequate to test the knowledge, education and competency of applicants and shall consist of three (3) tests: the North American Pharmacist Licensure Examination, an operative/practical examination, and jurisprudence.

Section 4. No person shall be deemed to have successfully passed an examination conducted by the Kentucky Board of Pharmacy unless he obtains the following scores:

(1) At least seventy-five (75) on the basis of the North American Pharmacist Licensure Examination in order to meet the requirements of Article II, Section 4, (A)(3), of the National Association of Boards of Pharmacy Bylaws. The operative/practical and jurisprudence grades shall not be used in computing the National Association of Boards of Pharmacy Licensure Examination score;

(2) At least seventy-five (75) on any operative/practical examination;

(3) At least seventy-five (75) [eighty (80)] on jurisprudence.

Section 5. If an applicant fails to obtain the necessary scores in any of the three (3) tests described in Section 3 of this administrative regulation, he may upon proper application retake such tests upon the payment of the fee set forth in 201 KAR 2:050 plus any direct costs for test materials and supplies. If subsequent reexamination is required, an additional fee equal to the original examination fee must be submitted. An applicant for reexamination must sit for such examination within one (1) year from the date he first fails the examination.

Section 6. All results of examinations shall be preserved. The questions shall be prepared or approved by the board. Written examinations shall be conducted in such manner that the results shall be entirely fair and impartial, the applicant being known only by numbers so that no examiner or member of the board may identify the paper of the applicant until after the examiners certify the results.

Section 7. An examination fee shall not be refunded after an application has been accepted by the board.

RODNEY C. STACEY, President

CHERYL LALONDE-MOONEY, J. D., Assistant Attorney General

APPROVED BY AGENCY: August 18, 1999

FILED WITH LRC: August 25, 1999 at 3 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held at 8:45 a.m. on October 27, 1999, at 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Mr. Michael A. Moné, Executive Director, Kentucky Board of Pharmacy, 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601-8204, Phone: (502) 573-1580; Fax: (502) 573-1582.

REGULATORY IMPACT ANALYSIS

Contact person: Mr. Michael A. Moné

(1) Type and number of entities affected: All applicants for licensure as a pharmacist.

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

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Processing of the applications.

2. Continuing costs or savings: Biennial applications and periodic license transfer applications.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Application for licensure.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Appropriated budget from the Kentucky Board of Pharmacy Trust Fund.

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

from administrative regulation, on:

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

(b) Kentucky: None

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The public should accrue a benefit in that a psychometrically valid examination will be provided to test the competencies of applicants for licensure as a pharmacist in the Commonwealth. Costs for the board associated with the implementation should decrease since the applicants will be taking a national examination that the board will not be required to prepare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The failure to adopt this proposed amendment to this administrative regulation could result in increased costs for the board as a result of litigation associated with an allegedly arbitrary cut score.

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

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

(a) Necessity of proposed regulation if in conflict: None

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All persons in each class are treated identically by this amended administrative regulation.

BOARD OF LICENSURE FOR NURSING HOME ADMINISTRATORS (Amendment)

201 KAR 6:020. Other requirements for licensure.

RELATES TO: KRS 216A.070(1)(a), 216A.080(1)(e), (f)

STATUTORY AUTHORITY: KRS 216A.070(3), 216A.080(1)(e),

(f) NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.070(1)(a) requires the Kentucky Board of Licensure for Nursing Home Administrators to develop, impose, and enforce standards which shall be met by an individual in order to receive a license. KRS 216A.080(1)(f) authorizes the board to establish other requirements to be met if the requirements are uniform and applied to each applicant for a license. KRS 216A.080(1)(e) requires an applicant to pass an examination administered by the board. This administrative regulation establishes the other requirements for licensure and sets limits on the taking of the examination.

Section 1. An applicant for a license as a nursing home administrator shall in addition to meeting all of the requirements provided by KRS 216A.080(1):

(1) Have satisfactorily completed a course of study for, and have been awarded a baccalaureate degree from an accredited college or university;

(2) Pass the written examination administered and verified by the National Association of Board of Examiners for Nursing Home Administrators and submit documentation of a passing score to the Board of Licensure for Nursing Home Administrators.

(3)(a) Except as provided in paragraph (b) of this subsection, have six (6) months of continuous management experience in a health care facility within three (3) years of the date of application. The management experience shall include evidence of responsibility for:

1. Personnel management;

2. Budget preparation;

3. Fiscal management; and

4. Public relations.

(b) A preceptorship or internship, that is at least six (6) months in length, which is a part of a degree in long-term care administration

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or a related field, shall satisfy the experience requirement established in paragraph (a) of this subsection.

Section 2. (1) The examination for licensure established by KRS 216A.080(1)(e) shall be the examination prepared by the National Association of Boards of Examiners for Nursing Home Administrators.

(2) An applicant shall be permitted to sit for the examination no more than four (4) [~~three (3)~~] times within twelve (12) [~~twenty-four (24)~~] months.

NANCY L. BLACK, Director

MARK BRENGELMAN, Assistant Attorney General

APPROVED BY AGENCY: September 10, 1999

FILED WITH LRC: September 14, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed amended administrative regulation shall be held on October 22, 1999, at 4 p.m., local time, at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the Board in writing by October 15, 1999, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Nancy L. Black, Director, Division of Occupations and Professions, PO Box 1360, Frankfort, Kentucky 40602-1360, Phone: (502) 564-3296 ext. 225; Fax: (502) 564-4818.

REGULATORY IMPACT ANALYSIS

Contact person: Nancy L. Black

(1) Type and number of entities affected: Approximately 110 annual applicants for licensure as a nursing home administrator.

(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: This amended regulation will reduce the application process for applicants submitting documents to the board and will not require that the applicant pay to the board a required examination fee.

2. Second and subsequent years: This amended regulation will reduce the application process for applicants submitting documents to the Board and will not require that the applicant pay to the Board a required examination fee.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This amended regulation will reduce the application process for applicants submitting documents to the board resulting in increased efficiency for the board which will not have to handle fees for the examination administered by the board.

2. Continuing costs or savings: This amended regulation will reduce the application process for applicants submitting documents to the board resulting in increased efficiency for the board which will not have to handle fees for the examination administered by the board.

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

(b) Reporting and paperwork requirements: This amended regulation will reduce the application process for applicants submitting documents to the board.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Board funds and annual 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: N/A

(b) Kentucky: N/A

(7) Assessment of alternative methods; reasons why alternatives were rejected: The board rejected an alternative method of having applicants pay an examination fee to the board when the board was simply acting as a processor of such examination fees for the costs of the examination approved by the board.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: The board would not be able to protect the public by ensuring that only qualified applicants obtained a license by passing a written examination administered by the board and mandated by KRS 216A.080(e).

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

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

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

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? No. This regulation applies to all applicants equally.

BOARD OF LICENSURE FOR
NURSING HOME ADMINISTRATORS
(Amendment)

201 KAR 6:060. Fees.

RELATES TO: KRS 216A.110(1), 216A.130

STATUTORY AUTHORITY: KRS 216A.070(3), (4), 216A.110(1), 216A.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.070(4) requires the board to establish a fee for a temporary permit. KRS 216A.110(1) requires the board to prescribe and collect reasonable fees and charges for processing applications, examination, and issuance of licenses, including renewals. KRS 216A.130 authorizes the board to establish a fee for licensure by reciprocity. This administrative regulation establishes those fees.

Section 1. Application Fee. (1) The application fee for board review of the application for licensure shall be fifty (50) dollars.

(2) The application fee shall be nonrefundable.

Section 2. Initial Licensure Fee. (1) The initial licensure fee shall be \$150 for an applicant for licensure.

(2) The fee for licensure by endorsement shall be \$250 for an applicant for licensure.

(3) If the applicant successfully completes all requirements for licensure, this fee shall cover licensure for the initial two (2) year period.

Section 3. Temporary Permit Fee. The fee for a temporary permit shall be fifty (50) dollars.

Section 4. [Examination Fees. The fee for taking or retaking the written examination shall be \$125.

Section 5. Renewal Fee, Late Renewal Fee, Inactive License Fee and Reinstatement Fee. (1) The renewal fee shall be \$100.

- (2) The late renewal fee shall be \$150.
- (3) The inactive license fee shall be fifty (50) dollars.
- (4) The fee for reactivating an inactive license shall be fifty (50) dollars.
- (5) The reinstatement fee shall be \$300.

Section 5. [6:] Duplicate License Fee. The duplicate license fee shall be twenty-five (25) dollars.

Section 6. [7:] Licensure Verification Fee. The fee for verification of state licensure shall be fifteen (15) dollars.

NANCY L. BLACK, Director

MARK BRENGELMAN, Assistant Attorney General

APPROVED BY AGENCY: September 10, 1999

FILED WITH LRC: September 14, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed amended administrative regulation shall be held on October 22, 1999, at 4 p.m., local time, at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the board in writing by October 15, 1999, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Nancy L. Black, Director, Division of Occupations and Professions, PO Box 1360, Frankfort, Kentucky 40602-1360, Phone: (502) 564-3296 ext. 225; Fax: (502) 564-4818.

REGULATORY IMPACT ANALYSIS

Contact person: Nancy L. Black

(1) Type and number of entities affected: Approximately 110 annual applicants for licensure as a nursing home administrator.

(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: This amended regulation will reduce the application process for applicants submitting documents to the board and will not require that the applicant pay to the board a required examination fee.

2. Second and subsequent years: This amended regulation will reduce the application process for applicants submitting documents to the board and will not require that the applicant pay to the board a required examination fee.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This amended regulation will reduce the application process for applicants submitting documents to the board resulting in increased efficiency for the board which will not have to handle fees for the examination administered by the board.

2. Continuing costs or savings: This amended regulation will reduce the application process for applicants submitting documents to the board resulting in increased efficiency for the board which will not have to handle fees for the examination administered by the board.

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

(b) Reporting and paperwork requirements: This amended regulation will reduce the application process for applicants submit-

ting documents to the board.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: board funds and annual 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: N/A

(b) Kentucky: N/A

(7) Assessment of alternative methods; reasons why alternatives were rejected: The board rejected an alternative method of having applicants pay an examination fee to the board when the board was simply acting as a processor of such examination fees for the costs of the examination approved by the board.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: The board would not be able to protect the public by ensuring that only qualified applicants obtained a license by passing a written examination administered by the board and mandated by KRS 216A.080(e).

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

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

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

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? No. This regulation applies to all applicants equally.

KENTUCKY BOARD OF SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY (Amendment)

201 KAR 17:011. Requirements for interim licensure.

RELATES TO: KRS 334A.050

STATUTORY AUTHORITY: KRS 334A.080

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes criteria for interim licensure for speech-language pathologists and audiologists as authorized by KRS 334A.050, as amended.

Section 1. Education and Experience. In addition to the citizenship requirements of KRS 334A.050, each applicant for interim licensure in speech-language pathology or audiology in Kentucky shall hold the following qualifications:

(1)(a) A master's degree or equivalent with major emphasis in speech-language pathology, audiology, or speech-language and hearing science from a college or university program accredited by the American Speech-Language-Hearing Association.

(b) "Equivalent" is defined as holding:

1. A doctoral degree in speech-language pathology or audiology from a program accredited by the American Speech-Language-Hearing Association; or

2. A bachelor's degree from a regionally accredited college or university, and completion of all coursework and clinical practicum requirements leading to a doctorate or master's degree from a university program accredited by the American Speech-Language-Hearing Association. [and at least forty-two (42) post baccalaureate semester hours from a regionally accredited college or university toward a master's degree, of which at least thirty (30) semester hours must be in the areas of speech-language pathology, audiology, or speech-language and hearing science. At least twenty-one (21) of these forty-two (42) semester hours must be obtained from a single college or university, none may have been completed more than ten (10) years

prior to the date of application and no more than six (6) semester hours may be credit offered for clinical practicum.

(2) In evaluation of credits to be used in the computation of an applicant's educational requirements, one-quarter (1/4) hour will be considered the equivalent of two-thirds (2/3) of a semester hour. Transcripts that do not report credit in terms of semester or quarter hours should be submitted for special evaluation.

(3) A total of sixty (60) semester hours of academic credit must have been accumulated from accredited colleges or universities that demonstrate that the applicant has obtained a well-integrated program of course study dealing with the normal aspects of human communication, development thereof, disorders thereof, and clinical techniques for evaluation and management of such disorders. Twelve (12) of these sixty (60) semester hours must be obtained in courses that provide information that pertains to normal development and use in speech, language, and hearing. Thirty (30) of these sixty (60) semester hours must be obtained in courses that provide information relative to communication disorders, and information about and training in evaluation and management of speech, language, and hearing disorders. At least twenty-four (24) of these thirty (30) semester hours must be in courses in the professional area (speech-language pathology or audiology) for which licensure is requested, and at least six (6) must be in audiology for licensure in speech-language pathology or in speech-language pathology for licensure in audiology. Moreover, no more than six (6) semester hours may be in courses that provide credit for clinical practicum obtained during academic training. Credit for study of information pertaining to related fields that augment the work of the clinical practitioner of speech-language pathology and/or audiology may also apply toward the total sixty (60) semester hours. Thirty (30) of the total sixty (60) semester hours that are required for licensure must be in courses that are acceptable toward a graduate degree by the college or university in which they are taken. This requirement may be met by courses completed as an undergraduate providing the college or university in which they are taken specifies that these courses would be acceptable toward a graduate degree if they were taken at the graduate level. Moreover, twenty-one (21) of these thirty (30) semester hours must be within the twenty-four (24) semester hours required in the professional area (speech-language pathology or audiology) for which interim licensure is requested or within the six (6) semester hours required in the other area.

(4) The applicant must have completed a minimum of 300 clock hours of supervised clinical experience with individuals who present a variety of communication disorders, and this experience must have been obtained with the training institution or in one of its cooperating programs.

(5) The applicant shall submit to the board a written description verifying his completion of the required academic coursework and supervised clinical experience on the form provided for that purpose. No credit may be allowed for courses listed on the application unless satisfactory completion is verified by an official transcript. Satisfactory completion is defined as the applicant's having received academic credit (i.e., semester hours, quarter hours, or other unit of credit) with a passing grade as defined by the training institution.

(6) Application for approval of academic coursework and supervised clinical experience shall be made as soon as possible after completion of these experiences, and either before or within thirty (30) days after the postgraduate professional experience is begun.]

(2) [(7)] A written plan for the postgraduate professional experience shall [must] be submitted with the application for interim licensure [on forms provided for that purpose] within thirty (30) days after initiating the postgraduate professional experience. The applicant shall [must] proceed to obtain postgraduate professional experience under a supervisor who is a speech-language pathologist or audiologist licensed in Kentucky.

GEORGE O. PURVIS, Chair

DIANE SCHULER FLEMING, Assistant Attorney General

APPROVED BY AGENCY: September 14, 1999

FILED WITH LRC: September 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 27, 1999, at 10 a.m. at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at

this hearing shall notify this agency in writing by October 20, 1999, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nancy Black, Executive Director, Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, telephone (502) 564-3296, Fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS

Agency contact: Nancy Black

(1) Type and number of entities affected: Approximately 72 applicants who seek interim licensure in speech-language pathology or audiology in the Commonwealth of Kentucky.

(2) Direct and indirect costs or savings to those affected: The direct cost is the fee for the interim license.

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: No additional effects or changes.

(a) Direct or indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: No change in reporting and paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Not applicable.

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No comments received.

(a) Geographical area in which administrative regulation will be implemented This administrative regulation does not affect economic activity.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.

(8) Assessment of expected benefits: Increased clarity in the areas of education and postgraduate professional experience that is required of all interim licensees.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Board is not aware of any statute, regulation or government policy which may be in conflict or is duplicated by this proposed regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed

administrative regulation with conflicting provisions: Not applicable.

(10) Any additional comments: None

(11) TIERING: Is tiering applied? No. The regulation applies equally to all speech-language pathology and audiology interim licensees.

**KENTUCKY BOARD OF SPEECH-LANGUAGE
PATHOLOGY AND AUDIOLOGY
(Amendment)**

201 KAR 17:015. Board members, expenses.

RELATES TO: KRS 334A.100

STATUTORY AUTHORITY: KRS 334A.080(3)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation authorizes board members to receive a per diem and travel expenses when conducting board-related business.

Section 1. Members of the board shall:

(1) Receive compensation in the amount of \$100 per day for each day of actual board service; and

(2) Travel expenses as provided by 200 KAR 2:006. [The board members shall receive no compensation for their services, but may receive a per diem in the amount of fifty (50) dollars per day or fraction thereof devoted to board service and travel expenses to the extent authorized by 200 KAR Chapter 2.]

GEORGE O. PURVIS, Chair

DIANE SCHULER FLEMING, Assistant Attorney General

APPROVED BY AGENCY: September 14, 1999

FILED WITH LRC: September 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 27, 1999, at 10 a.m. at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 1999, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nancy Black, Executive Director, Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, telephone (502) 564-3296, Fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS

Agency contact: Nancy Black

(1) Type and number of entities affected: Approximately 8 members of the Kentucky Board of Speech-Language Pathology and Audiology.

(2) Direct and indirect costs or savings to those affected: The direct costs are the travel and per diem expenses.

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: No addi-

tional effects or changes.

(a) Direct or indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: No change in reporting and paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Not applicable.

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No comments received.

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation does not affect economic activity.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.

(8) Assessment of expected benefits: Brings the administrative regulation into compliance with the recent amendments to 200 KAR 2:006.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Board is not aware of any statute, regulation or government policy which may be in conflict or is duplicated by this proposed regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

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

(10) Any additional comments: None

(11) TIERING: Is tiering applied? No. The regulation applies equally to all board members.

**KENTUCKY BOARD OF SPEECH-LANGUAGE
PATHOLOGY AND AUDIOLOGY
(Amendment)**

201 KAR 17:025. Requirements for an interim license as a speech-language pathology assistant.

RELATES TO: KRS 334A.035(2), 1994 Ky. Acts ch. 32, sec. 4

STATUTORY AUTHORITY: KRS 334A.080

NECESSITY, FUNCTION, AND CONFORMITY: 1994 Ky. Acts ch. 32, sec. 4 establishes the guidelines for licensure as a speech-language pathology assistant. KRS 334A.035(2) requires an applicant for licensure as a speech-language pathology assistant to complete postgraduate professional experience in order to become licensed. This administrative regulation establishes the requirements for interim licensure.

Section 1. Education. (1) In order to receive an interim license to become a speech-language pathology assistant, the applicant shall possess a baccalaureate degree in speech-language pathology.

(2) A baccalaureate degree in speech-language pathology shall be a baccalaureate degree from a regionally accredited institution in communication sciences or disorders or its equivalent.

(3) In order to be considered as equivalent, the applicant shall have obtained a baccalaureate degree and a minimum of twenty-seven (27) hours in the core areas of communication sciences or disorders including the following:

(a) Anatomy and physiology;

(b) Phonetics and speech science;

(c) Speech and language development;

(d) [(e)] Communication disorders in children;

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- (e) [(f)] Audiology;
- (f) [(g)] Aural rehabilitation; and
- (g) [(h)] Intervention for children with communication disorders.

Section 2. Supervision. (1) The interim licensee shall function under the supervision of an appropriate supervisor during the period of interim licensure.

(2) It shall be the responsibility of the supervisor to design and provide a supervision system that protects pupil welfare and maintains the highest possible standards of quality speech-language pathology services.

(3) Additional supervision may be required, based on the experience of the speech-language pathology assistant, the pupils served, and the physical or geographic proximity to the supervisor.

(4) As the supervisory responsibility of the supervisor increases, the direct service responsibilities of the supervisor shall decrease.

(5) Treatment for the pupils served remains the responsibility of the supervisor. Therefore, the level of supervision required is considered the minimum level necessary for the supervisor to retain direct contact with the pupils.

(6) Each speech-language pathology assistant shall be required to receive no less than three (3) hours per full-time week of documented direct supervision. Supervision shall be adjusted proportionally for less than full-time employment. This ensures that the supervisor will have direct contact time with the speech-language pathology assistant as well as with the pupil.

(7) Direct supervision means on-site, in-view observation and guidance as a clinical activity is performed.

(a) A speech-language pathology assistant must be supervised by either:

1. A licensed speech-language pathologist; or
2. A "certified" speech-language pathologist as defined by the Education Professional Standards Board.

(8) Supervision shall provide information about the quality of the speech-language pathology assistant's performance with assigned tasks and verify that clinical activity is limited to tasks specified in the speech-language pathology assistant's scope of responsibilities.

(9) Information obtained during direct supervision may include data relative to:

- (a) Accuracy in implementation of screening, diagnostic, and treatment procedures;
- (b) Agreement between the assistant and the supervisor on correct or incorrect judgment of target behavior;
- (c) Accuracy in recording data; and
- (d) Ability to interact effectively with the pupil.

(10) Indirect supervision shall be required no less than three (3) hours per full-time week. Supervision shall be adjusted proportionally for less than full-time employment. Indirect supervision may include:

- (a) Demonstration;
- (b) Record review;
- (c) Review and evaluation of audio or videotaped sessions; or
- (d) Supervisory conferences that may be conducted by telephone.

(11) A minimum total of six (6) hours of direct and indirect supervision per full-time week shall be required for each speech-language pathology assistant and shall be documented. Additional direct and indirect supervision may be necessary depending on the experience of the assistant and the needs of the pupil.

(12) A speech-language pathology assistant shall not at any time provide direct services when a supervising speech-language pathologist cannot be reached by personal contact, phone, pager, or some other immediate means.

(13) If for any reason (i.e., maternity leave, illness, change of jobs) the supervisor is no longer available to provide the level of supervision stipulated, the speech-language pathology assistant may not provide service until a fully qualified speech-language pathologist has been designated as the speech-language pathology assistant's supervisor.

(14) Although more than one (1) supervisor may provide supervision of a speech-language pathology assistant, a supervisor shall not be listed as the supervisor of record for more than two (2) speech-language pathology assistants. When multiple supervisors are used, each supervisor shall be responsible for that portion of the caseload that is theirs and each shall sign the license application and postgraduate professional experience report. ~~[one (1) shall be designated~~

~~as the supervisor of record.]~~

(15) The maximum number of pupils served by the speech-language pathology assistant shall not exceed the caseload established for a speech-language pathologist by administrative regulation.

Section 3. Postgraduate Professional Experience. (1) The applicant shall obtain the equivalent of not less than nine (9) months of full-time professional experience with full-time employment defined as a minimum of thirty (30) clock hours of work a week. This requirement also may be fulfilled by part-time employment as follows:

(a) Work of fifteen (15) through nineteen (19) hours per week over eighteen (18) months;

(b) Work of twenty (20) through twenty-four (24) hours per week over fifteen (15) months; or

(c) Work of twenty-five (25) through twenty-nine (29) hours per week over twelve (12) months.

(2) In the event that part-time employment is used to fulfill a part of the postgraduate professional experience, 100 percent of the minimum hours of the part-time work per week requirement must be spent in direct professional experience.

(3) The postgraduate professional experience shall be completed within a maximum period of thirty-six (36) consecutive months.

Section 4. Evaluation and Recommendation. Within thirty (30) days after completion of the postgraduate professional experience, the applicant and his supervisor shall submit a written report to the board verifying the successful completion of postgraduate professional experience.

~~Section 5. [Examination for Licensure as a Speech-language Pathology Assistant. (1) During the period of interim licensure, an applicant for licensure shall submit to an examination composed of the Praxis Series, Professional Assessments for Beginning Teachers, specialty area test in speech-language pathology and administered by the Educational Testing Service (ETS).~~

~~(2) The passing score on the examination for licensure as a speech-language pathology assistant shall be 480.~~

~~(3) If an applicant fails the examination, the applicant may, with payment of the required fee, be rescheduled to take the examination at its next regularly scheduled date.~~

~~Section 6.] Licensure as a Speech-language Pathology Assistant. Upon successful completion of each requirement set forth in this administrative regulation, completion of the required application, and payment of the required fee, the holder of an interim license shall be eligible to be licensed as a speech-language pathology assistant and shall immediately apply for licensure.~~

GEORGE O. PURVIS, Chair

DIANE SCHULER FLEMING, Assistant Attorney General

APPROVED BY AGENCY: September 14, 1999

FILED WITH LRC: September 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 27, 1999, at 10 a.m. at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 1999, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nancy Black, Executive Director, Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, telephone (502) 564-3296, Fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS

Agency contact: Nancy Black

(1) Type and number of entities affected: Approximately 50 applicants who seek interim licensure as speech-language pathology assistants in the Commonwealth of Kentucky.

(2) Direct and indirect costs or savings to those affected: The direct cost is the fee for the interim license.

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: No additional effects or changes.

(a) Direct or indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: No change in reporting and paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Not applicable.

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No comments received.

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation does not affect economic activity.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.

(8) Assessment of expected benefits: Increased clarity in the supervision requirements, specifically setting forth who may supervise the interim licensees. Eliminates the examination requirement.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Board is not aware of any statute, regulation or government policy which may be in conflict or is duplicated by this proposed regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

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

(10) Any additional comments: None

(11) TIERING: Is tiering applied? No. The regulation applies equally to all speech-language pathology assistant interim licensees.

**KENTUCKY BOARD OF SPEECH-LANGUAGE
PATHOLOGY AND AUDIOLOGY
(Amendment)**

201 KAR 17:027. Supervision requirements for a speech-language pathology assistant.

RELATES TO: 1994 Ky. Acts ch. 32, sec. 4

STATUTORY AUTHORITY: KRS 334A.080

NECESSITY, FUNCTION, AND CONFORMITY: 1994 Ky. Acts,

ch. 32, sec. 4 establishes the requirements for licensure as a speech-language pathology assistant. One (1) of the requirements is that the speech-language pathology assistant may only practice under supervision. This administrative regulation establishes the supervisory requirements.

Section 1. The supervision requirements specified in these guidelines are minimum requirements.

(1) It shall be the responsibility of the supervisor to design and provide a supervision system that protects pupil welfare and maintains the highest possible standards of quality speech-language pathology services.

(2) Additional supervision may be required, based on the experience of the speech-language pathology assistant, the pupils served, and the physical or geographic proximity to the supervisor.

(3) As the supervisory responsibility of the supervisor increases, the direct service responsibilities of the supervisor shall decrease.

Section 2. Treatment for the pupils served remains the responsibility of the supervisor. Therefore, the level of supervision required is considered the minimum level necessary for the supervisor to retain direct contact with the pupils.

Section 3. Each speech-language pathology assistant shall be required to receive no less than two (2) hours per full-time week of documented direct supervision. This ensures that the supervisor will have direct contact time with the speech-language pathology assistant as well as with the pupil.

(1) Direct supervision means on-site, in-view observation and guidance as a clinical activity is performed.

(a) A speech-language pathology assistant must be supervised by either:

1. A licensed speech-language pathologist; or

2. A "certified" speech-language pathologist as defined by the Educational Professional Standards Board.

(2) Supervision shall provide information about the quality of the speech-language pathology assistant's performance with assigned tasks and verify that clinical activity is limited to tasks specified in the speech-language pathology assistant's scope of responsibilities.

(3) Information obtained during direct supervision may include data relative to:

(a) Accuracy in implementation of screening, diagnostic, and treatment procedures;

(b) Agreement between the assistant and the supervisor on judgment of target behavior;

(c) Accuracy in recording data; and

(d) Ability to interact effectively with the pupil.

Section 4. Indirect supervision shall be required no less than two (2) hours per full-time week and may include:

(1) Demonstration;

(2) Record review;

(3) Review and evaluation of audio or videotaped sessions; or

(4) Supervisory conferences that may be conducted by telephone.

Section 5. A minimum total of four (4) hours of direct and indirect supervision per full-time week shall be required for each speech-language pathology assistant and shall be documented. Additional direct and indirect supervision may be necessary depending on the experience of the assistant and the needs of the pupil.

Section 6. A speech-language pathology assistant shall not at any time provide direct services when a supervising speech-language pathologist cannot be reached by personal contact, phone, pager, or some other immediate means.

Section 7. If for any reason (i.e., maternity leave, illness, change of jobs) the supervisor is no longer available to provide the level of supervision stipulated, the speech-language pathology assistant may not provide service until a fully qualified speech-language pathologist has been designated as the speech-language pathology assistant's supervisor.

Section 8. Although more than one (1) supervisor may provide supervision of a speech-language pathology assistant, a supervisor shall not be listed as the supervisor of record for more than two (2) speech-language pathology assistants. When multiple supervisors are used, each supervisor shall be responsible for that portion of the caseload that is theirs. [~~one (1) shall be designated as the supervisor of record.~~]

Section 9. The maximum number of pupils served by the speech-language pathology assistant shall not exceed the caseload established for a speech-language pathologist by administrative regulation.

GEORGE O. PURVIS, Chair

DIANE SCHULER FLEMING, Assistant Attorney General

APPROVED BY AGENCY: September 14, 1999

FILED WITH LRC: September 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 27, 1999, at 10 a.m. at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 1999, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nancy Black, Executive Director, Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, telephone (502) 564-3296, Fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS

Agency contact: Nancy Black

(1) Type and number of entities affected: Approximately 100 applicants who seek licensure as speech-language pathology assistants in the Commonwealth of Kentucky.

(2) Direct and indirect costs or savings to those affected: The direct cost is the fee for the interim license.

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: No additional effects or changes.

(a) Direct or indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: No change in reporting and paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Not applicable.

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No comments received.

(a) Geographical area in which administrative regulation will be

implemented: This administrative regulation does not affect economic activity.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.

(8) Assessment of expected benefits: Clarification of supervision requirements.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Board is not aware of any statute, regulation or government policy which may be in conflict or is duplicated by this proposed regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

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

(10) Any additional comments: None

(11) TIERING: Is tiering applied? No. The regulation applies equally to all speech-language pathology assistant licensees.

KENTUCKY BOARD OF SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY (Amendment)

201 KAR 17:041. Professional code of ethics.

RELATES TO: KRS 334A.180

STATUTORY AUTHORITY: KRS 334A.080

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessitated by KRS 334A.080(3) which requires the board to adopt and publish a code of ethics.

Section 1. Responsibility to Patients. (1) A licensee shall:

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

(b) Respect the rights of a person seeking his assistance; and

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

(2) A licensee shall not:

(a) Discriminate against or refuse professional service to anyone on the basis of race, gender, religion, or national origin;

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

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

1. Impair professional judgment;

2. Incur a risk of exploitation of the patient; or

3. Otherwise violate a provision of this administrative regulation.

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

(d) Use his professional relationship with a patient to further his own interests;

(e) Continue therapeutic relationships unless it is reasonably clear that the patient is benefiting from the relationship;

(f) Fail to assist a person in obtaining other therapeutic services if the licensee is unable or unwilling, for appropriate reasons, to provide professional help;

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

(h) Videotape, record, or permit third-party observation of the provision of services without having first obtained written informed consent from the patient;

(i) Engage in sexual or other harassment or exploitation of his patient, student, trainee, supervisee, employee, colleague, research subject, or actual or potential witness or complainant in investigations and ethical proceedings; or

(j) Diagnose, treat, or advise on problems outside the recog-

nized boundaries of his competence.

Section 2. Confidentiality. (1) A licensee shall respect and guard the confidences of each individual patient.

(2) Licensees shall not disclose a patient confidence except:

- (a) As mandated, or permitted by law.
- (b) To prevent a clear and immediate danger to a person.
- (c) During the course of a civil, criminal, or disciplinary action arising from the therapy, at which the licensee is a defendant.
- (d) In accordance with the terms of a written waiver. If the patient is a minor, a parent may provide a waiver.

(3) A licensee may use patient or clinical materials in teaching, writing, and public presentations if:

- (a) A written waiver has been obtained in accordance with subsection (1)(d) of this section; or
- (b) Appropriate steps have been taken to protect patient identity and confidentiality.
- (4) A licensee shall store or dispose of patient records so as to maintain confidentiality.

Section 3. Professional Competence and Integrity. A licensee shall maintain standards of professional competence and integrity and shall be subject to disciplinary action in accordance with KRS 334A.180:

- (1)(a) Upon conviction of any felony, or a misdemeanor related to the practice of the licensee;
- (b) Conviction shall include adjudication based on:
 - 1. A plea of no contest or an "Alford Plea"; or
 - 2. The suspension or deferral of a sentence.
- (2) If his license or certificate is subject to disciplinary action by another state's regulatory agency that the board determines violates applicable Kentucky state law or administrative regulation;
- (3) Upon a showing of impairment due to mental incapacity or the abuse of alcohol or other substances which negatively impact the licensee's practice;
- (4) If the licensee misrepresented or concealed a material fact in obtaining a license, renewing a license, or reinstating a license;
- (5) If he has refused to comply with an order issued by the board; or
- (6) He has failed to cooperate with the board by not:
 - (a) Furnishing in writing a complete explanation to a complaint filed with the board;
 - (b) Appearing before the board at the time and place designated; or
 - (c) Properly responding to subpoenas issued by the board.

Section 4. Responsibility to His Student or Supervisee. A licensee shall:

- (1) Be aware of his influential position with respect to a student or supervisee;
- (2) Avoid exploiting the trust and dependency of a student or supervisee;
- (3) Avoid a social, business, personal, or other dual relationship that could:
 - (a) Impair professional judgment; and
 - (b) Increase the risk of exploitation;
- (4) Take appropriate precautions to ensure that judgment is not impaired and to prevent exploitation if a dual relationship cannot be avoided;
- (5) Not provide professional services to a:
 - (a) Student;
 - (b) Employee; or
 - (c) Supervisee;
- (6) Not engage in sexual intimacy or contact with a:
 - (a) Student;
 - (b) Employee; or
 - (c) Supervisee;
- (7) Not permit a student or supervisee to perform or represent himself as competent to perform a professional service beyond his level of:
 - (a) Training;
 - (b) Experience; or
 - (c) Competence;

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

- (a) Unless permitted or mandated by law;
- (b) Unless it is necessary to prevent a clear and immediate danger to a person;
- (c) During the course of a civil, criminal, or disciplinary action arising from the supervision, at which the licensee is a defendant;
- (d) In an educational or training setting, of which there are multiple supervisors or professional colleagues who share responsibility for the training of the supervisee;
- (e) In accordance with the terms of a written informed consent agreement.

Section 5. Financial Arrangements. A licensee shall:

- (1) Disclose his fees to a patient and supervisee at the beginning of service;
- (2) Make financial arrangements with a patient, third-party payor, or supervisee that:
 - (a) Are reasonably understandable; and
 - (b) Conform to accepted professional practices;
- (3) Not offer or accept payment for a referral;
- (4) Represent facts truthfully to a patient, third-party payor, or supervisee regarding services rendered.

Section 6. Advertising. (1) A licensee shall:

- (a) Accurately represent education, training, and experience relevant to the practice;
- (b) Not use professional identification that includes a statement or claim that is false, fraudulent, misleading, or deceptive, including the following:
 - 1. A business card;
 - 2. An office sign;
 - 3. Letterhead;
 - 4. Telephone or association directory listing.
- (2) A statement shall be considered false, fraudulent, misleading, or deceptive if it:
 - (a) Contains a material misrepresentation of fact;
 - (b) Is intended to or likely to create an unjustified expectation;
 - (c) Deletes a material fact or information. (Preamble: The preservation of the highest standards of integrity and ethical principles is vital to the successful discharge of the professional responsibilities of all speech-language pathologists and audiologists. This code of ethics has been promulgated by the Kentucky Board of Speech-language Pathology and Audiology in an effort to stress the fundamental rules considered essential to this basic purpose. Any action that is in violation of the spirit and purpose of this code shall be considered unethical. Failure to specify any particular responsibility or practice in this code of ethics should not be construed as denial of the existence of other responsibilities or practices.)

Section 2. The fundamental rules of ethical conduct are described in three (3) categories: principles of ethics, ethical proscriptions, and matters of professional propriety as follows:

- (1) Principles of ethics. Six (6) principles serve as a basis for the ethical evaluation of professional conduct and form the underlying moral basis for the code of ethics. Licensees must observe these principles as affirmative ethical obligations under all conditions of professional activity.
- (2) Ethical proscriptions are formal statements of prohibitions that are derived from the principles of ethics.
- (3) Matters of professional propriety. Matters of professional propriety represent guidelines of conduct designed to promote the public interest and thereby better inform the public and particularly the persons in need of speech-language pathology and audiology services as to the availability and the rules regarding the delivery of those services.

Section 3. Principles of Ethics I. (1) Licensees should hold paramount the welfare of persons served professionally:

- (a) Licensees shall use every resource available, including referral to other specialists as needed to provide the best service possible;
- (b) Licensees shall fully inform persons served of the nature and possible effects of the services;
- (c) Licensees shall fully inform research subjects or subjects par-

icipating in teaching activities of the nature and possible effects of these activities:

(d) Licensees' fees shall be commensurate with services rendered:

(e) Licensees shall provide appropriate access to records of persons served professionally:

(f) Licensees shall take all reasonable precautions to avoid injuring persons in the delivery of professional services:

(g) Licensees shall evaluate services rendered to determine effectiveness:

(2) Ethical proscription:

(a) Licensees must not exploit persons in the delivery of professional services, including accepting persons for treatment when benefit cannot reasonably be expected or continuing treatment unnecessary:

(b) Licensees must not guarantee the results of any therapeutic procedures directly or by implication. A reasonable statement of prognosis may be made, but caution must be exercised not to mislead persons served professionally to expect results that cannot be predicted from sound evidence:

(c) Licensee must not use persons for teaching or research in a manner that constitutes an invasion of privacy or fails to afford informed free choice to participate:

(d) Licensees must not evaluate or treat speech, language or hearing disorders except in a professional relationship. They must not evaluate or treat solely by correspondence. This does not preclude follow-up correspondence with persons previously seen, nor providing them with general information of an education nature:

(e) Licensees must not reveal to unauthorized persons any professional or personal information obtained from the persons served professionally, unless required by law or unless necessary to protect the welfare of the person or the community:

(f) Licensees must not discriminate in the delivery of professional services on any basis that is unjustifiable or irrelevant to the need for and potential benefits from such services, such as race, sex or religion:

(g) Licensees must not charge for services not rendered:

Section 4. Principle of Ethics II. (1) Licensees shall maintain high standards of professional competence:

(a) Licensees shall continue their professional development throughout their careers:

(b) Licensees shall identify competent, dependable referral services for persons served professionally:

(c) Licensees shall maintain adequate records of professional services rendered:

(2) Ethical proscriptions:

(a) Licensees must neither provide services nor supervision of services for which they have not been properly prepared, nor permit services to be provided by anyone under their supervision who is not properly prepared:

(b) Licensees must not provide clinical services by prescription from anyone who does not hold a Kentucky license in the field of speech-language pathology and/or audiology:

(c) Licensees must not delegate any service requiring the professional competence of a licensed speech-language pathologist and/or audiologist to anyone unqualified:

(d) Licensees must not offer clinical services by supportive personnel for whom they do not provide appropriate supervision and assume full responsibility:

(e) Licensees must not require anyone under their supervision to engage in any practice that is in violation of the code of ethics:

Section 5. Principle of Ethics III. (1) Licensees' statements to persons served professionally and to the public shall provide accurate information about the nature and management of communication disorders, and about the professional services rendered by its practitioners:

(2) Ethical proscriptions:

(a) Licensees must not misrepresent their training or competence:

(b) Licensees' public statements providing information about professional services and products must not contain representations or claims that are false, deceptive or misleading:

(c) Licensees must not use professional or commercial affiliations in any way that would mislead or limit services to persons served professionally:

(3) Matters of propriety. Licensees should announce services in a manner consonant with highest professional standards in the community:

Section 6. Principle of Ethics IV. (1) Licensees shall maintain objectivity in all matters concerning the welfare of persons served professionally. Licensees who dispense products to persons served professionally shall observe the following standards:

(a) Products associated with professional practice must be dispensed to the person served as a part of a program of comprehensive rehabilitative care:

(b) Fees established for professional services must be independent of whether a product is dispensed:

(c) Persons served must be provided freedom of choice for the source of services and products:

(d) Price information about professional services rendered and products dispensed must be disclosed by providing to or posting for persons served a complete schedule of fees and charges in advance of rendering services, which schedule differentiates between fees for professional services and charges for products dispensed:

(e) Products dispensed to the person served must be evaluated to determine effectiveness:

(2) Ethical proscriptions. Licensees must not participate in activities that constitute a conflict of professional interest:

(3) Matters of propriety:

(a) Licensees should not accept compensation for supervision from the person being supervised:

(b) Licensees should present products they have developed to their colleagues in a manner consonant with highest professional standards:

Section 7. Principle of Ethics V. (1) Licensees shall honor their responsibilities to the public, their profession, and their relationships with colleagues and members of allied professions:

(2) Matters of professional propriety:

(a) Licensees should seek to provide and expand services to persons with speech, language and hearing handicaps as well as to assist in establishing high professional standards for such programs:

(b) Licensees should educate the public about speech, language and hearing processes, speech, language and hearing problems, and matters related to professional competence:

(c) Licensees should strive to increase knowledge within the profession and share research with colleagues:

(d) Licensees should establish harmonious relations with colleagues and members of other professions, and endeavor to inform members of related professions of services provided by speech-language pathologists and audiologists, as well as seek information from them:

(e) Licensees should assign credit to those who have contributed to a publication in proportion to their contribution:

Section 8. Principal of Ethics VI. (1) Licensees shall inform the board of violations of this code of ethics:

(2) Licensees shall cooperate fully with the board inquiries into matters of professional conduct related to this code of ethics:]

GEORGE O. PURVIS, Chair

DIANE SCHULER FLEMING, Assistant Attorney General

APPROVED BY AGENCY: September 14, 1999

FILED WITH LRC: September 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 27, 1999, at 10 a.m. at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 1999, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of

the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nancy Black, Executive Director, Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, telephone (502) 564-3296, Fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS

Agency contact: Nancy Black

(1) Type and number of entities affected: Approximately 1,900 licensees in speech-language pathology or audiology in the Commonwealth of Kentucky.

(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: No comments received.

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: No additional effects or changes.

(a) Direct or indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: No change in reporting and paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Not applicable.

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No comments received.

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation does not affect economic activity.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.

(8) Assessment of expected benefits: Elimination of old code of ethics. Substitution of an updated version which is compatible with other boards and agencies in the Commonwealth and around the nation.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Board is not aware of any statute, regulation or government policy which may be in conflict or is duplicated by this proposed regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

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

(10) Any additional comments: None

(11) TIERING: Is tiering applied? No. The regulation applies equally to all speech-language pathology and audiology licensees.

KENTUCKY BOARD OF SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY (Amendment)

201 KAR 17:070. Complaint procedure.

RELATES TO: KRS 334A.180

STATUTORY AUTHORITY: KRS 334A.080(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 334A.180 delineates the causes for which disciplinary action may be taken against a licensee. This administrative regulation establishes procedures for the filing, evaluation, and disposition of administrative complaints.

Section 1. Definitions. (1) "Chairman" means the chairman or vice-chairman of the board.

(2) "Charge" means a specific allegation contained in a formal complaint, as established in subsection (5) of this section, issued by the board alleging a violation of a specified provision of KRS Chapter 334A; the administrative regulations promulgated thereunder; or any other state or federal statute or regulation.

(3) "Complaint" means any written allegation of misconduct by a credentialed individual or other person which might constitute a violation of KRS Chapter 334A, the administrative regulations promulgated thereunder, or any other state or federal statute or regulation.

(4) "Complaint screening committee" means a committee consisting of three (3) persons appointed by the chairman of the board to review complaints, investigative reports, and to participate in informal proceedings to resolve a formal complaint. In addition to board members the executive director of the board or another staff member may be appointed to serve on this committee.

(5) "Formal complaint" means a formal administrative pleading authorized by the board which sets forth charges against a licensed individual or other person and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B or requests the court to take criminal or civil action.

(6) "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of reaching a dispensation of any matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

(7) "Investigator" means an individual designated by the board to assist the board in the investigation of a complaint or an investigator employed by the Attorney General or the board.

Section 2. Receipt of Complaints. (1) A complaint:

(a) May be submitted by an:

1. Individual;

2. Organization; or

3. Entity.

(b) Shall be:

1. In writing; and

2. Signed by the person offering the complaint.

(c) May be filed by the board based upon information in its possession.

(2) Upon receipt of a complaint:

(a) A copy of the complaint shall be sent to the individual named in the complaint along with a request for that individual's response to the complaint. The individual shall be allowed a period of twenty (20) days from the date of receipt to submit a written response.

(b) Upon receipt of the written response of the individual named in the complaint, a copy of his response shall be sent to the complainant. The complainant shall have seven (7) days from the receipt to submit a written reply to the response.

Section 3. Initial Review. (1) After the receipt of a complaint and the expiration of the period for the individual's response, the complaint screening committee shall consider the individual's response, complainant's reply to the response, and any other relevant material available and make a recommendation to the board. The board shall determine whether there is enough evidence to warrant a formal investigation of the complaint.

(2) If the board determines before formal investigation that a

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complaint is without merit, it shall:

- (a) Dismiss the complaint; and
- (b) Notify the complainant and respondent of the board's decision.
- (3) If the board determines that a complaint warrants a formal investigation, it shall:
 - (a) Authorize an investigation into the matter; and
 - (b) Order a report to be made to the complaint screening committee at the earliest opportunity.

Section 4. Results of Formal Investigation; Board Decision on Hearing. (1) Upon completion of the formal investigation, the investigator shall submit a report to the complaint screening committee of the facts regarding the complaint. The committee shall review the investigative report and make a recommendation to the board. The board shall determine whether there has been a prima facie violation of KRS Chapter 334A or the administrative regulations promulgated thereunder and a complaint should be filed.

(2) If the board determines that a complaint does not warrant issuance of a formal complaint, it shall:

- (a) Dismiss the complaint; and
- (b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a violation has occurred but is not serious, the board may issue a written admonishment to the licensee. A copy of the written admonishment shall be placed in the permanent file of the licensee. The licensee shall have the right to file a response in writing to the admonishment within thirty (30) days of its receipt and may have it placed in his permanent file. Alternatively, the licensee may file a request for a hearing with the board within thirty (30) days of the admonishment. Upon receipt of the request, the board shall set aside the written admonishment and set the matter for hearing pursuant to the provisions of KRS Chapter 13B.

(4) If the board determines that a complaint warrants the issuance of a formal complaint against a respondent, the complaint screening committee shall prepare a formal complaint which states clearly the charge or charges to be considered at the hearing. The formal complaint shall be reviewed by the board and, if approved, signed by the chairman and served upon the individual as required by KRS Chapter 13B.

(5) If the board determines that a person may be in violation of KRS 334A.030(2), it shall:

- (a) Order the individual to cease and desist from further violations of KRS 334A.030(2);
- (b) Forward information to the county attorney of the county of residence of the person allegedly violating KRS 334A.030(2) with a request that appropriate action be taken under KRS 334A.990; or
- (c) Initiate action in Franklin Circuit Court for injunctive relief to stop the violation of KRS 334A.030(2).

Section 5. Settlement by Informal Proceedings. (1) The board, through counsel and the complaint screening committee, may, at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the chairman.

(3) The board may employ mediation as a method of resolving the matter informally.

Section 6. Notice and Service Process. A notice required by KRS Chapter 334A or this administrative regulation shall be issued pursuant to KRS Chapter 13B.

Section 7. Notification. The board shall make public:

- (1) Its final order in a disciplinary action under KRS 334A.180 with the exception of a written admonishment issued pursuant to Section 4(3) of this administrative regulation; and
- (2) An action to restrain or enjoin a violation of KRS 334A.030(2). [All complaints shall be in writing and verified and shall bear the date and signature of the person making the complaint.

Section 2. The person making the complaint shall signify willingness to testify in the event that it is necessary.

Section 3. Before a complaint is investigated it shall present substantial evidence of a specific violation.

Section 4. Complaints may be received by any board member, the board attorney, or by any board staff member.

Section 5. The person(s) receiving a complaint shall make an investigation to verify complaints and collect additional information.

Section 6. The person(s) receiving a complaint shall interview the person against whom the complaint has been made.

Section 7. The person(s) receiving a complaint shall evaluate information received; determine if the complaint is valid; and if an apparent violation has been committed.

Section 8. Consult legal counsel as indicated.

Section 9. The board shall notify the individual against whom the complaint has been made of the charges. They shall be advised of their rights in accordance with the administrative regulations of the board as follows:

- (1) For legal counsel; and
- (2) To access to evidence.

Section 10. If the complaint warrants a formal hearing, the board shall provide the respondent with:

- (1) A formal written presentation of charges;
- (2) A notice of the right to be represented by counsel;
- (3) A reasonable time to prepare any defense;
- (4) The right to answer charges;
- (5) The right to subpoena witnesses in their behalf; and
- (6) The notice of the right to appeal after an adjudication against them.

Section 11. A board member who has participated in the preliminary investigations shall not participate in the hearing process.

Section 12. All subpoenas shall be issued in the name of the board and shall be signed by the chairman of the board. The person requesting the subpoena shall bear the cost of serving the subpoena, paying the witness fees and expenses. The board shall bear the cost of witnesses subpoenaed in the board's behalf.

Section 13. The board shall notify the person making the complaint and the person against whom the complaint was made of the final disposition of the case.]

GEORGE O. PURVIS, Chair

DIANE SCHULER FLEMING, Assistant Attorney General

APPROVED BY AGENCY: September 14, 1999

FILED WITH LRC: September 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 27, 1999, at 10 a.m. at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 1999, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nancy Black, Executive Director, Division of Occupations and Professions, 700 Louisville Road, Frankfort,

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Kentucky 40601, telephone (502) 564-3296, Fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS

Agency contact: Nancy Black

(1) Type and number of entities affected: Approximately 1,900 licensees in speech-language pathology or audiology in the Commonwealth of Kentucky.

(2) Direct and indirect costs or savings to those affected: the direct cost to the licensees occurs only in the event that a disciplinary action is instituted against them. The indirect cost is the cost of conducting the hearings.

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: No additional effects or changes.

(a) Direct or indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: No change in reporting and paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Not applicable.

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No comments received.

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation does not affect economic activity.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.

(8) Assessment of expected benefits: Updates and revises the complaint procedure to bring it more fully into compliance with the mandates and provisions of KRS Chapter 13B.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Board is not aware of any statute, regulation or government policy which may be in conflict or is duplicated by this proposed regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

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

(10) Any additional comments: None

(11) TIERING: Is tiering applied? No. The regulation applies equally to all speech-language pathology and audiology licensees.

KENTUCKY BOARD OF SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY (Amendment)

201 KAR 17:090. Continuing education requirements.

RELATES TO: KRS 334A.170

STATUTORY AUTHORITY: KRS 334A.080

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Definitions. As used in this administrative regulation, unless the context otherwise requires:

(1) "Academic courses offered by an accredited postsecondary institution" means:

(a) A speech-language pathology or audiology course, designated by a speech-language pathology or audiology title or content; or

(b) An academic course, relevant to speech-language pathology or audiology.

(2) "Approved" means recognized by the Kentucky Board of Speech-Language Pathology and Audiology.

(3) "Continuing education hour" means sixty (60) clock minutes of participating in continuing educational experiences.

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

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

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

(5) "Provider" means an organization approved by the Kentucky Board of Speech-Language Pathology and Audiology for providing continuing education programs.

(6) "Relevant" means having content applicable to the practice of speech-language pathology or audiology as determined by the board.

Section 2. Accrual of Continuing Education Hours. (1) A minimum of fifteen (15) continuing education hours shall be accrued by each person holding licensure as a speech-language pathologist, speech-language pathology assistant or audiologist during the annual period for renewal.

(2) A person who holds a license in both speech-language pathology and audiology shall be required to complete a minimum of twenty-five (25) continuing education hours during the licensure period for renewal for the following year. This person shall obtain continuing education hours in both areas of licensure.

(3) All continuing education hours shall be in or related to the field in which the person is licensed.

(4) Continuing education hours earned in excess of those required under Section 2(1) and (2) of this administrative regulation may be carried over into the immediately following licensure renewal period to the following extent:

(a) A licensee holding one (1) license may carry over five (5) continuing education hours; or

(b) A licensee holding dual licensure may carry over eight (8) continuing education hours.

(5) A person newly licensed during the license renewal period shall not be required to complete continuing education as a prerequisite for the first renewal of their license.

Section 3. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the license shall be directly related to the professional growth and development of a speech-language pathologist, speech-language pathology assistant or audiologist. They may be earned by completing any of the following educational activities:

(1) Programs not requiring board review and approval. An educational program from any of the following providers shall be deemed to be relevant to the practice of speech-language pathology or audiology and shall be approved without further review by the board if it is:

(a) Sponsored or approved by:

1. The American Speech-Language-Hearing Association; or

2. The American Academy of Audiology;

(b) An academic course offered by an accredited postsecondary institution directly related to speech-language pathology or audiology;

(2) Programs requiring board review and approval. A program from any of the following sources shall be reviewed and determined if it is relevant and therefore subsequently approved by the board:

(a) A program, including a home study course and in-service training provided by another organization, educational institution, or service provider approved by the board;

(b) A program or academic course presented by the licensee. A presenter of relevant programs or academic courses may earn full continuing education credit for each contact hour of instruction, not to exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of the same course;

(c) Authoring an article in a relevant, professionally recognized or juried publication. Credit shall not be granted for an article unless it was published within the one (1) year period immediately preceding the renewal date and a licensee shall not earn more than one-half (1/2) of the continuing education hours required for renewal. Not more than one (1) publication shall be counted during a renewal period.

(3) A general education course, elective course, or a course designated to meet degree requirements, shall not be acceptable. Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equals fifteen (15) continuing education hours.

Section 4. Procedures for Approval of Continuing Education Programs. A course, which has not been preapproved by the board, may be used for continuing education if approval is secured from the board for the course. In order for the board to adequately review these programs, the following information shall be submitted:

(1) A published course or similar description;

(2) Names and qualifications of the instructors;

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

(4) Number of continuing education hours requested;

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

(6) Application to the board for continuing education credits approval.

Section 5. Procedures for Preapproval of Continuing Education Sponsors and Programs. (1) Sponsor approval. Any entity seeking to obtain approval:

(a) Of a continuing education program prior to its offering shall apply to the board at least sixty (60) days in advance of the commencement of the program, and shall provide the information required in Section 4 of this administrative regulation.

(b) As a prior-authorized continuing education provider under Section 3(1) of this administrative regulation, shall satisfy the board that the entity seeking this status:

1. Consistently offers programs which meet or exceed all the requirements set forth in Section 2(2) of this administrative regulation; and

2. Does not exclude any licensee from its programs.

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

(a) Is an organized program of learning;

(b) Pertains to subject matters, which integrally relate to the practice of speech-language pathology or audiology;

(c) Contributes to the professional competency of the licensee; and

(d) Is conducted by individuals who have educational training or experience acceptable to the board.

Section 6. Responsibilities and Reporting Requirements of a Licensee. (1) During the licensure renewal period, up to fifteen (15) percent of all licensees shall be selected at random by the board and required to furnish documentation of the completion of the appropriate number of continuing education hours. Verification of con-

tinuing education hours shall not otherwise be reported to the board;

(2) A licensee shall:

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

(b) Identify his own continuing education needs and seek activities that meet those needs;

(c) Seek ways to integrate new knowledge, skills and attitudes;

(d) Select approved activities by which to earn continuing education hours;

(e) Submit to the board, if applicable, a request for approval for continuing education activities not approved as required in Section 3(2) of this administrative regulation;

(f) At the time of renewal, list the continuing education hours obtained during that licensure renewal period;

(g) Document attendance, participation in, and successful completion of continuing education activity for a period of one (1) year from the date of the renewal; and

(h) Maintain records of continuing education hours;

(3) The following items may be used to document continuing education activity:

(a) Transcript;

(b) Certificate;

(c) Affidavit signed by the instructor; or

(d) Receipt for the fee paid to the sponsor;

(4) Comply with the provisions of this administrative regulation. Failure to comply shall constitute a violation of KRS 334A.170(4) and shall result in:

(a) Refusal to renew licensure;

(b) Suspension of licensure; or

(c) Revocation of licensure;

(5) Documentation sent to the board prior to renewal shall be returned to the licensee by regular mail.

Section 7. Responsibilities and Reporting Requirements of Providers and Sponsors. (1) A provider of continuing education not requiring board approval shall be responsible for providing documentation, as established in Section 5(4) of this administrative regulation, directly to the licensee.

(2) A sponsor of continuing education requiring board approval shall be responsible for submitting a course offering to the board for review and approval before listing or advertising that offering as approved by the board.

Section 8. Board to Approve Continuing Education Hours; Appeal of Denial. (1) If an application for approval of continuing education hours is denied, in whole or part, the licensee shall have the right to appeal the board's decision.

(2) An appeal shall be:

(a) In writing;

(b) Received by the board within thirty (30) days after the date of the decision denying approval of continuing education hours; and

(c) Conducted in accordance with KRS Chapter 13B.

Section 9. Waiver or Extensions of Continuing Education. (1) On application, the board may grant a waiver of the continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:

(a) Medical disability of the licensee;

(b) Illness of the licensee or an immediate family member;

(c) Death or serious injury of an immediate family member.

(2) A written request for waiver or extension of time involving medical disability or illness shall be:

(a) Submitted by the person holding licensure; and

(b) Accompanied by a verifying document signed by a licensed physician.

(3) A waiver of or extension of time within which to fulfill the minimum continuing education requirements shall not exceed one (1) year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the person holding licensure shall reapply for the waiver or extension.

Section 10. Continuing Education Requirements for a Person on Inactive Status or Holding Interim Licensure. (1) The continuing education requirements established in Section 2 of this administrative regulation shall be waived for a licensee on inactive status during the time period he remains inactive. A person on inactive status who requests reactivation shall meet the requirements of Section 11 of this administrative regulation.

(2) The continuing education requirements established in Section 2 of this administrative regulation shall not apply to a person holding interim licensure.

Section 11. Continuing Education Requirements for Reinstatement or Reactivation of Licensure. (1) A person requesting reinstatement or reactivation of licensure shall submit evidence of fifteen (15) hours of continuing education within the twelve (12) month period immediately preceding the date on which the request for reinstatement or reactivation is submitted to the board.

(2) If the person seeking reinstatement or reactivation does not meet the requirement established in subsection (1) of this section, the board shall reinstate or reactivate licensure, and the person shall obtain fifteen (15) hours of continuing education within six (6) months of the date on which licensure is reinstated.

(3) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 2 of this administrative regulation and shall not be used to comply with the requirements of that section. [Continuing Education Hour Defined; Accrual of Continuing Education Hours Mandatory; Computation of Accrual. One (1) continuing education hour means sixty (60) contact minutes of participating in continuing educational experiences. A minimum of fifteen (15) continuing education hours shall be accrued by each licensee during the licensure period for renewal for the following year. The licensure period shall be January 1 through December 31 of each calendar year. All hours shall be in or related to the field of speech-language pathology or audiology and in the specific area for which licensure is sought. Individuals who hold a license in both speech-language pathology and audiology will be required to complete a minimum of twenty-five (25) continuing education hours during the licensure period for renewal for the following year. These individuals shall obtain continuing education hours in both areas of licensure.

Section 2. Methods of Acquiring Continuing Education Hours. The following educational activities are examples of, but not limited to, methods of acquiring continuing education hours provided they are directly related to the professional growth and development of speech-language pathologists and/or audiologists:

(1) Short courses, miniseminars, self-study programs or independent studies, and teleconferences sponsored or approved by the American Speech-Language-Hearing Association;

(2) Educational sessions of the Kentucky Speech-Language-Hearing Association state convention and/or regional conferences; or

(3) The following types of educational activities may be submitted to the board for approval provided they are directly related to the fields of speech-language pathology and/or audiology:

(a) Educational sessions provided within the licensee's work setting;

(b) College credit courses approved by and/or acceptable to the board taken for credit or through official audit;

(c) Scientific and educational lectures, workshops or seminars;

(d) Scientific and educational lectures, workshops, or seminars presented by the licensee. A maximum of two (2) continuing education hours may be credited for scientific and educational lectures, workshops, or seminars presented by the licensee. The two (2) hour maximum credit for presentations by the licensee will be applicable to only one (1) licensee (speech-language pathology or audiology) for those individuals who hold dual licensure.

(4) Related continuing education subjects which are not specifically a part of the field of speech-language pathology or audiology may be approved for up to two (2) continuing education hours if the board believes that the related areas serve to enhance the licensee's ability to practice. The two (2) hour maximum credit for related areas of study by the licensee shall be applicable to only one (1) licensee (speech-language pathology or audiology) for those individuals who

hold dual licensure:

Section 3. Procedures for Accreditation of Sponsors and Approval of Continuing Education Activities. Prior approval of continuing education activities may be requested from the board by an institution, organization, agency, or individual licensee who desires approval of a continuing education activity prior to its presentation. A licensee who desires to establish accreditation of continuing education activity prior to attendance shall be received at the board no later than forty-five (45) days in advance of the commencement of the activity, on a form provided by the board, stating the type of learning activity, the subject matter, the names and qualifications of the instructors, and the number of continuing education hours offered. A continuing education activity shall qualify for approval if the board determines that the activity being presented:

(1) Is an organized program of learning; and

(2) Pertains to subject matters which integrally relate to the practice of speech-language pathology and/or audiology; and

(3) Contributes to the professional competency of the licensee; and

(4) Is conducted by individuals who have education training, or experience acceptable to the board.

Section 4. Responsibilities and Reporting Requirements of Licensees. The ultimate responsibility for continuing education activities rests with the individual. His responsibility is to identify his own continuing education needs, to take the initiative in seeking continuing professional education activities to meet these needs, and to seek ways to integrate new knowledge, skills and attitudes. Each licensee has specific responsibility to:

(1) Select approved activities by which to earn continuing education hours;

(2) Obtain from the board prior approval for continuing education activities not accredited by the board;

(3) Maintain records of continuing education hours. Each licensee shall maintain, for a period of three (3) years, all documentation verifying successful completion of continuing education hours. During each licensure renewal period, up to fifteen (15) percent of all licensees shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education hours for a period not to exceed the current renewal period and the two (2) years immediately preceding. Verification of continuing education hours is not otherwise to be reported to the board;

(4) Documentation of attendance and participation in a continuing education activity may be in the form of, but not limited to, official documents such as transcripts, certificates, affidavits signed by instructors, receipts for fees paid to the sponsor, or less formal evidence such as written summaries of experiences that are not otherwise formally or officially documented in any way. The type of documentation required varies depending on the specific activity submitted to the board for approval; and

(5) Fully comply with the provisions of this administrative regulation. Failure to comply shall constitute unprofessional conduct as set forth in KRS 334A.180 and may result in the refusal to renew, suspension, or revocation of the license.

Section 5. Carry-over of Continuing Education Hours; One (1) Year Exemption for Newly Licensed Persons. (1) Continuing education hours earned in excess of those required under Section 1 of this administrative regulation may be carried over into the immediately following licensure renewal period to the following extent:

(a) A licensee holding one (1) license may carry over five (5) continuing education hours; or

(b) A licensee holding dual licensure may carry over eight (8) continuing education hours.

(2) Those persons newly licensed during the license renewal period shall not be required to complete continuing education as a prerequisite for the first renewal of their license.

Section 6. Board to Approve Continuing Education Hours; Appeal when Approval Denied. (1) The board may appoint a committee to review all applications for approval of continuing education hours.

(2) In the event of denial, in whole or part, of any application for

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approval of continuing education hours, the licensee shall have the right to appeal in writing to the board. Notice of such appeal shall be received by the board within thirty (30) days after the entry date of the board's order denying approval of continuing education hours.

(3) A hearing before the full board may be held at the request of the licensee if the written appeal is denied, provided the board receives written request for such hearing within ten (10) days after the entry date of the board's order denying the written appeal.

Section 7. Interim Licensees. Continuing education requirements do not apply to the holders of interim licenses.]

GEORGE O. PURVIS, Chair

DIANE SCHULER FLEMING, Assistant Attorney General

APPROVED BY AGENCY: September 14, 1999

FILED WITH LRC: September 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 27, 1999, at 10 a.m. at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 1999, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nancy Black, Executive Director, Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, telephone (502) 564-3296, Fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS

Agency contact: Nancy Black

(1) Type and number of entities affected: Approximately 1,900 licensees in speech-language pathology or audiology in the Commonwealth of Kentucky.

(2) Direct and indirect costs or savings to those affected: The direct cost is the cost of attending the continuing education class.

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: No additional effects or changes.

(a) Direct or indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: No change in reporting and paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Not applicable.

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No comments received.

(a) Geographical area in which administrative regulation will be

implemented: This administrative regulation does not affect economic activity.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.

(8) Assessment of expected benefits: Complete revision of continuing education requirements. The new format, which retains many of the same requirements, is easier to follow and understand. Changes have also been made in light of years of monitoring the continuing education program for the licensees, for example, providing for the waiver of the requirement with specific standards which put the licensees on notice.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Board is not aware of any statute, regulation or government policy which may be in conflict or is duplicated by this proposed regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

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

(10) Any additional comments: None

(11) TIERING: Is tiering applied? No. The regulation applies equally to all speech-language pathology and audiology licensees.

JUSTICE CABINET Department of Corrections Division of Adult Institutions (Amendment)

501 KAR 6:030. Kentucky State Reformatory.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

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

Section 1. (1)(a) Kentucky State Reformatory policies and procedures September 14 [June 14], 1999, are incorporated by reference.

(b) There will be no public hearing on these policies and procedures as they are secured policies under the provisions of KRS 197.025 which states that such policies shall not be accessible to the public or inmates.

(2) Kentucky State Reformatory policies and procedures include:

KSR 01-00-09 Public Information and News Media Relations
(Amended 9/14/99)

KSR 01-00-10 Entry Authorization for All Cameras and Tape Recorders Brought into the Institution (Amended 9/14/99)

KSR 01-00-15 Cooperation and Coordination with Oldham County Courts [Court] (Amended 9/14/99)

KSR 01-00-19 Personal Service Contract Personnel (Amended 9/14/99)

KSR 02-00-01 Inmate Canteen

KSR 02-00-03 Screening Disbursements from Inmate Personal Accounts

KSR 02-00-11 Inmate Personal Accounts

KSR 02-00-12 Institutional Funds and Issuance of Checks

KSR 04-00-02 Staff Training and Development

KSR 05-00-01 Officers' Daily Housing Security and Safety Log

KSR 05-00-02 Research Activities

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KSR 05-00-03	Management Information Systems	KSR 12-00-05	Sanitation Policy and Standards
KSR 06-00-01	Inmate Master File (<u>Amended 9/14/99</u>)	KSR 12-00-07	Regulations for Inmate Barbershop
KSR 06-00-03	Kentucky Open Records Law and Release of Psychological/ Psychiatric Information	KSR 12-00-09	Treatment of Inmates with Body Lice
KSR 07-00-02	Institutional Tower Room Regulations	KSR 13-00-02	Hospital Operations, Rules and Regulations
KSR 07-00-04	Handling of PCB Articles and Containers	KSR 13-00-03	Medication for Inmates Leaving Institution Grounds
KSR 07-00-05	Proper Removal of Transformers	KSR 13-00-04	Medical and Dental Care
KSR 07-00-06	Asbestos Abatement (<u>Amended 9/14/99</u>)	KSR 13-00-05	Medical Records
KSR 07-00-07	Discharge Monitoring Report (DMR) (<u>Amended 9/14/99</u>)	KSR 13-00-08	Institutional Laboratory Procedures
KSR 07-00-08	Control of Hazardous Energy (Lockout or Tagout) (<u>Amended 9/14/99</u>)	KSR 13-00-09	Institutional Pharmacy Procedures
KSR 07-00-09	Inventory Control of Underground Storage Tanks (<u>Amended 9/14/99</u>)	KSR 13-00-10	Requirements for Medical Personnel
KSR 08-00-07	Inmate Family Emergency - Life Threatening Illness or Death in Inmate's Immediate Family	KSR 13-00-11	Health Evaluation
KSR 08-00-08	Death of an Inmate/Notification of Inmate Family in Case of Serious Injury, Critical Medical Emergency, Major Surgery or Death	KSR 13-00-12	Vision Care/Optomety Services
KSR 08-00-10	Hazardous Chemicals and Material Safety Data Sheet	KSR 13-00-14	Periodic Health Examinations for Inmates
KSR 09-00-21	Crime Scene Camera	KSR 13-00-15	Medical Alert System
KSR 09-00-22	Collection, Preservation, and Identification of Physical Evidence	KSR 13-00-16	Suicide Prevention and Intervention Program
KSR 09-00-23	Drug Abuse Testing	KSR 13-00-17	Special Care
KSR 09-00-26	Contraband Outside Institutional Perimeter	KSR 13-02-01	Mental Health Services
KSR 09-00-28	Restricted Areas	KSR 13-02-02	Mentally Retarded Inmates
KSR 09-00-29	Transportation of Inmates	KSR 13-02-03	Suicide Prevention and Intervention Program
KSR 09-00-30	Parole Board	KSR 13-02-04	Department of Corrections Division of Mental Health's Intensive Services Transitional Program: Program Description
KSR 09-00-31	Forced Cell Move in Medium or Maximum Area	KSR 13-02-05	Access to Intensive Services Programs Operated at Kentucky State Reformatory by the Division of Mental Health
KSR 10-00-10	Segregation - Special Management Inmate Legal Access	KSR 14-00-01	Inmate Rights
KSR 10-00-11	Unit D - Behavior Problem Control	KSR 14-00-02	Americans with Disabilities Act Inmate Program Access
KSR 10-01-13	Unit D - Property Room Access	KSR 14-00-04	Inmate Grievance Procedure
KSR 10-01-01	Segregation Unit - Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training and Evaluation	KSR 15-00-02	Regulations Prohibiting Inmate Control or Authority Over Other Inmate(s)
KSR 10-01-02	Segregation - General Operational Procedures	KSR 15-00-06	Inmate I.D. Cards
KSR 10-01-03	Segregation - Inmate Tracking System and Records System	KSR 15-00-07	Inmate Rules and Discipline - Adjustment Committee Procedures
KSR 10-01-04	Segregation - Administrative Segregation	KSR 15-00-08	Firehouse Living Area
KSR 10-01-05	Segregation - Disciplinary Segregation	KSR 15-00-09	Use of Tobacco Products [Smoking and No Smoking Areas] for Inmates and Staff (<u>Amended 9/14/99</u>)
KSR 10-01-06	Segregation - Protective Custody	KSR 15-00-10	Program Services for Special Housing Placement
KSR 10-01-07	Segregation - Convalescent Care Unit	KSR 15-01-01	Operational Procedures and Rules and Regulations for Unit A, B & C: Functions of Assigned Personnel
KSR 10-01-08	Unit D - Safekeepers and Pretrial Contract Hold Status Inmates	KSR 15-01-02	Operational Procedures and Rules and Regulations for Unit A, B, & C: Staff Operational Procedures
KSR 10-01-09	Unit D - Hold Ticket Residents	KSR 15-01-03	Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Rules and Regulations
KSR 10-01-11	Segregation Unit - Behavior Problem Control	KSR 15-01-04	Operational Procedures and Rules and Regulations for Unit A, B & C: Institutional Medical and Fire Safety Service: Unit Application
KSR 10-01-13	Segregation Unit - Property Room Access	KSR 15-01-05	Operational Procedures Rules and Regulations for Unit A, B, & C: Institutional Inmate Services
KSR 10-02-01	Department of Corrections Division of Mental Health's Intensive Services Transitional Program: Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training, Time and Attendance	KSR 15-01-06	Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Honor Housing Criteria and Regulations
KSR 10-02-02	Unit E Designated Staff Visits	KSR 16-00-02	Inmate Correspondence and Mailroom Operations
KSR 10-02-03	Unit E-1 Convalescent Care	KSR 16-00-03	Inmate Access to Telephones
KSR 10-02-04	Department of Corrections Division of Mental Health's Intensive Services Transitional Program: General Operating Procedures	KSR 16-01-01	Visiting Regulations
KSR 10-02-07	<u>Correctional Psychiatric Treatment Unit: Inmate Tracking System and Record System (Added 9/14/99)</u>	KSR 16-01-02	Lawn Visit Procedure and Regulations
KSR 11-00-01	<u>Meal Planning and Procedure (Amended 9/14/99) [for the General Population]</u>	KSR 16-01-03	Night Visit Regulations
KSR 11-00-02	Special Diets	KSR 17-00-05	Assessment and Orientation, Consent Decree Notification to Inmates
KSR 11-00-03	Food Service Inspections (<u>Amended 9/14/99</u>)	KSR 17-00-07	Inmate Personal Property
KSR 11-00-04	Dining Room Rules and Dress Code for Inmates (<u>Amended 9/14/99</u>)	KSR 17-00-08	Repair of Inmate Owned Appliances by Outside Dealers
KSR 11-00-06	Health Standards and [?]Regulations for Food Service Employees (<u>Amended 9/14/99</u>)	KSR 18-00-04	Intratransfers, Identification Department, Departure - Admission and Discharge
KSR 11-00-07	Early Chow Line Passes for Medically Designated Inmates	KSR 18-00-05	Transfer of Residents to Kentucky Correctional Psychiatric Center, and Referral Procedure for Residents Adjudicated Guilty but Mentally Ill
KSR 12-00-01	Inmate Summer Dress Regulations	KSR 18-00-06	Classification
KSR 12-00-03	State Items Issued to Inmates	KSR 18-00-07	Kentucky State Reformatory Placement Committee
		KSR 19-00-01	Inmate Work Incentives
		KSR 19-00-02	On-the-job (<u>OJT</u>) Training Program (<u>Amended 9/14/99</u>)
		KSR 19-00-03	Safety Inspections of Inmate Work Assignment

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KSR 20-00-01	Locations (Amended 9/14/99)
KSR 20-00-04	Technical and Adult Basic Level Learning Center Programs (Amended 9/14/99)
KSR 20-00-06	Criteria for Participation in A College Program
KSR 21-00-01	English as a Second Language (Amended 9/14/99)
KSR 21-00-02	Legal Aide Office and Inmate Law Library Services and Supervision
KSR 21-00-03	Inmate Library Services
KSR 21-00-05	Library Services for Unit D
KSR 22-00-03	Library Services for Correctional Psychiatric Treatment Unit [(Added 6/14/99)]
KSR 22-00-07	Inmate Organizations
KSR 22-00-08	Inmate Magazine
KSR 23-00-02	Privilege Trips
KSR 23-00-03	Chaplain's Responsibility and Inmate Access to Religious Representatives
KSR 24-00-02	Religious Programming
KSR 25-00-01	Substance Abuse and Chemical Dependency Program
KSR 26-00-01	Discharge of Inmates to Hospital or Nursing Home Volunteer Services Program

DOUG SAPP, Commissioner
TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: September 13, 1999

FILED WITH LRC: September 15, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1999, at 9 a.m., in the 5th Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by October 14, 1999, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone (502) 564-2024, Facsimile (502) 564-6494.

REGULATORY IMPACT ANALYSIS

Contact person: Tamela Biggs

(1) Type and number of entities affected: 532 employees of the correctional institutions, 1608 inmates, and all visitors to state correctional institutions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

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

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

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET Department of Corrections Division of Adult Institutions (Amendment)

501 KAR 6:040. Kentucky State Penitentiary.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Kentucky State Penitentiary.

Section 1. (1)(a) Kentucky State Penitentiary policies and procedures, September 14 [April 14], 1999 are incorporated by reference.

(b) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Kentucky State Penitentiary policies and procedures include:

KSP 01-02-01	Public Information and Media Communications
KSP 020000-15	Legal Assistance
KSP 02-01-01	Inmate Commissary Program
KSP 02-08-01	Inventory Records and Control
KSP 02-11-01	Requisition and Purchase of Supplies and Equipment
KSP 02-12-01	Inmate Personal Funds
KSP 05-02-01	Management Information System
KSP 06-01-01	Inmate Records
KSP 10-02-01	Special Management Units: Assignment, Classification Review and Release
KSP 10-02-05	Special Security Unit [(Amended 4/14/99)]
KSP 10-04-01	Special Needs Inmates
KSP 11-03-01	Therapeutic Diets
KSP 11-06-01	Food Service Inspections

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KSP 120000-11	Religious Services - Staffing
KSP 120000-18	Religious Services - Religious Programming
KSP 13-01-01	Pharmacy Procedures [(Amended 4/14/99)]
KSP 13-02-01	Health Services [(Amended 4/14/99)]
KSP 13-02-02	Organization of Medical Services [(Amended 4/14/99)]
KSP 13-02-03	Continuity of Care [(Amended 4/14/99)]
KSP 13-02-04	Levels of Care and Staff Training [(Amended 4/14/99)]
KSP 13-02-05	Consultations [(Amended 4/14/99)]
KSP 13-02-08	Health Records [(Amended 4/14/99)]
KSP 13-02-09	Psychiatric and Psychological Services [(Amended 4/14/99)]
KSP 13-02-11	Psychological and Psychiatric Treatment Upon Release
KSP 13-02-12	Dental Services for Special Management Units
KSP 13-02-13	Optometric Services
KSP 13-06-02	Informed Consent [(Added 4/14/99)]
KSP 14-03-01	Marriage of Inmates
KSP 14-04-01	Legal Services
KSP 14-06-01	Inmate Grievance Procedure
KSP 15-01-01	Inmate Grooming and Dress Code (Amended 9/14/99)
KSP 15-03-01	Award of Meritorious Good Time
KSP 15-06-01	Adjustment Procedures
KSP 16-01-01	Visiting Program [(Amended 4/14/99)]
KSP 16-02-01	Inmate Correspondence
KSP 16-03-02	Inmate Telephone Access
KSP 16-04-01	Inmate Packages
KSP 17-01-01	Inmate Personal Property
KSP 17-01-02	Disposition of Unauthorized Property
KSP 17-01-03	Procedures for Providing Clothing, Linens and Other Personal Items
KSP 17-01-04	Property Room, Clothing Storage and Property Inventory Control
KSP 18-01-01	General Guidelines and Functions of the Classification Committee
KSP 18-01-02	Functions of the Classification Committee
KSP 18-06-01	Classification Document
KSP 18-10-01	Parole Progress Report
KSP 18-11-01	Transfers to Kentucky Correctional Psychiatric Center (KCPC)
KSP 18-15-01	Protective Custody Unit
KSP 19-04-01	Inmate Work Programs and Safety Inspections of Inmate Work Locations
KSP 19-04-02	Unit Classification Committee: Inmate Work Assignments
KSP 19-05-01	Correctional Industries
KSP 20-04-01	Educational Programs
KSP 22-04-01	Arts and Crafts Program
KSP 25-01-02	Inmate Release Procedure (Added 9/14/99)
KSP 25-04-01	Inmate Furloughs
KSP 25-08-01	Extended Furloughs
KSP 25-10-01	Discharge of Inmates by Shock Probation

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: September 13, 1999

FILED WITH LRC: September 13, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1999, at 9 a.m., in the State Office Building Auditorium. Individuals interested in being heard at this hearing shall notify this agency in writing by October 14, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative

regulation to the contact person.

CONTACT PERSON: Jack T. Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Phone (502) 564-2024, Fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS

Contact person: Tamela Biggs, Staff Attorney

(1) Type and number of entities affected: 328 employees of the correctional institutions, 815 inmates, and all visitors to state correctional institutions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

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

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

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

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

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET
Department of Corrections
Division of Adult Institutions
(Amendment)

501 KAR 6:060. Northpoint Training Center.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

VOLUME 26, NUMBER 4 – OCTOBER 1, 1999

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Northpoint Training Center.

Section 1. (1)(a) Northpoint Training Center policies and procedures, September [April] 14, 1999, are incorporated by reference.

(b) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Northpoint Training Center policies and procedures include:

NTC 01-05-01	Extraordinary Occurrence Reports	NTC 13-06-01	Licensure and Training Standards (<u>Amended 9/14/99</u>)
NTC 01-10-01	Legal Assistance for Corrections Staff	NTC 13-07-01	Provisions for Health Care Delivery (<u>Amended 9/14/99</u>)
NTC 01-11-01	Political Activities of Merit Employees	NTC 13-08-01	Medical and Dental Records (<u>Amended 9/14/99</u>)
NTC 01-15-01	Establishment of the Warden as Chief Executive Officer [<u>Amended 4/14/99</u>]	NTC 13-09-01	Special Diets
NTC 01-17-01	Relationships with Public, Media and Other Agencies	NTC 13-11-01	Inmate Health Screening and Evaluation
NTC 02-02-02	Warden's Participation in the Agency Budgeting Process	NTC 13-12-01	Special Health Care Programs
NTC 02-03-01	Accounting for Appropriations and Expenditures of Funds	NTC 13-13-01	Inmate Self-administration of Medication (<u>Amended 9/14/99</u>)
NTC 02-04-01	Internal Control and Monitoring of Accounting Procedures	NTC 13-17-01	Inmates Assigned to Health Services
NTC 02-07-02	Institutional Religious Center Fund [<u>Amended 4/14/99</u>]	NTC 13-19-01	Mental Health Care Program (<u>Amended 9/14/99</u>)
NTC 02-08-01	Inmate Canteen	NTC 13-19-03	Suicide Prevention and Intervention Program
NTC 02-10-01	Insurance Coverage	NTC 13-20-01	Infectious Disease (<u>Amended 9/14/99</u>)
NTC 02-12-01	Inmate Accounts [<u>Amended 4/14/99</u>]	NTC 13-20-02	Infection Control
NTC 04-01-01	Training and Staff Development [<u>Amended 4/14/99</u>]	NTC 13-20-03	Disposal of Biohazard Waste
NTC 04-04-01	Firearms and Chemical Agents Training	NTC 13-21-01	Vision Care and Optometry Services
NTC 06-01-01	Offender Records	NTC 13-22-01	Informed Consent
NTC 06-01-02	Records - Release of Information	NTC 13-23-01	Special Needs Inmates (<u>Amended 9/14/99</u>)
NTC 06-01-03	Taking Offender Record Folders onto the Yard	NTC 14-01-01	Legal Services Program (<u>Amended 9/14/99</u>)
NTC 08-05-01	The Fire and Safety Officer (<u>Amended 9/14/99</u>)	NTC 14-01-02	Receiving, Viewing, Handling and Storage of Video Tapes (<u>Amended 9/14/99</u>)
NTC 08-05-02	Fire Procedures (<u>Amended 9/14/99</u>)	NTC 14-02-01	Inmate Grievance Procedure
NTC 08-05-03	Fire Prevention (<u>Amended 9/14/99</u>)	NTC 14-03-01	Inmate Rights and Responsibilities
NTC 08-05-04	Storage of Flammables and Dangerous Chemicals and Their Use	NTC 14-03-02	Board of Claims (<u>Amended 9/14/99</u>)
NTC 08-07-01	Safety Standards	NTC 15-01-01	Restoration of Forfeited Good Time
NTC 10-01-01	Special Management Unit (<u>Amended 9/14/99</u>)	NTC 15-02-01	Due Process/Disciplinary Procedures
NTC 10-03-01	Protective Custody (<u>Deleted 9/14/99</u>)	NTC 15-02-02	Extra Duty Assignments
NTC 11-03-01	Food Services: General Guidelines	NTC 15-02-03	Hearing Officer
NTC 11-04-02	Menu, Nutrition and Special Diets	NTC 15-03-01	Rules for Inmates Assigned to Outside Detail
NTC 11-05-02	Health Standards and Regulations for Food Service Employees	NTC 15-03-02	Rules and Regulations for General Population Dormitories
NTC 11-06-01	Inspection and Sanitation	NTC 15-03-03	Nonsmoking Dormitory [<u>Added 4/14/99</u>]
NTC 11-07-01	Purchasing and Storage of Food Products	NTC 15-04-01	Inmate Identification
NTC 12-01-01	Institutional Inspection (<u>Amended 9/14/99</u>)	NTC 15-05-01	Drug Abuse and Intoxicants Testing
NTC 12-02-01	Personal Hygiene for Inmates; Clothing and Linens (<u>Amended 9/14/99</u>)	NTC 16-01-01	Mail Regulations [<u>Amended 4/14/99</u>]
NTC 12-02-02	Issuance of Personal Hygiene Products (<u>Amended 9/14/99</u>)	NTC 16-02-01	Visiting
<u>NTC 12-04-01</u>	<u>Sanitation and Pest Control Officer Post Orders (<u>Added 9/14/99</u>)</u>	NTC 16-02-02	Extended and Special Visits
<u>NTC 12-06-01</u>	<u>Housekeeping Procedures (<u>Added 9/14/99</u>)</u>	NTC 16-02-03	Honor Dorm and Outside Detail Dorm Visiting
NTC 12-07-01	Grooming and Hair Care Standards (<u>Amended 9/14/99</u>)	NTC 16-02-04	Controlled Visitation
NTC 13-01-01	Emergency Medical Care Plan	NTC 16-03-01	Inmate Furloughs
NTC 13-01-02	Emergency and Specialized Health Services	NTC 16-05-01	Telephone Use and Control
NTC 13-02-01	Administration and Authority for Health Services	NTC 17-01-01	Personal Property Control (<u>Amended 9/14/99</u>)
NTC 13-03-01	Sick Call and Pill Call (<u>Amended 9/14/99</u>)	NTC 17-01-02	Authorized Inmate Personal Property (<u>Amended 9/14/99</u>)
NTC 13-04-01	Utilization of Pharmaceutical Products (<u>Amended 9/14/99</u>)	NTC 17-01-03	Unauthorized Inmate Property
NTC 13-05-01	Dental Services (<u>Amended 9/14/99</u>)	NTC 17-01-04	Disposition of Unauthorized Property
NTC 13-05-03	Dental Radiation Levels	NTC 17-01-05	State Issue and Required Inmate Clothing
NTC 13-05-04	Attest Steam Incubator	NTC 17-03-01	Assessment and Orientation
		NTC 18-01-01	Parole Progress Report
		NTC 18-02-01	Classification
		NTC 18-02-02	Classification - 48 Hour Notification
		NTC 18-03-01	Special Notice Form
		NTC 18-05-01	Transfers of Inmates
		NTC 18-05-02	Transfer of Inmates to Kentucky Correctional Psychiatric Center
		NTC 19-01-01	Inmate Work Program
		NTC 19-01-03	Temporary Leave from Job Assignment
		NTC 19-02-01	Correctional Industries
		NTC 19-02-02	Guidelines for Correctional Industries
		NTC 20-01-01	Educational Programs
		NTC 20-02-02	Live Work Projects in Vocational School Classes
		NTC 21-01-01	Library Services
		NTC 22-03-01	Conducting Inmate Organizational Meetings and Programs
		NTC 23-01-01	Religious Services
		NTC 23-03-01	Marriage of Inmates
		NTC 24-04-01	Honor Housing
		NTC 24-05-01	Unit Management
		NTC 25-01-01	Release Preparation Program
		NTC 25-01-02	Temporary and Community Center Release
		NTC 25-01-03	Graduated Release
		NTC 25-02-01	Funeral Trips and Bedside Visits

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NTC 25-03-01 Inmate Release Procedure
NTC 26-01-01 Citizen Involvement and Volunteer Services Program

DOUG SAPP, Commissioner
TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: September 13, 1999

FILED WITH LRC: September 15, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1999, at 9 a.m. in the State Office Building Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by October 14, 1999, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to be heard at the public hearing, you may submit comments on the proposed administrative regulation. Send written notification to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack T. Damron or Tameela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, (502) 564-2024, FAX: (502) 564-6494.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Tameela Biggs

(1) Type and number of entities affected: 302 employees of the correctional institutions, 1,148 inmates, and all visitors to state correctional institutions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

None

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

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

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

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

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

(a) Necessity of proposed administrative regulation if in conflict:

N/A

(b) If in conflict, was effort made to harmonize the proposed ad-

ministrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET Department of Corrections Division of Adult Institutions (Amendment)

501 KAR 6:170. Green River Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Green River Correctional Complex.

Section 1. Incorporation by Reference. (1)(a) Green River Correctional Complex Policies and Procedures, September [January] 14, 1999, is incorporated by reference.

(b) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Green River Correctional Complex Policies and Procedures include:

<u>GRCC 01-01-01</u>	<u>Establishment of the GRCC Institutional Operations Manual (Added 9/14/99)</u>
<u>GRCC 01-01-02</u>	<u>Organization of GRCC Operations Manual (Added 9/14/99)</u>
<u>GRCC 01-01-03</u>	<u>Formulation and Revision of GRCC Operating Procedures (Added 9/14/99)</u>
<u>GRCC 01-02-01</u>	<u>Organization and Assignment of Responsibility (Added 9/14/99)</u>
<u>GRCC 01-04-01</u>	<u>Monthly Reports (Added 9/14/99)</u>
<u>GRCC 01-05-01</u>	<u>Procedures Officer (Added 9/14/99)</u>
<u>GRCC 01-06-01</u>	<u>Inmate Access to and Communication with GRCC Staff (Added 9/14/99)</u>
<u>GRCC 01-08-01</u>	<u>GRCC Cooperation with Outside Bodies Including Courts, Governmental, Legislative, Executive and Community Agencies (Added 9/14/99)</u>
<u>GRCC 01-10-01</u>	<u>Smoking: GRCC Facility (Added 9/14/99)</u>
<u>GRCC 01-11-01</u>	<u>Institutional Planning (Added 9/14/99)</u>
<u>GRCC 02-07-01</u>	<u>Inmate Personal Funds</u>
<u>GRCC 02-06-01</u>	<u>Inmate Canteen</u>
<u>GRCC 09-02-01</u>	<u>Drug Abuse Testing</u>
<u>GRCC 09-09-01</u>	<u>Contraband Control: Collection, Preservation and Disposition of Contraband and Identification of Physical Evidence</u>
<u>GRCC 10-01-01</u>	<u>Special Management Unit</u>
<u>GRCC 11-01-01</u>	<u>Food Service Guidelines</u>
<u>GRCC 11-02-01</u>	<u>Food Service: Security</u>
<u>GRCC 11-03-01</u>	<u>Dining Room Guidelines</u>
<u>GRCC 11-04-01</u>	<u>Food Service: Meals</u>
<u>GRCC 11-04-02</u>	<u>Food Service: Menu, Nutrition and Special Diets</u>
<u>GRCC 11-06-01</u>	<u>Health Requirements of Food Handlers</u>

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GRCC 11-07-01	Food Service: Inspections and Sanitation
GRCC 12-01-01	Clothing, Bedding, Hygiene Supplies and Barber Services
GRCC 13-01-01	Organization of Medical Services
GRCC 13-02-01	Medical Services: Sick Call, Physician's Clinics and Pill Call
GRCC 13-02-03	Continuing of Care: Health Evaluations, Intra-System Transfer and Individual Treatment Plans
GRCC 13-03-01	Use of Pharmaceutical Products
GRCC 13-04-01	Health Records
GRCC 13-04-02	Psychological and Psychiatric Reports
GRCC 13-05-01	Management of Serious and Infectious Diseases
GRCC 13-06-01	Mental Health Services
GRCC 13-07-01	Medical Restraints
GRCC 13-08-01	Eye Care
GRCC 13-09-01	Dental Care
GRCC 13-10-01	Transfers and Medical Profiles
GRCC 13-11-01	Informed Consent
GRCC 13-12-01	Infirmity Care
GRCC 13-13-01	Inmate Self-administration of Medication
GRCC 13-15-01	Health Education Program and Detoxification
GRCC 14-01-01	Inmate Rights and Responsibilities
GRCC 14-02-01	Legal Services Program
GRCC 15-01-01	GRCC Adjustment Program and Procedures
GRCC 16-01-01	Inmate Visiting
GRCC 16-02-02	Inmate Correspondence and Privileged Mail
GRCC 16-03-01	Inmate Telephone Communications
GRCC 16-04-01	Inmate Packages
GRCC 17-01-01	GRCC Inmate Property Control
GRCC 17-02-01	GRCC Inmate Receiving and Orientation Process
GRCC 17-03-01	Procedure for Sending Televisions to Outside Dealer for Repair
GRCC 18-01-01	Inmate Classification
GRCC 18-02-01	Meritorious Housing
GRCC 18-02-02	Meritorious Visitation Program
GRCC 19-01-01	Inmate Work Programs
GRCC 19-01-02	Unassigned Status
GRCC 20-01-01	Educational Programs
GRCC 21-01-01	Library Services
GRCC 22-01-01	Recreation Programs
GRCC 22-02-01	Inmate Organizations
GRCC 22-04-01	Arts and Crafts Project [(Added 1/14/99)]
GRCC 22-05-01	Inmate Photo Project
GRCC 23-02-01	Death or Hospitalization of an Inmate's Family Member and Notification of Inmates
GRCC 24-01-01	Social Services and Counseling Program
GRCC 25-01-01	Pre-release Program
GRCC 25-01-02	Inmate Release Process
GRCC 25-02-01	Parole Hearing Procedure

DOUG SAPP, Commissioner
TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: September 13, 1999

FILED WITH LRC: September 15, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1999, at 9 a.m., in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by October 14, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky

40601, Phone (502) 564-2024, FAX (502) 564-6494.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Tamela Biggs, Staff Attorney

(1) Type and number of entities affected: 213 employees of the correctional institutions, 614 inmates, and all visitors to state correctional institutions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds budgeted for this 1998-2000 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

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

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

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

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

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

(10) Any additional information or comments: None

(11) **TIERING:** Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET

Department of Criminal Justice Training (Amendment)

503 KAR 3:010. Basic law enforcement training course recruit conduct requirements; [misconduct], procedures and penalties [discipline procedures].

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 en-

forcement personnel. This administrative regulation prescribes conduct requirements of recruits attending basic law enforcement training courses conducted by the Department of Criminal Justice Training, prescribes procedures for disciplinary action, and sets penalties.

Section 1. Uniforms and Operator's License Required. A recruit shall provide the uniforms required by the department and present a valid motor vehicle operator's license to participate in the basic training course.

Section 2. Removing a Recruit from the Course. (1) Unqualified recruit. ~~If [The director or section supervisor shall remove from basic training]~~ a recruit ~~[who]~~ is not qualified to participate in the basic training course, ~~he shall:~~

(a) ~~Be removed from basic training by the:~~

1. Commissioner;
2. Director;
3. Branch manager; or
4. Section supervisor;

(b) ~~[- The recruit shall]~~ Receive no credit for the part of the course he has completed.

(c) If a recruit 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.~~

(d) ~~A recruit shall be considered unqualified if he:~~

1. ~~Or his law enforcement agency files an incomplete or fraudulent application to attend basic training, or otherwise fails to comply with admissions requirements;~~

2. ~~Is not presently employed as a law enforcement officer and has not received special permission to attend;~~

3. ~~Arrives at the beginning of basic training physically unable to participate because of:~~

a. ~~Physical injury; or~~
b. ~~Being under the influence of alcohol or drugs (prescription or illegal); or~~

c. ~~Failure of the physical training entry requirements as found in 503 KAR 1.110 if the recruit is required to complete basic training in order to fulfill the peace officer certification provisions as found in KRS 15.380 to 15.402;~~

4. ~~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;~~

5. ~~Is unprepared to participate in training due to his arrival without the required equipment, license, uniform, or preparation;~~

(2) Agency's request: ~~The department shall remove a recruit [shall be removed] from basic training upon the department's receipt of a written request from the recruit's law enforcement agency. The recruit shall receive no credit for the part of the course he has completed.~~

Section 3. Gifts. Gifts from recruits to department staff members shall conform with the Executive Branch Code of Ethics (KRS [Chapter] 11A.040).

Section 4. Penalties for Misconduct. (1) The following penalties shall apply to a recruit's failure to meet conduct or Honor Code requirements of the department. The penalties are listed in order of decreasing severity.

(a) Expulsion. The recruit is dismissed from the course, and all privileges are terminated. The recruit may not reapply for admission to the department's basic training course for five (5) years from the date of expulsion.

(b) Suspension. The recruit is suspended from training for a specified period of time, not to exceed three (3) years; all privileges are rescinded during the suspension period.

(c) Probation. The recruit is placed on probation for a specified period of time, not to exceed the final date of the basic training course in which he is currently enrolled. A loss of privileges may be imposed during the period of probation. A violation of any conduct or Honor Code requirement during the period of probation shall result in an extension of the period of probation, additional loss of privi-

leges, suspension, or expulsion.

(d) Loss of privileges. The recruit's privileges as specified in the imposed penalty are rescinded for a stated period of time. The recruit's participation in training activities is not affected.

(e) [(d)] Written reprimand. The recruit is reprimanded in writing for violating a conduct or Honor Code requirement.

(f) [(e)] Verbal warning. The recruit is warned verbally that he has violated a conduct or Honor Code requirement.

(2) Second and subsequent violations.

(a) If a recruit has received a penalty for violating a conduct or Honor Code requirement, upon a second violation of any conduct or Honor Code requirement the next higher penalty shall be added to the list of penalties which may be imposed for the second violation.

(b) If a recruit has previously received two (2) penalties for violating two (2) conduct or Honor Code requirements, upon a third or subsequent violation of any conduct or Honor Code requirement the next two (2) higher penalties shall be added to the list of penalties which may be imposed for the third or subsequent violation.

(3) Giving notice of disciplinary action to recruit ~~[and recruit's agency].~~ The department shall give written notice to a recruit of any penalty imposed upon him. ~~[The recruit's agency shall be given written notice of any penalty imposed upon the recruit except a verbal warning, and shall be given verbal notice when a recruit has been charged with a violation of a conduct or Honor Code requirement and has requested a hearing.]~~

(4) Penalty records.

(a) The department shall keep a written record of any penalty imposed on a recruit.

(b) A copy of any penalty imposed on a recruit shall be placed in his basic training file.

(c) Only the department, the recruit, and the recruit's agency head shall have access to the penalty records in a recruit's basic training file unless broader access is required by law.

Section 5. Termination of Dangerous or Disruptive Situation. If the conduct or condition of a recruit constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of a department activity, a department staff member may take all reasonable steps necessary to terminate the situation.

Section 6. Conduct Requirements. A recruit attending the basic training course shall meet the following conduct requirements:

(1) General conduct, chain of command. All communications shall follow chain of command of the department. Exceptions are the unavailability of a supervisor, or the recruit's complaint regarding a supervisor. Penalty: verbal warning or written reprimand.

(2) General conduct, insubordination. A recruit shall:

(a) Obey a lawful order from a department staff member. Penalty: verbal warning, written reprimand, loss of privileges, probation, or suspension.

(b) Refrain from vulgarity, rudeness, violent, threatening, or offensive confrontation, or other disrespectful conduct directed toward a department staff member, recruit or other department trainee or guest. Penalty: verbal warning, written reprimand, probation, or suspension.

(3) General conduct, grooming. The recruit shall be clean shaven with sideburns no longer than the bottom of the ear lobe. A mustache is permitted if the recruit has the mustache upon arrival and keeps it neatly trimmed. A beard shall not be permitted unless the recruit receives permission from the department based upon a written request from the recruit's agency and good cause shown. A recruit's hair shall not be unkempt and shall not be over the collar. Penalty: verbal warning or written reprimand.

(4) General conduct, alcoholic beverages and other intoxicants.

(a) A recruit shall not possess, consume nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician while enrolled in a basic training course. A recruit shall submit to testing as requested by the department to determine the presence of alcoholic beverages, or controlled or other intoxicating substances at the department's expense. Penalty: written reprimand, loss of privileges, probation, suspension or expulsion.

(b) If a recruit has taken a controlled substance as prescribed by a physician or has taken any other medication, whether prescribed or not, he shall not participate in any training activity if he is under the influence thereof to the extent that the recruit may be impaired or may endanger himself or other persons or property. A recruit shall advise the class coordinator or the section supervisor in writing of the use of controlled substance or medication whether or not it has been prescribed by a physician. Penalty: verbal warning, written reprimand, probation, or suspension.

(c) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, or branch manager observes an unlawfully-possessed intoxicating substance, he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(5) General conduct, weapons and other dangerous devices.

(a) A recruit shall not possess deadly weapons (as defined in KRS 500.080), ammunition, destructive devices or booby trap devices (as defined in KRS 237.030), hazardous substances (as defined in KRS 224.01-400), knives other than an ordinary pocket knife, fireworks, or instruments used by law enforcement for control purposes including [~~such as~~] batons, stun guns, Mace, and pepper spray, [j] on property used by the department except under circumstances specifically authorized by the department. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

(b) Weapons specifically designated by the department to be used for training purposes shall be stored in a vault provided by the department at all times when they are not being used directly in training activities and may be removed only for scheduled training, servicing, cleaning, or repair. Servicing, cleaning, and repairs of weapons (other than repairs which may require the expertise of a qualified gunsmith) shall be carried out only as authorized by the section supervisor and only in the presence of a certified firearms instructor. Penalty: verbal warning, [or] written reprimand, loss of privileges, or probation.

(c) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, branch manager, director or commissioner observes an unlawfully-possessed weapon or other dangerous device he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(6) General conduct, department property.

(a) A recruit shall not intentionally or negligently 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, probation, suspension or expulsion.

(b) A recruit shall not have successfully completed basic training, and shall not be allowed to graduate until he has returned all issued items or made satisfactory arrangements to pay for unreturned or damaged items.

(7) General conduct, conduct unbecoming a recruit. A recruit shall not:

(a) Engage in criminal activity, including acts which would constitute a felony, misdemeanor or violation, while enrolled in a basic training class. Depending on the nature of the conduct, the recruit shall be penalized by a verbal warning, written reprimand, loss of privileges, probation, 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 recruit or another, possess obscene matter as defined in KRS 531.010, engage in conduct which is unreasonably annoying, engage in fighting or in violent, tumultuous or threatening conduct, engage in sexual harassment or conduct which is patently offensive. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension or expulsion.

(c) Engage in conduct which violates an Eastern Kentucky University policy or rule. Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(8) Training activities, uniforms.

(a) A recruit shall acquire all necessary uniforms and wear them

as required by the department. Penalty: verbal warning, [or] written reprimand, loss of privileges, or probation.

(b) Navy blue utility uniforms shall be:

1. Clean, pressed and in good condition;

2. Appropriately sized to fit the recruit and not excessively loose, baggy, or tight;

3. Worn over a clean white tee-shirt, visible at the neck; and

4. [3:] Worn with a wide black police-type belt, clean black police-type footwear, black or navy blue socks, and when outdoors, a department cap. Penalty: verbal warning or written reprimand.

(c) Jewelry. The recruit may wear:

1. One (1) ring per hand. A wedding and engagement ring worn together on the left hand shall be considered one (1) ring; or

2. Necklaces if worn under the tee-shirt and not visible. [The only collar pins a recruit may wear are ones provided by his agency.] Penalty: verbal warning or written reprimand.

(d) A name tag, provided by the department, shall be worn on the left shirt-pocket flap. Penalty: verbal warning or written reprimand.

(e) Sleeves on winter shirts shall not be rolled up outside the classroom. Penalty: verbal warning or written reprimand.

(f) The physical fitness uniform shall be provided by the recruit and shall consist of solid dark blue athletic shorts, solid dark blue sweat shirt and sweat pants, solid white athletic socks, and a pair of athletic shoes. A department-issued tee shirt shall be worn during physical training. Penalty: verbal warning or written reprimand.

(g) Additional clothing may be worn during a training activity if authorized by the instructor.

(9) Training activities, absences.

(a) A recruit is absent if he is not physically present in a class or other required department activity for [more than] ten (10) minutes or more. A recruit is tardy if he is not physically present at a class or other required department activity for fewer than ten (10) minutes. A recruit shall give advance notice of an absence when possible. Penalty for an unexcused absence: verbal warning, [or] written reprimand, loss of privileges, probation, or suspension; penalty for an unexcused tardiness: verbal warning or written reprimand.

(b) All absences from basic training must be approved by the section supervisor or branch manager.

(c) If a trainee is absent, excused or unexcused, he shall make up for the absence by completing an assignment provided by the instructor who taught the missed unit. Failure to make up the work shall be deemed a failure for that training area.

(10) Training activities, breaks. Recruits shall be allowed a ten (10) minute break per hour of instruction if possible. Breaks shall be taken only in areas designated by the department. Penalty: verbal warning or written reprimand.

(11) Training activities, general conduct.

(a) A recruit shall be attentive during training activities. Penalty: verbal warning or written reprimand.

(b) A recruit shall not use tobacco products during, or bring food or drink into a training activity unless so permitted by the training director or commissioner. Penalty: verbal warning or written reprimand.

(c) A recruit shall not engage in conduct which creates or may create a risk of injury to others during a training session. Penalty: probation, suspension, or expulsion.

(d) A recruit shall complete assignments by the deadline established by the instructor or coordinator. Penalty: verbal warning or written reprimand.

(12) Training activities, dishonesty.

(a) A recruit shall not cheat or attempt to cheat on a test [~~or on any other assignment or activity~~], or alter or attempt to alter a test grade or other evaluation result. A recruit shall not permit, assist or facilitate such conduct by another recruit. [for himself or another.] Penalty: [verbal warning,] written reprimand, loss of privileges, probation, suspension or expulsion.

(b) A recruit shall not cheat or attempt to cheat on any other assignment or activity. [or] engage in any other conduct intended to gain an undeserved evaluation, or falsify a document provided to the department during basic training. A recruit shall not permit, assist or facilitate such conduct by another recruit. [for himself or another.] Penalty: [verbal warning,] written reprimand, loss of privileges, probation, suspension or expulsion.

(13) Residence hall.

(a) During the basic training course, when attending in Madison County, a recruit shall reside in the residence hall designated by the department.

(b) A recruit shall return to his residence hall at curfew times designated by the commissioner, Sunday through Thursday evenings, and Friday or Saturday if a training session is scheduled for the following day, and remain there until 5 a.m. the next morning. Exceptions shall be approved by the class coordinator and reported in writing through channels to the director. Penalty: verbal warning, written reprimand, loss of privileges, probation.

(c) A recruit shall observe "lights out" by 11:30 p.m. Sunday through Thursday, and Friday or Saturday if a training session is scheduled for the following day, except on nights prior to an academic test when the time shall be extended to 12 midnight. Penalty: verbal warning or written reprimand.

(d) Each recruit shall be responsible for cleaning his area. Each morning, prior to leaving for class training, a recruit shall ensure his room is clean and free of trash, with beds made and the room ready for inspection. Penalty: verbal warning, written reprimand, loss of privileges.

(e) Doors shall be locked whenever a room is unoccupied. Penalty: verbal warning or written reprimand.

(f) The use of cooking appliances or space heaters is prohibited. Penalty: verbal warning, written reprimand, loss of privileges.

(g) All residence hall rooms, closets, and containers therein may be inspected by department staff for purposes of safety, sanitation and rule violations.

(h) A recruit residing at the residence hall shall not:

1. Have any person of the opposite sex in his room, or visit in the room of a recruit of the opposite sex without the permission of the department. Penalty: verbal warning, written reprimand, loss of privileges, probation, or suspension.

2. Have a visitor in his room after 9 p.m. Penalty: verbal warning or written reprimand, loss of privileges.

3. Keep pets, animals, or birds of any kind in his room. Penalty: verbal warning, written reprimand, loss of privileges.

4. Engage in dangerous, disruptive, immoral or obscene behavior. Penalty: verbal warning, written reprimand, loss of privileges, probation, [or] suspension, or expulsion.

Section 7. Honor Code. (1) The recruit shall abide by the provisions of the Honor Code which reads as follows:

We are a dynamic team of individuals who possess a wide array of talent and strengths. In order for our team to grow and be successful, we will respect the leadership of the agency and follow directives to the best of our ability. We will make sacrifices for the benefit of the team. We will practice humility and show a spirit of compromise. As recruits of the Department of Criminal Justice Training, Law Enforcement Basic Training class, we will not lie, steal or cheat nor tolerate any among us who do.

We will keep our private lives honorable as an example to all. We will be exemplary in obeying the laws of the Commonwealth and the administrative regulations of the Department of Criminal Justice Training. Whatever we see or hear of a confidential nature or confided to us in our official capacity shall be kept confidential unless revelation is necessary in the performance of duty. We will never allow personal feelings, prejudices, ill will or friendships to influence our decisions.

We know that each of us is individually responsible for standards of professional performance. Therefore, we will make the utmost effort to improve our level of knowledge and competence.

We recognize the badge of our office as a symbol of public faith and accept it as a public trust to be held so long as we are true to the ethics of the police service. We will constantly strive to achieve these ideals, dedicating ourselves to our chosen profession - law enforcement. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension or expulsion.

(2) The coordinator, in cooperation with the class shall designate a minimum of one (1) [elect an] Honor Code representative during the first week of basic training. The Honor Code representative may be replaced:

(a) In the case of nonperformance of duties, including conduct

violations; or

(b) When the coordinator, in cooperation with the class, determines that a rotating assignment as Honor Code representative is in the best interest of the class.

(3) All recruits shall report Honor Code violations to the Honor Code representative who shall report the offense to the class coordinator. The representative will recommend the penalty to be imposed for the violation.

(4) All disciplinary procedures contained in this administrative regulation shall apply to the Honor Code violation. The department may pursue separately any additional offenses discovered during the investigation of the Honor Code violation. The department may charge a recruit with an Honor Code violation without a prior report from the Honor Code representative.

Section 8. Department's Responsibilities to Recruit's Agency. In order to keep the agency advised of the recruit's progress and performance in basic training so that the agency may adequately assess the recruit's ability to perform required duties, the department shall provide the following to the police chief, sheriff or chief administrator of the recruit's agency:

(1) Recruit performance report which shall be completed at four (4) week intervals and shall include recruit conduct, demonstrated leadership abilities, examination scores, physical fitness scores and overall effort on performance, observed social and [r] interpersonal skills, and appearance.

(2) Immediate notice of specific nonperformance[misconduct] or lack of progress.

(3) Immediate notice of any off-campus activity which reflects negatively on the profession, including the following:

(a) Parking a marked police vehicle at a:

1. Bar;

2. Tavern;

3. Lounge;

4. Nightclub; or

5. Other establishment with the primary purpose of serving alcoholic beverages;

(b) Disorderly conduct;

(c) Speeding; or

(d) Other behavior that gives rise to a citizen's complaint.

(4) Written notice of any conduct or Honor Code penalty imposed upon the recruit.

(5) Notice when a recruit has been charged with a violation of a conduct or Honor Code requirement and has requested a hearing.

(6) Notice when a recruit has been removed from training pending an initial appearance before the commissioner as defined in Section 10 of this administrative regulation, or when a recruit has been removed from training pending a disciplinary hearing as defined in Section 14(3) of this administrative regulation.

(7) Immediate notice of concerns related to the recruit's safety, or physical or emotional health.

Section 9. Summary Discipline. Except for summary discipline, no penalty shall be imposed upon a recruit unless charges have first been brought by the legal officer.

(1) The following department staff members have the authority to impose the specified penalties summarily without meeting the requirements of the formal disciplinary procedures provided by Sections 10 through 16 of this administrative regulation. To have the authority to impose summary discipline, the staff member must have reasonable grounds to believe the recruit has engaged in the misconduct.

(a) A department instructor may summarily impose a verbal warning.

(b) The section supervisor, branch manager, director, or commissioner may summarily impose a verbal warning, or written reprimand[or loss of privileges].

(c) The branch manager, director, or commissioner may summarily impose a verbal warning, written reprimand, or loss of privileges consisting only of a change in curfew.

(2) Before imposing a penalty summarily, the staff member shall give the recruit the opportunity to give an explanation.

(3) A summarily imposed penalty shall be reviewed by, and may

be rescinded or modified by, the immediate supervisor of the staff member imposing the penalty. The reviewer shall provide the recruit with the opportunity to give an explanation.

Section 10. Removal From Training Pending an Initial Appearance Before the Commissioner. (1) When a charge [~~request for charges~~] is filed against a recruit, the commissioner or director may remove the recruit from some or all training until the recruit's initial appearance before the commissioner if he has reasonable grounds to believe the alleged misconduct took place and:

(a) He has reasonable suspicion to believe the recruit would be dangerous or disruptive if not removed; or

(b) The recruit has been [~~may be~~] charged with misconduct serious enough to authorize expulsion.

(2) A recruit who has been removed from training pending an initial appearance before the commissioner shall be provided the initial appearance within three (3) training days of the removal.

Section 11. Complaint. Anyone having reasonable grounds to believe [~~for believing~~] that a recruit has violated any of the conduct or Honor Code requirements identified in this administrative regulation may file a complaint with the section supervisor. This complaint shall be in writing setting forth the facts upon which the complaint is based.

Section 12. Investigation by Section Supervisor. (1) If the section supervisor receives a complaint of or witnesses apparent misconduct, he shall take statements and otherwise investigate the matter.

(2) After investigating the matter, the section supervisor shall:

(a) Take no action if none is justified by the evidence; or

(b) Impose appropriate summary discipline; or

(c) File, with the legal officer, a written request that charges be brought against the recruit. The request for charges shall describe the alleged misconduct and designate the specific conduct requirements violated. All pertinent evidence and documents including the complaint, and statements of the recruit and witnesses shall be forwarded to the legal officer.

Section 13. Review by Legal Officer; Placing Charges. (1) The legal officer shall review the request for charges and the supporting evidence and documents.

(2) The legal officer may make or cause further inquiry into the matter for additional information.

(3) The legal officer shall either:

(a) File such charges against the recruit as he believes are justified by the evidence; or

(b) Deny the request for charges if the evidence does not support any charges. If the legal officer declines to file charges, he shall provide the commissioner with a statement of his reasons for not filing charges.

(4) The charging document shall:

(a) Be in writing;

(b) Particularly describe the alleged misconduct so as to reasonably inform the recruit of the nature of the allegation;

(c) State the time, date and place the recruit shall make an initial appearance before the commissioner to answer the charges;

(d) Be signed by the legal officer; and

(e) Be served upon the recruit at least one (1) hour before his initial appearance before the commissioner.

Section 14. Initial Appearance Before the Commissioner. (1) The initial appearance before the commissioner shall be held no more than three (3) training days after the charges have been served on the recruit. If the recruit after receiving proper notice, fails to appear, the commissioner may proceed in his absence and the recruit shall be notified in writing of any action taken.

(2) At the initial appearance before the commissioner:

(a) The legal officer shall:

1. Read the charges to the recruit;

2. Explain to the recruit:

a. The charges;

b. His right to a hearing in accordance with KRS Chapter 13B;

and

c. His right to be represented by legal counsel.

(b) The legal officer shall explain to the recruit the possible answers to the charges: admit the charges are true, deny the charges are true but waive a hearing, or deny the charges are true and ask for a hearing.

(c) The commissioner shall advise the recruit of the penalty which shall be imposed if the recruit admits the charges or waives a hearing.

(d) The recruit shall be requested to answer the charges.

(e) If the recruit chooses to waive his rights and admits the charges or denies the charges but waives a hearing:

1. He shall be permitted to make a statement of explanation; and

2. The commissioner shall impose a penalty.

(f) If the recruit denies the charges and requests a hearing, the commissioner shall set a date for the hearing. A notice of administrative hearing as required by KRS 13B.050 shall be served on the recruit within forty-eight (48) hours of the initial appearance before the commissioner.

(g) If the recruit remains silent or refuses to answer the charges, the commissioner may suspend the recruit from training until the recruit answers the charges or the legal officer drops the charges.

(3) The commissioner may remove the recruit from some or all training until the hearing if:

(a) He has reasonable grounds to believe the recruit would be dangerous or disruptive if not removed; or

(b) The recruit is charged with misconduct serious enough to authorize expulsion as a possible penalty.

Section 15. Hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

Section 16. Appeal. (1) A trainee may appeal an order entered by the commissioner which imposes a penalty adverse to the trainee by filing a written notice of appeal to the Secretary of the Justice Cabinet.

(a) The notice of appeal shall state the points on which the appeal is based and shall be on a form provided by the department. The form is made a part hereof by reference.

(b) A copy of the order being appealed shall be attached to the notice of appeal.

(c) A copy of the notice of appeal shall be delivered to the commissioner of the department by certified mail.

(2) The appeal shall not be heard de novo but shall be determined upon the audio record and any written or physical evidence introduced at the hearing.

(3) The Secretary of the Justice Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.

JOHN W. BIZZACK, Ph.D., Commissioner

STEPHANIE C. BINGHAM, General Counsel

APPROVED BY AGENCY: September 14, 1999

FILED WITH LRC: September 15, 1999 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1999, at 10 a.m., in room 211, Funderburk Building, Richmond, Kentucky 40475-3137. Individuals interested in being heard at this hearing shall notify this agency in writing by October 14, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephanie C. Bingham, General Counsel, Department of Criminal Justice Training, Funderburk Building, Richmond, Kentucky 40475-3137; Phone (606) 622-5897, FAX (606) 622-3162.

REGULATORY IMPACT ANALYSIS

Contact Person: Stephanie C. Bingham

(1) Type and number of entities affected: all law enforcement or other officers participating in basic training and their agencies.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1999 - 2000 biennium.

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

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

(b) Kentucky: None

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

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

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

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET

Department of Juvenile Justice
(Amendment)

505 KAR 1:040. Policy and procedures manual.

RELATES TO: KRS. 194.060, 199.420 to 199.990, 200.080 to 200.120, 205.201 to 205.204, 205.455 to 205.465, Chapters 208, 209, 600 to 645, *United States of America v. Commonwealth of Kentucky*, et al., Civil Action No. 3:95 CV-757-S (W.D.KY. 1995), EO 96-1576

STATUTORY AUTHORITY: KRS 194.050, 199.420, 200.080, 209.030, 605.150, 615.50, 620.180, 625.120, 630.140, 635.100, 640.120, 645.250, EO 96-862, EO 96-1576, *United States of America*

v. Commonwealth of Kentucky, et al., Civil Action No. 3:95 CV-757-S (W.D. 1995)

NECESSITY, FUNCTION, AND CONFORMITY: 42 USC 9901-9912 "Block Grants for Social Services - Title XX", authorizes grants to states for social services. KRS 15A.160 authorizes the Justice Cabinet to adopt administrative regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. This administrative regulation is promulgated to incorporate into regulatory form, by reference, materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program, and to implement currently required provisions of a consent decree entered December 4, 1995, by the United States District Court of Kentucky in *United States of America v. Commonwealth of Kentucky*, et al., Civil Action No. 3:CV-757-S (W.D.KY. 1995) and EO 96-1576.

Section 1. Incorporation by Reference. (1) The "Department of Juvenile Justice Policy and Procedures, 1998 Edition" is incorporated by reference and includes the following:

101	<u>Administrative Responsibility of Managers</u>
102	Professional Practices
104	Code of Conduct
105	<u>Management Response to Flagrant/Nonflagrant Violations</u>
106	On-call Staff Coverage
106.1	Attendance At professional Meetings
106.2	Staff Meetings
106.3	Criminal History Checks on All Personnel
106.4	Replacement of Damaged or Destroyed Personal Property
106.5	Duty Office/On-call
106.6	Equal Employment Opportunity
106.7	Tuition Assistance Program
106.9	<u>Compensatory Time</u>
106.10	<u>Out-of-state Travel</u>
106.11	<u>Sexual Harassment</u>
107	Fiscal Management
108	<u>Professional Fees and Dues</u>
106.8	Ombudsman
109	Employee Exit Interview
110	General Security Guidelines
111	Use of Vehicles
112	Volunteers
113	<u>Citizen Advisory Committees</u>
114	<u>Staff and Visitor Meals</u>
115	<u>E-mail and Internet Access</u>
116	<u>Uniformed Youth Worker Dress Code</u>
117	Weather Emergency
119	News Media Contacts
121	Interviews with Youth by Attorneys or Law Enforcement Officials
122	<u>Legal Assistance for DJJ Staff</u>
123	Quarterly and Annual Reports
125	Inventory Control
127	Research Projects
128	<u>Student Intern Program</u>
130	<u>Cooperation with Community Agencies and Educational Institutions</u>
131	<u>Community Juvenile Justice Partnership Grant Program</u>
132.1	Open Records Law
[133	Case Records]
139	Use of Tobacco
140	Reporting of Special Incidents
142	Staff Involved in Abuse Allegations
145	Quality Assurance Monitoring Program
146	Investigations
147	Death of a Youth
148	Formulation and Revision of Operating Procedures
149	Management Information Systems
200	Criteria for Admissions
201	Placement

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202	Waiting List	404.2	Ectoparasite Control
204	Daily Census and Population	404.3	Health Assessment
206	Administrative Transfers	404.4	Sick Call
208	Youth Rights	404.5	Access to Diagnostic Services
209	Access to Outside Investigative Units	404.6	Emergency Services
210	Interstate Referrals	404.7	First Aid
211	Interstate Runaways, Escapees and Absconders	404.8	Hospital Care
212	Interstate Out-of-state-purchase of Care	404.9	Psychiatric and Mental Health Services
213	Interstate Travel	404.10	Special Needs Treatment Plans
214	Interstate Revocations and Case Closure	404.11	Perinatal Care
215	Reception/Assessment Center	404.12	Oral Screening and Oral Care
216	Reception/Assessment Center Protocol for Transition	404.13	Disease Prevention and Health Promotion
300.1	Communication and Correspondence	404.14	Family Planning Services
300.2	Youth's Personal Belongings	407	Pharmaceutical Services
302	Individualized Treatment Planning	408	Drug Testing
303	Treatment Team Composition, Functioning and Responsibility	408.1	Forensic Information
304	Individual Counseling	409	Substance Abuse and Chemical Dependency
305	Group Counseling	410	Orthoses and Prostheses and Other Aids to Impairment
306	Phase System	411	Notification in Emergencies
307	Treatment Techniques	412	Sexual Assault
309	Family Involvement in Treatment Process	414	Environmental Health and Safety
309.1	Professional Oversight	415	OSHA Coordinator
310	Community Contacts	416	Health Services: Blood-borne Pathogens/HIV/AIDS infection
314	Youth Council	416.1	Infection Control and Medical Isolation
315	Use of Nongovernmental Funds and Youth Activity Funds	417	Suicide Prevention
316	Youth Chore and Work Assignments	[420	Log and Shift Reports]
317	Recreation	421	Youth Movement
318	Behavior Management	422	Contraband
318.1	Discipline	423	Bed Checks
318.2	Disciplinary Review	424	Emergency Plans
319	Required Staffing for Supervision of Juveniles	[425	Sanitation and Hygiene Inspections]
319.1	Facility Capacities and Staffing Requirements	426	Dietary Services
322	Management of the Aggressive Youth	427	Maintenance
323	Isolation	427.1	Control and Use of Tools
321	Critical Incident Reports	428	Control and Accountability of Flammable, Toxic, Caustic and Other Hazardous Materials
324	Restraints	429	Safety and Emergency Procedures - Fire Safety
325.1	Searches	430	Pets and Domestic Animals
327	AWOL/Escape	500	Training
328	Individual Client Record	501 [431]	Specialized Training and Certification
329	Progress Notes	600	Intake, Case Registration and Planning
330	Log and Shift Reports	600.1	Commitment
331	Grievance Procedure	600.2	Conviction as a Youthful Offender
[332	Youthful Offender Parole]	600.3	Transportation of Committed Youth
333	Youthful Offender Transfer	600.4	Children's Benefits
334	Comprehensive Educational System	600.5	Title IV-E: Federal Foster Care Maintenance Payments
335	Educational/Vocational Records	600.6	Trust Funds
336	Academic/Vocational Assessment of Youth	600.8	Service Complaints
337	Educational Plans	600.9	Juvenile Service Case Records
338	Aftercare/Transition Services and Educational Passport	600.10	Service Recordings
339	Instructional Staffing	600.11	Critical Incident Reports
340	Instructional Services	601	Predisposition/Presentence Investigation
341	Education: Student Code of Conduct and Discipline	602	Youth Travel Permits
342	Evaluation of Education and Vocational Programs	603	Probation
344	Library Services	603.1	Youthful Offender Shock Probation
345	Religious Programs	605	Termination of Probation
346	Educational Good Time	605.1	Revocation of Probation
347	Meritorious Good Time	606	Out-of-home Placements
348	Sex Offender Treatment	606.3	Out-of-home Initial Case Planning
349	Youthful Offender Sex Offender Risk Assessment	608	Placement with Relative
350	Youthful Offender Sex Offender Registration	609	Private Child Care Referral
351	Youthful Offender Parole	610	Independent Living
400	Health Services	611	Residential Placement
401	Administration/Personnel	611.1	Placement in Psychiatric Care
401.1	Medical Director	611.2	Detention
402	Access to Treatment; consultation; Health Records; Sharing Information and Notification	612	Youth Awaiting Placement
402.1	Medical Records	613	Youth in Placement
404	Health Maintenance Service Delivery	614	Authorized Leave
404.1	Admission Screening for Physical and Mental Challenges	615	AWOL
		616	Placement Planning

617	Supervised Placement/Aftercare
[617-1	Youthful Offender Preparole Placement Evaluation]
618	Juvenile Intensive Supervision Team
[620	Supervised Placement Revocation]
621	Search, Seizure and Chain of Custody
626	Juvenile Sex Offender
627	Sex Offender Tracking
628	Youthful Offender Sex Offender Registration [Meritorious Good Time]
629	Discharge from Commitment
730	Annual Inspections of Secure Detention Facilities, Secure Holding Facilities and Intermittent Holding Facilities
731	Complaint Investigations of Secure Detention Facilities, Secure Holding Facilities and Intermittent Holding Facilities

(2) It may be inspected, copied, or obtained in any department field office, and at the Office of the Commissioner between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

RALPH E. KELLY, ED.D., Commissioner

MICHAEL KEITH HORN, Office of General Counsel

APPROVED BY AGENCY: September 13, 1999

FILED WITH LRC: September 13, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on October 21, 1999, at 9 a.m. in the conference room at the Department of Juvenile Justice, 1025 Capital Center Drive, Building #3, Third Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 14, 1999, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request is made for a transcript. 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: Michael Keith Horn, Office of General Counsel, Department of Juvenile Justice, Capital Complex East, 1025 Capital Center Drive, Building #3, Third Floor, Frankfort, Kentucky 40601, (502) 573-2738, FAX: (502) 573-4308.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Keith Horn

(1) Type and number of entities affected: The type and number of entities affected are all families, children and adults who may be benefited by the implementation of a statewide juvenile service program through the current policies and procedures of the Department of Juvenile Justice. The implementation of the policies for compliance with the consent decree entered into with the Department of Justice will affect the thirteen residential facilities, seventeen group homes and eighteen day treatment programs operated or contracted by the Department for Social Services, Division of Youth Services now Department of Juvenile Justice via EO 96-1576 signed November 27, 1996.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. Implementation of these regulations will not affect the cost of living or employment in the areas served. A public hearing has been scheduled during which public comments may be received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. Implementation of this regulation will not affect the cost of doing business in the areas served. A public hearing has been scheduled during which public comments may be received.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competi-

tion) for the:

1. First year following implementation: The only change in compliance, reporting and paperwork requirements for the first year is that facilities affected by the policies and procedures will be required to maintain adequate records to document compliance and management staff will be required to monitor compliance and report back as related to meeting the terms of the regulation.

2. Second and subsequent years: The only change in compliance, reporting and paperwork requirements for the second and subsequent years is that facilities affected by the policies and procedures will be required to maintain adequate records to document compliance and management staff will be required to monitor compliance and report back as related to meeting the terms of the regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will not be any first year direct or indirect costs to The Department of Juvenile Justice as the proposed regulations only implement some provisions of the voluntary consent decree entered into with the Department of Justice.

2. Continuing costs or savings: There will not be any continuing direct or indirect costs or savings to the Department of Juvenile Justice as the proposed regulations only implement some provisions of the voluntary consent decree entered into with the Department of Justice.

3. Additional factors increasing or decreasing costs: The only other factor that may decrease costs is the decrease in liability from law suits related to youth's constitutional rights as a result of the implementation of some provisions of the voluntary consent decree entered into with the Department of Juvenile Justice.

(b) Reporting and paperwork requirements: The only change in reporting and paperwork requirements is that facilities affected by the policies and procedures will be required to maintain adequate records to document compliance and management staff will be required to monitor compliance and report back as related to meeting the terms of the regulation.

(4) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Sources of revenue used to implement this administrative regulation include the Department of Juvenile Justice General Funds.

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

(a) Geographical area in which administrative regulation will be implemented: A public hearing has been scheduled during which public comments may be received.

(b) Kentucky: A public hearing has been scheduled during which public comments may be received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No other alternative methods were considered because the proposed regulations are currently in effect via EO 96-1576.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There are no effects on the public health and environmental welfare, but this regulation will improve conditions for youth housed in residential treatment facilities operated or contracted by the Department of Juvenile Justice.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There are no detrimental effects on the public health or environmental welfare, but this regulation will improve conditions for youth housed in residential treatment facilities operated or contracted by the Department of Juvenile Justice.

(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 ad-

ministrative 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. This administrative regulation sets forth the policies and procedures of all offices of the Department of Juvenile Justice and is effective statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Consent decree entered December 4, 1995 by the United States District Court for the Western District of Kentucky in the case of *United States of America v. Commonwealth of Kentucky et al.* Civil Action No. 3:95-CV-757-S (W.D.KY 1995) and EO 96-1576 signed November 27, 1996.

2. State compliance standards. The state has issued policies that comply with mandates of the juvenile services consent decree relating to protection and rights of committed juveniles.

3. Minimum or uniform standards contained in the federal mandate. The consent decree contained specific requirements to improve conditions for youth housed in thirteen residential treatment facilities operated or contracted by the cabinet, now the Department of Juvenile Justice, via EO 96-1576.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These administrative regulations will not impose stricter standards, or additional or different responsibilities or requirements.

EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board (Amendment)

704 KAR 20:210. Substitute teachers and emergency school personnel.

RELATES TO: KRS 161.020, 161.028(1)(a), (c), 161.030(1), (9), 161.100

STATUTORY AUTHORITY: KRS 161.020, 161.028(1)(a), (c), 161.030(1), (9), 161.100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires that a teacher and other professional school personnel hold a certificate of legal qualification for the respective position. KRS 161.100 provides for the issuance of an emergency certificate. This administrative regulation establishes a Certificate for Substitute Teaching and establishes the priority status of this certificate in comparison with a regular certificate and an emergency certificate.

Section 1. (1) The Certificate for Substitute Teaching shall be issued in accordance with the pertinent Kentucky statutes and administrative regulations of the Education Professional Standards Board to an applicant who:

(a) Holds a valid statement of eligibility for a Kentucky teaching certificate; or

(b) Has previously held a Kentucky certificate for classroom teaching for which the completion of a four (4) year program of teacher preparation and a bachelor's degree were required.

(2) The Certificate for Substitute Teaching shall be issued initially for a duration period of five (5) years and may be reissued or renewed upon recommendation of the employing school district superintendent.

(3) The Certificate for Substitute Teaching shall:

(a) Be valid for substitute teaching; and

(b) Not be valid for:

1. Continuous part-time employment for classroom teaching; or

2. As a permanent replacement for a teacher of record for the remainder of the school year.

Section 2. To employ a substitute teacher during the absence of

the teacher of record for a position, priority in selection and employment shall be given in accordance with the following order:

(1) A teacher who holds appropriate regular certification corresponding to the grade level of the teaching assignment;

(2) A teacher who holds regular certification for classroom teaching at any grade level;

(3) A teacher who holds the Certificate for Substitute Teaching;

(4) Except as provided in subsection (5) of this section, a person certified on an emergency basis for substitute teaching pursuant to 704 KAR 20:120, who shall be called according to the following descending order relating to the amount of college hours completed:

(a) A Bachelor's degree;

(b) At least ninety-six (96) semester hours of college credit;

(c) From sixty-four (64) to ninety-five (95) semester hours of college credit;

(5) A person certified on an emergency basis for substitute teaching in a health, technical, or industrial occupation with a minimum of four (4) years of occupational experience in the area to be taught and a high school diploma or its equivalent as determined by evidence of an acceptable score on the General Education Development Test.

Section 3. If a district is unable to employ a substitute teacher using the priority selection process established in Section 2 of this administrative regulation, a district may utilize a person through the Emergency School Personnel Pilot Program established by the [an approved] Education Professional Standards Board. A district seeking participation in this program shall apply to and receive approval from the Education Professional Standards Board on an annual basis. The pilot program shall be limited to no more than twelve (12) districts during the 1999-2000 school year. [one (1) year approval for emergency school personnel. The one (1) year approval for emergency school personnel shall be available to no more than five (5) districts during the pilot year of the plan, 1998-99. A district participating in the pilot year may be approved for participation in a subsequent year.]

(1) Application for participation in the Emergency School Personnel Pilot Program for the 1999-2000 school year [The one (1) year approval for emergency school personnel] shall be filed by August 1, 1999 and reviewed for approval by the Education Professional Standards Board based upon the following documented components:

(a) The number of teaching days not filled with an appropriately certified teacher or appropriately certified emergency substitute in the preceding year;

(b) The extent and anticipated usage of emergency school personnel;

(c) A plan to eliminate the need for emergency school personnel in the future;

(d) The steps taken by the district to recruit and retain emergency certified personnel;

(e) The recruitment of persons with a high school diploma, age twenty-five (25) or over, except an individual enrolled in an approved teacher education program who may be less than twenty-five (25) years old;

(f) Recruitment of instructional assistants, parents or other para-professionals assigned to the school;

(g) A detailed outline of a minimum eighteen (18) clock hour orientation program including emphasis on student safety, district policies, and procedures; and

(h) An outline of the district screening process, including the required criminal record and reference check.

(2) Upon Education Professional Standards Board approval of the one (1) year approval plan, the district shall:

(a) Submit a list, by name, Social Security number, and school, of personnel meeting the requirements established in subsection (1) of this section;

(b) Utilize personnel in the school for which approval has been granted;

(c) Submit a quarterly report to the Education Professional Standards Board identifying the number of days personnel were utilized under this one (1) year approval plan; and

(d) Submit a year-end evaluation of the one (1) year approval plan for emergency school personnel.

(3) A district that was approved by the Education Professional Standards Board to operate an emergency school personnel pilot

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program the preceding year may file a renewal application for continuation of the program. Renewal shall be contingent upon a successful evaluation of the previous year's program pursuant to the application and reporting requirements of this administrative regulation.

TIM DEDMAN, Chair
ALLISON WEBER, Attorney

APPROVED BY AGENCY: September 2, 1999

FILED WITH LRC: September 8, 1999 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on October 26, 1999 at 10 a.m. in the 1st Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 19, 1999, five work days prior to 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. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact Person: Dr. Susan Leib, Associate Commissioner, Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606, FAX (502) 573-1610.

REGULATORY IMPACT ANALYSIS

Contact person: Mary Ellen Wiederwohl

(1) Type and number of entities affected: Local school districts facing shortages in certified emergency school personnel.

(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: In the districts selected for participation in this program, additional job opportunities are created for individuals with a high school education or its equivalent.

(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: Participating school districts must file an annual report detailing the use of emergency school personnel approved under this program.

2. Second and subsequent years: Participating districts must reapply for each subsequent year they wish to participate in this program.

(3) Effects on promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs and savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State Funds.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternative were rejected: The Education Professional Standards Board considered expanding the program to all districts in Kentucky. However, the board concluded that the data from the first year (1998-99) was

insufficient to make such a determination. The expansion of this program to 12 districts from 5 in the first year represents the board's intent to gather more data on the need for emergency school personnel, and simultaneously address the challenges facing districts in recruiting certified substitute personnel.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: Districts participating in this pilot program can use emergency school personnel to staff classrooms which could otherwise be left unattended on days when certified substitutes are unavailable. This action facilitates better classroom management and monitoring of student achievement and discipline.

(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: 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: The initial year of the pilot program, 1998-99, produced promising results from the 5 districts who participated. The districts reported that the program addressed the substitute shortages they were facing. The Education Professional Standards Board wishes to expand the program to 12 districts in the 1999-2000 year to establish additional and longitudinal data on the need for such a program statewide.

(11) TIERING: Is tiering applied? Yes. The program is still in its "pilot" phase. The board limited participation in the first year to only 5 districts, and 12 in the second year. Applications will be accepted from districts statewide, and the board will select up to 12 districts for participation in the program for the 1999-2000 school year, including the original 5 districts who can reapply for a second year in the program.

EDUCATION, ARTS, AND HUMANITIES CABINET Department for Libraries and Archives Division of Field Services (Amendment)

725 KAR 2:060. Certification of public librarians.

RELATES TO: KRS 171.230-171.300

STATUTORY AUTHORITY: KRS Chapter 13A, 171.250, 171.260

NECESSITY, FUNCTION, AND CONFORMITY: Certification of public librarians is mandated by KRS 171.250 and 171.260. Administrative regulations are needed to prescribe the rules by which public librarians shall be certified. This program is administered by the Kentucky Department for Libraries and Archives.

Section 1. Definitions. (1) "Board" means the Kentucky State Board for the Certification of Librarians.

(2) [(4)] "Continuing education units (CEU)" means education offerings that provide credit through a certified program.

(3) "Full-time" employment means working more than 100 hours per month.

(4) [(3)] "Library information services" means duties which require special skills and knowledge to be performed properly.

(5) [(2)] "Library work experience" means employment in a library that [which] includes administration, collection development, technical or public services, or support for public service areas, and excludes secretarial, custodial, groundskeeping, security, food service, driver, and messenger duties.

Section 2. Required Certification by Public Library Position. (1) Library directors serving a population of more than 15,00 shall hold or obtain a professional certificate [regardless of part-time or full-time employment].

(2) Library directors serving a population of 15,000 or less shall hold or obtain at least the paraprofessional certificate [regardless of

part-time or full-time employment).

(3) Assistant directors [librarians], bookmobile librarians, branch heads or department heads shall hold or obtain at least the paraprofessional certificate [regardless of part-time or full-time employment].

(4) All other full-time [permanent] positions, [whether held by one (1) or more individuals,] providing library information services as determined by local library policy shall be filled by persons who obtain or hold at least the library experience certificate.

Section 3. Types of Certificates. (1) A Professional Certificate I shall be valid for five (5) years, and shall be awarded if an applicant has obtained a master's degree in library science from an ALA accredited library school [and shall be valid for five (5) years];

(2) A Professional Certificate II shall be valid for five (5) years and shall be awarded if an applicant has obtained a master's degree in library science from a library school that [which] has not been ALA accredited [and shall be valid for five (5) years];

(3) A Professional Certificate III [shall be awarded if an applicant has obtained a bachelor's degree with at least twenty-one (21) hours in library science and] shall be valid for five (5) years and shall be awarded if an applicant has obtained:

(a) A bachelor's degree with at least twenty-one (21) hours in library science; or

(b) A master's degree with at least twelve (12) hours in library science;

(4) A Professional Certificate IV shall be valid for five (5) years, and shall be awarded if an applicant has passed the library certification examination before July 1, 1980[- and shall be valid for five (5) years];

(5) A paraprofessional certificate shall be valid for five (5) years and shall be awarded if an applicant has completed:

(a) Sixty (60) hours of college training, twelve (12) hours of library science (library science hours may be included in the sixty (60) hours of college training), and two (2) years of full-time library work experience; or

(b) A high school diploma or GED, fifteen (15) hours of library science and five (5) years of full-time library work experience; or

(c) A bachelor's degree with at least twelve (12) hours in library science; or

(d) A master's degree with at least six (6) hours in library science.

(6) A library experience certificate shall be valid for five (5) [three (3)] years and shall be awarded if an applicant has obtained [completed] a high school diploma or GED and has completed:

(a) Twelve (12) hours in library science; or

(b) Nine (9) hours in library science and three (3) hours in a related field of study; or

(c) Six (6) hours in library science and ten (10) years of full-time library work experience; or

(d) A bachelor's degree and six (6) hours in library science[- or

(e) Successful completion of an on-the-job training program as approved by the board.

(7) Professional, paraprofessional and library experience certificates shall be renewed according to 725 KAR 2:070.

(8)[(e)] A temporary certificate shall be valid for five (5) years and shall be issued to a person who:

(a) [1:] Holds a job requiring certification as provided in Section 2 of this administrative regulation; and

(b) [2:] Does not meet the requirements of Section 2 of this administrative regulation.

[(b) A temporary certificate:

1. Shall be valid for one (1) year; and

2. May be renewed for: (4) times.]

Section 4. Sources of Education for Initial Certification. (1) The board shall accept academic credit from college credit courses offered by institutions of higher education which are accredited by their respective regional associations.

(2) The board shall accept library and information science credits from courses offered by:

(a) Graduate schools accredited by the Committee on Accreditation of the American Library Association and these courses shall be approved for all types of certificates;

(b) Colleges whose library and information science departments

are accredited by their respective regional associations and these courses shall be approved for all types of certificates;

(c) Accredited colleges that [which] offer individual library and information science courses and these courses shall be approved for all types of certificates;

(d) Community and technical colleges which offer library or information science courses [that are nontransferable to a four (4) year college] and these courses shall be approved for paraprofessional and library experience certificates. [One (1) of these courses may be approved for an initial professional certificate.]

(3) The board shall accept one (1) or more nontraditional sources of education and shall be accepted for the paraprofessional and the library experience [toward attainment of specified] certificates as follows:

(a) A library institute shall be an in-depth program of library and information science developed according to approved guidelines [and shall be accepted for paraprofessional and library experience certificates]. The program shall be submitted to the board for approval sixty (60) days in advance of implementation. One (1) institute shall substitute for a three (3) hour college level library and information science [studies] course and shall be substituted once.

(b) [An on-the-job training program shall consist of at least three (3) structured, library-based training series, developed according to approved guidelines and shall be accepted for the library experience certificate. The program shall be submitted to the board for approval sixty (60) days in advance of implementation. Each program shall substitute for nine (9) hours of library and information science credit.

(c) Four (4) CEUs in library topics shall be equal to one (1) three (3) hour college level course, [credit] and shall [may] be substituted once [toward initial paraprofessional and library experience certificates].

[(d) Audited courses shall be college level library and information science courses for which:

1. Students register, attend, but do not receive college credit;

2. Proof of attendance and satisfactory completion shall be provided by the course instructor; and

3. Credit toward paraprofessional and library experience certificates shall be accepted until December 31, 1992.

(e) Successful completion of an approved on-the-job training program and achievement of the library experience certificate may substitute for three (3) hours of college credit toward the paraprofessional certificate.]

Section 5. Application for public library certification shall be made to the board.

Section 6. A fee of five (5) dollars shall be charged for all certificates issued.

Section 7. Professional, paraprofessional and library experience certificates shall be issued to voluntary applicants who meet the requirements and submit the required fee.

Section 8. Incorporation by Reference. (1) The following materials are [hereby] incorporated by reference:

(a) [The guidelines of the "On-The-Job Training Program", dated January 29, 1992, referred to in Section 4(3)(b) and (c) of this administrative regulation.

(b)] The guidelines for a "Library Institute", dated January 29, 1992, referred to in Section 4(3)(a) of this administrative regulation.

(b) [(c)] The "Application for Public Library Certification", dated January 29, 1992, referred to in Section 5 of this administrative regulation.

(2) The materials incorporated by reference in subsection (1) of this section may be inspected, copied or obtained from the Kentucky Department for Libraries and Archives, PO Box 537, Frankfort, Kentucky 40602-0537, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES A. NELSON, State Librarian and Commissioner
CHERYL LALONDE-MOONEY, Assistant Attorney General

APPROVED BY AGENCY: September 15, 1999

FILED WITH LRC: September 15, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative

regulation shall be held on October 22, 1999, at 10 a.m. at the Kentucky Department for Libraries and Archives Board Room. Individuals interested in being heard at this hearing shall notify this agency in writing by October 15, 1999, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written documents on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person,

CONTACT PERSON: Tezeta G. Lynes, Program Development Office Branch Manager, Field Service Division, Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, Phone: (502) 564-8300 ext. 267, Fax: (502) 564-5773.

REGULATORY IMPACT ANALYSIS

Contact person: Tezeta G. Lynes

(1) Type and number of entities affected: All currently employed staff in 118 county public libraries required to be certified. The number of applicants for certification and the holders of public library certificates are undeterminable.

(2) Direct and indirect costs or savings on the: There are no financial costs or savings created by this regulation; no increase in paperwork is required and there will be no increase in the cost of doing business as a result of this regulation.

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

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

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

1. First year following implementation: None required.

2. Second and subsequent years: Same.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: No direct continuing cost will be realized.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The agency collects fees for the filing of applications.

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

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

(b) Kentucky: No public comments received.

(7) Assessment of alternative methods: No viable alternatives were identified. Public library staff need and are required to have training in the performance of their jobs. This regulation effects that training and is mandated by statute (KRS Chapter 171).

(8) Assessment of expected benefits: In addition to the cited well-trained staff, implementation of this administrative regulation will greatly enhance a public librarian's educational level and training, thus providing much better, faster and more accurate information to the citizens of the Commonwealth.

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

Kentucky.

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

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

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

(a) Necessity of proposed regulation if in conflict: None in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: The requirements of this regulation will enhance the ability of a public library staff to do his job well; will be in greater confidence of his ability to assist patrons; and will acquire the basic skills necessary to do his job well. Better and more efficient training, such as is effected by this regulation, are the keys to helping with the continuing education of the citizens of the Commonwealth, regardless of age or socioeconomic background.

(11) TIERING: Is tiering applied? No. Tiering is not applied since regulation requires uniformity in the amount of application fees. Education requirements for each level of certification are the same for all applicants and all entities wishing to develop approved training programs will be treated similarly.

EDUCATION, ARTS, AND HUMANITIES CABINET Department for Libraries and Archives Division of Field Services (Amendment)

725 KAR 2:070. Certification renewal of public librarians.

RELATES TO: KRS 171.230-171.320

STATUTORY AUTHORITY: KRS Chapter 13A, 171.250, 171.260

NECESSITY, FUNCTION, AND CONFORMITY: Renewal of certification of public librarians is authorized by KRS 171.250. Administrative regulations are needed to prescribe rules for the manner in which public librarians shall renew their certification. This program is administered by the Kentucky Department for Libraries and Archives.

Section 1. Definitions. (1) "Board" means the Kentucky State Board for the Certification of Librarians.

(2) [(5)] "Certification renewal point" means a unit of measurement which is the equivalent of ten (10) contact hours of learning activity.

(3) [(4)] "Professional library association" means an organization of librarians and persons interested in libraries.

(4) "Full-time" employment means working more than 100 hours per month.

(5) [(6)] "Learning activity" means a class, institute, seminar or workshop which is planned, coordinated, administered and evaluated in terms of learning objectives.

(6) [(3)] "Library information services" mean duties which require special skills and knowledge to be performed properly.

(7) [(2)] "Library work experience" means employment in a library which includes administration, collection development, technical or public services, or support for public service areas, and excludes secretarial, custodial, groundskeeping, security, food service, driver, and messenger duties.

Section 2. Required Certification Renewal by Public Library Position. (1) Library directors serving a population of more than 15,000 shall renew the professional certificate every five (5) years [~~regardless of part-time or full-time employment~~]. Ten (10) certification renewal points shall be accumulated within the five (5) year period.

(2) Library directors serving a population of 15,000 and less shall renew at least the paraprofessional certificate every five (5) years [~~regardless of part-time or full-time status~~]. Ten (10) certification renewal points shall be accumulated within the five (5) year period.

(3) Assistant ~~directors~~ [librarians], bookmobile librarians, branch ~~heads~~, or department heads shall renew at least the paraprofessional certificate every five (5) years [~~regardless of part-time or full-time~~]

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status]. Ten (10) certification renewal points shall be accumulated within the five (5) year period.

(4) All other full-time ~~employees in permanent~~ positions providing library information services as determined by local library policy shall renew the library experience certificate every five (5) ~~three (3)~~ years; ~~regardless of part-time or full-time status~~. Five (5) ~~Three (3)~~ certification renewal points shall be accumulated within the five (5) ~~three (3)~~ year period.

Section 3. Types of Certificates. ~~[(+)]~~The following certificates may be renewed for a period of five (5) years:

- (1) ~~[(a)]~~ Professional Certificate I;
- (2) ~~[(b)]~~ Professional Certificate II;
- (3) ~~[(c)]~~ Professional Certificate III;
- (4) ~~[(d)]~~ Professional Certificate IV;
- (5) ~~[(e)]~~ Paraprofessional Certificate;
- (6) ~~[(f)]~~
- (2) ~~A~~ Library experience certificate ~~[may be renewed for a period of three (3) years]~~.

Section 4. Sources of Learning Activities which Provide Certification Renewal Points. (1) The board shall accept job-related coursework or continuing education offerings from institutions of higher education as follows:

(a) Classes, institutes, seminars, workshops, conferences, lecture series or internships;

(b) Courses taken for academic credit ~~[or audited]~~.

(2) The board shall accept activities in professional library associations as follows:

(a) Participation in seminars, workshops, conferences and lecture series;

(b) The holding of an association office, with statement specifying learning activity and derived educational benefit.

(3) The board shall accept participation in seminars, workshops, conferences and lecture series sponsored by the Kentucky Department for Libraries and Archives.

(4) The board shall accept participation in workshops, lecture series and ~~[on-the-job]~~ training programs that shall be documented as job related. These activities may be sponsored by individual libraries.

(5) The board shall accept self-directed learning activities as follows:

(a) Writing reviews of library materials or library-related books, articles, or chapters that ~~[which]~~ are published in statewide, regional or national publications; or

(b) Editing a library publication with statewide, regional or national distribution; or

(c) Making a prepared library-related presentation to library staff, library school students or library trustees; or

(d) Preparing for and teaching a course, workshop, seminar or institute, and documenting that each learning activity incorporates new subject matter. [; and

~~(e) Documenting that each learning activity incorporates new subject matter.~~

~~(6) The board shall accept participation in group learning activities which shall be documented as job-related.]~~

Section 5. Application for public librarian certification renewal shall be made to the board.

Section 6. A fee of five (5) dollars shall be charged for all certificate renewals issued.

JAMES A. NELSON, State Librarian and Commissioner
CHERYL LALONDE-MOONEY, Assistant Attorney General

APPROVED BY AGENCY: September 15, 1999

FILED WITH LRC: September 15, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 22, 1999, at 10 a.m. at the Kentucky Department for Libraries and Archives Board Room. Individuals interested in being heard at this hearing shall notify this agency in writing by October 15, 1999, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This

hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written documents on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person,

CONTACT PERSON: Tezeta G. Lynes, Program Development Office Branch Manager, Field Service Division, Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, Phone: (502) 564-8300 ext. 267, Fax: (502) 564-5773.

REGULATORY IMPACT ANALYSIS

Contact person: Tezeta G. Lynes

(1) Type and number of entities affected: All currently employed staff in 118 county public libraries required to be certified. The number of applicants for certification and the holders of public library certificates are undeterminable.

(2) Direct and indirect costs or savings on the: There are no financial costs or savings created by this regulation; no increase in paperwork is required and there will be no increase in the cost of doing business as a result of this regulation.

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

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

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

1. First year following implementation: None required.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: No direct continuing cost will be realized.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The agency collects fees for the filing of applications.

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

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

(b) Kentucky: No public comments received.

(7) Assessment of alternative methods: No viable alternatives were identified. Public library staff need and are required to have training in the performance of their jobs. This regulation effects that training and is mandated by statute (KRS Chapter 171).

(8) Assessment of expected benefits: In addition to the cited well-trained staff, implementation of this administrative regulation will greatly enhance a public librarian's educational level and training, thus providing much better, faster and more accurate information to the citizens of the commonwealth.

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

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

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

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

no statute, administrative regulation, or government policy with which this regulation conflicts, overlaps, or duplicates.

(a) Necessity of proposed regulation if in conflict: None in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: The requirements of this regulation will enhance the ability of a public library staff to do his job well; will be in greater confidence of his ability to assist patrons; and will acquire the basic skills necessary to do his job well. Better and more efficient training, such as is effected by this regulation, are the keys to helping with the continuing education of the citizens of the Commonwealth, regardless of age or socioeconomic background.

(11) TIERING: Is tiering applied? No. Tiering is not applied since regulation requires uniformity in the amount of application fees. Education requirements for each level of certification are the same for all applicants and all entities wishing to develop approved training programs will be treated similarly.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
(Amendment)

808 KAR 10:260. Examination requirement for individuals advising the public on securities, broker-dealers, and agents.

RELATES TO: KRS 292.310, 292.330(4), (13)(b)6, 292.500(3)

STATUTORY AUTHORITY: KRS 292.330(4), (13)(b)6, 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.330(4) and (13)(b)6 authorize the commissioner to require an examination as evidence of knowledge of the securities business as a condition of registration. This administrative regulation requires an individual who advises the public regarding securities to successfully complete a written examination that demonstrates knowledge of the requirements of the securities laws and exempts certain individuals from the examination requirement.

Section 1. Except as provided in Section 2 of this administrative regulation, an individual, including an investment adviser or an investment adviser representative, who advises the public regarding the value of a security or the advisability of investing in, purchasing, or selling a security shall demonstrate competence in the law of securities by providing the commissioner with proof of obtaining a passing score on one (1) of the following examinations:

(1) The Uniform Investment Advisor Law Examination (Series 65 examination); or

(2) The General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination). [:

(1) Demonstrate competence in the law of securities by taking and passing with a minimum score of seventy (70) percent one (1) of the following examinations administered by the National Association of Securities Dealers:

(a) The Series 63 Uniform Securities Law Examination;

(b) The Series 65 Uniform Investment Advisor Law Examination;
or

(c) The Series 66 Uniform Combined State Law Examination; and

(2) Provide to the commissioner a copy of the notification from the National Association of Securities Dealers informing him of his score on the examination.]

Section 2. The following individuals shall not be required to take and pass the examination:

(1) An individual who has been employed continuously since on or before July 1, 1991, by an investment adviser who has been registered in Kentucky continuously since on or before July 1, 1991;

(2) An individual (including an officer, partner, director, or clerical staff) employed by a registered investment adviser if the individual does not advise the public regarding the value of a security or the advisability of investing in, purchasing, or selling a security;

(3) An investment adviser who is exempt from registration under KRS 292.330(1); [or]

(4) An individual employed by an investment adviser who is exempt from registration under KRS 292.330(1); or

(5) An individual who currently holds one (1) of the following professional designations and is in compliance with all continuing education and other requirements of good standing for such designation:

(a) Certified Financial Planner (CFP) issued by the Certified Financial Planner Board of Standards, Inc.;

(b) Chartered Financial Consultant (ChFC) issued by The American College, Bryn Mawr, Pennsylvania;

(c) Personal Financial Specialist (PFS) administered by the American Institute of Certified Public Accountants;

(d) Chartered Financial Analyst (CFA) granted by the Association for Investment Management and Research;

(e) Chartered Investment Counselor (CIC) granted by the Investment Counsel Association of America; or

(f) Such other professional designation as the commissioner may by order recognize.

Section 3. A registered investment adviser shall not employ an individual as an investment adviser or as one who represents an investment adviser unless that individual has complied with this administrative regulation.

Section 4. To register in Kentucky as a broker-dealer or agent, an individual or a principal, if the applicant is a corporation, shall:

(1) Pass one (1) of the following National Association of Securities Dealers ("NASD") examinations: Series 1, 2, 6, 7, 11, 17, 22, 24, 26, 39, 40, 52, 53, or 62; and

(2) Pass the NASD Series 63 or Series 66 examination.

RONALD MCCLOUD, Secretary

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Counsel

APPROVED BY AGENCY: September 10, 1999

FILED WITH LRC: September 14, 1999 at 3 p.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation is scheduled for October 26, 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 October 19, 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 October 19, 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, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Phone (502) 573-3390, FAX (502) 573-8787.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe

(1) Type and number of entities affected: Investment advisers and their representatives who are required to register 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: None
2. Second and subsequent years: None
- (3) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings:
 1. First year: Amendments are revenue neutral
 2. Continuing costs or savings: Amendments are revenue neutral
- (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: Not applicable.
- (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 alternatives were rejected: The department did not consider alternatives because modifications to the examinations necessitated the changes.
 - (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:
 - (11) TIERING: Is tiering applied? Yes, certain individuals are exempt from the examination requirements because it would be unfair to apply the requirements to them or because they are qualified by other means.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Adult and Child Health
(Amendment)

902 KAR 55:030. Schedule IV substances.

RELATES TO: KRS 218A.010 to 218A.030, 218A.100 to 218A.110, 21 CFR 1308.14

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 211.090, 218A.020, 218A.100, 218A.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.100 authorizes the Cabinet for Health Services to place a substance in Schedule IV if it finds that: (1) the substance has a low potential for abuse relative to substances in Schedule III; (2) the substance has currently accepted medical use in treatment in the United States; and (3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III. KRS 218A.020(3) provides that if any substance is designated, rescheduled, or deleted as a controlled substance under a federal law and notice of the designation, rescheduling or deletion is given to the cabinet, the cabinet may similarly control the substance by administrative regulation. The Cabinet for Health Services, after considering the criteria, designates the substances set forth in this administrative regulation as Schedule IV controlled substances.

Section 1. Stimulants. The Cabinet for Health Services designates as "Schedule IV" controlled substances, in addition to those specified by KRS 218A.110, a material, compound, mixture, or preparation which contains a quantity of the following substances, including their salts, isomers whether optical position or geometric, and salts of the isomers, if the existence of the salts, isomers, and salts of isomers is possible:

- (1) Cathine ((+)-norpseudoephedrine);
- (2) Diethylpropion;
- (3) Fencamfamin;
- (4) Fenfluramine;
- (5) Fenproporex;
- (6) Mazindol;
- (7) Mefenorex;
- (8) Modafinil;
- (9) Pemoline, including organometallic complexes and chelates;
- (10) Phentermine;
- (11) Pipradrol;
- (12) Sibutramine; and
- (13) SPA ((-)-1-dimethylamino-1,2-diphenyl ethane).

Section 2. Depressants. The Cabinet for Health Services designates as "Schedule IV" controlled substances, in addition to those specified by KRS 218A.110, a material, compound, mixture, or preparation which contains a quantity of the following substances, including its salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Alprazolam;
- (2) Bromazepam;
- (3) Camazepam;
- (4) Carisoprodol;
- (5) Chlordiazepoxide;
- (6) Clobazam;
- (7) Clonazepam;
- (8) Clorazepate;
- (9) Clotiazepam;
- (10) Cloxazolam;
- (11) Delorazepam;
- (12) Diazepam;
- (13) Estazolam;
- (14) Ethyl loflazepate;
- (15) Fludiazepam;
- (16) Flunitrazepam;
- (17) Flurazepam;
- (18) Halazepam;
- (19) Haloxazolam;
- (20) Ketazolam;
- (21) Loprazolam;
- (22) Lorazepam;
- (23) Lormetazepam;
- (24) Mebutamate;
- (25) Medazepam;
- (26) Methohexital;
- (27) Midazolam;
- (28) Nimetazepam;
- (29) Nitrazepam;
- (30) Nordiazepam;
- (31) Oxazepam;
- (32) Oxazolam;
- (33) Pinazepam;
- (34) Prazepam;
- (35) Quazepam;
- (36) Temazepam;
- (37) Tetrazepam;
- (38) Triazolam; [and]
- (39) Zaleplon; and
- (40) Zolpidem.

Section 3. Narcotics. The Cabinet for Health Services designates as "Schedule IV" controlled substances, in addition to those specified by KRS 218A.110, a material, compound, mixture, or preparation containing a quantity of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

- (1) Butorphanol;
- (2) Dextropropoxyphene (Alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane);
- (3) Not more than one (1) milligram of difenoxin and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit; and

(4) Nalbuphine.

RICE C. LEACH, MD, Commissioner
JOHN H. MORSE, Secretary
JOHN H. WALKER, Attorney

APPROVED BY AGENCY: September 14, 1999

FILED WITH LRC: September 15, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held October 21, 1999 at 9 a.m. in the Cabinet for Health Services Auditorium, 1st Floor, Department Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by October 14, 1999. 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. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments to: Kevin Devlin, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4 W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 Fax.

REGULATORY IMPACT ANALYSIS

Contact person: Danna Droz

(1) Type and number of entities affected: Approximately 14,000 health care professionals including pharmacists, physicians, dentists, and veterinarians in the Commonwealth are affected by this administrative regulation.

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

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

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

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

1. First year following implementation: There is no compliance, reporting or paperwork required by this regulation that is not already required for other substances in schedule IV.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no anticipated costs or savings to the administrative agency because the only change is to add a drug to the list of substances in schedule IV.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this administrative regulation.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The administration of drug regulations is financed by the general fund.

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

(a) Geographical area in which administrative regulation will be implemented: No comments were received related to this issue.

(b) Kentucky: No comments were received related to this issue.

(7) Assessment of alternative methods: reasons why alternatives were rejected: Alternatives were rejected because the result would be nonconformity with federal 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: Scheduling this drug will conform with federal regulations.

(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: No statute, regulation, or policy conflicts, overlaps or duplicates this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied because the provisions of KRS Chapter 218A apply to all substances and all health care professionals uniformly.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal laws and regulations are 84 Stat. 1242; 21 USC 801; and 21 CFR 1308.14.

2. State compliance standards. The criteria for substances in schedule IV are set forth in KRS 218A.020 and 218A.100.

3. Minimum or uniform standards contained in the federal mandate. The criteria for substances in schedule IV are set forth in 21 USC 812(b)(4).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Therefore the proposed amendment will conform to federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards are not imposed.

CABINET FOR HEALTH SERVICES Department for Public Health Division of Adult and Child Health (Amendment)

902 KAR 55:045. Exempt prescription products.

RELATES TO: KRS 218A.020 to 218A.130, 21 CFR 1308.31-1308.32

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 211.090, 218A.020, 218A.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.020(3) provides that if any controlled substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice is given to the Cabinet for Health Services, the Cabinet for Health Services may similarly control the substance under KRS Chapter 218A by administrative regulation. The purpose of this administrative regulation is to exempt certain stimulant or depressant products from the provisions of KRS Chapter 218A that have been exempted pursuant to federal regulation.

Section 1. Exempt Prescription Products. The Cabinet for Health Services exempts the following prescription products from the provisions of KRS 218A.150 - 218A.180 and 218A.200:

(1) Acetaminophen 325mg/Butalbital 50 mg, tablet, NDC 00456-0674: butalbital 50 mg;

(2) Acetaminophen 500mg/Butalbital 50 mg, tablet, NDC 00456-0671: butalbital 50 mg;

(3) ALAGESIC Tablets, tablet, NDC 55726-0300: butalbital 50 mg;

(4) Alkaloids of Belladonna and Phenobarbital, tablet, NDC 00377-0527: phenobarbital 16.20 mg;

(5) Amaphen Capsules (reformulated), capsule, NDC 11311-0954: butalbital 50 mg;

(6) Aminophylline and Phenobarbital, enteric coated tablet, NDC 00115-2156: phenobarbital 15 mg;

(7) Aminophylline and Phenobarbital Tablets, tablet, NDC 00115-2154: phenobarbital 15 mg;

(8) Anaspaz PB, tablet, NDC 00225-0300: phenobarbital 15 mg;

(9) Anolor 300 Capsules, capsule, NDC 51674-0009: butalbital 50

- mg;
- (10) Anoquan Modified Formula, capsule, NDC 00166-0881: butalbital 50 mg;
- (11) Anti-Spas Elixir, elixir, NDC 00719-4090: phenobarbital 3.24 mg/ml;
- (12) Anti-Spas Tablets, tablet, NDC 00719-1091: phenobarbital 16.20 mg;
- (13) Antispas, tablet, NDC 00377-0622: phenobarbital 16.20 mg;
- (14) Antispasmodic, tablet, NDC 00364-0020: phenobarbital 16 mg;
- (15) Antispasmodic, tablet, NDC 00367-4118: phenobarbital 16.20 mg;
- (16) Antispasmodic, tablet, NDC 03547-0777: phenobarbital 16.20 mg;
- (17) Antispasmodic Elixir, elixir, NDC 00182-0686: phenobarbital 3.24 mg/ml;
- (18) Antispasmodic Elixir, elixir, NDC 00364-7002: phenobarbital 3.20 mg/ml;
- (19) Antispasmodic Elixir, elixir, NDC 00832-8009: phenobarbital 3.24 mg/ml;
- (20) Antispasmodic Tablets, tablet, NDC 00182-0129: phenobarbital 16.20 mg;
- (21) Antispasmodic Tablets, tablet, NDC 47679-0158: phenobarbital 16.2 mg;
- (22) Antispasmodic Tablets, tablet, NDC 00839-5055: phenobarbital 16 mg;
- (23) Antrocol, capsule, NDC 00095-0041: phenobarbital 16 mg;
- (24) Antrocol Elixir, elixir, NDC 00095-0042: phenobarbital 3 mg/ml;
- (25) Antrocol Tablets, tablet, NDC 00095-0040: phenobarbital 16 mg;
- (26) Arco-Lase Plus, tablet, NDC code 00275-0045: phenobarbital 8 mg;
- (27) Atropine Sulfate with Phenobarbital, tablet, NDC 00463-6035: phenobarbital 15 mg;
- (28) Axotal, tablet, NDC 00013-1301: butalbital 50 mg;
- (29) Azpan, tablet, NDC 00172-3747: phenobarbital 8 mg;
- (30) B-A-C Tablets, tablet, NDC 00259-1256: butalbital 50 mg;
- (31) Bancap, capsule, NDC 00456-0546: butalbital 50 mg;
- (32) Barbeloid (Revised) Green, tablet, NDC 00377-0365: phenobarbital 16.20 mg;
- (33) Barbeloid Yellow, tablet, NDC 00377-0498: phenobarbital 16.20 mg;
- (34) Barbidonna Elixir, elixir, NDC 00037-0305: phenobarbital 3.20 mg/ml;
- (35) Barbidonna No 2, tablet, NDC 00037-0311: phenobarbital 32 mg;
- (36) Barbidonna Tablets, tablet, NDC 00037-0301: phenobarbital 16 mg;
- (37) Barophen, elixir, NDC 00472-0981: phenobarbital 3.24 mg/ml;
- (38) Bel-phen-ergot s Tablets, tablet, NDC 00182-1847: phenobarbital 40 mg;
- (39) Bel-Phen-Ergot-S Tablets, tablet, NDC 00719-1686: phenobarbital 40 mg;
- (40) Bel-Tabs, tablet, NDC 00677-1171: phenobarbital 40 mg;
- (41) Belladenal, tablet, NDC 00078-0028: phenobarbital 50 mg;
- (42) Belladenal-S, sustained release tablet, NDC 00078-0027: phenobarbital 50 mg;
- (43) Belladonna Alkaloids with Phenobarbital, elixir, NDC 00179-0045: phenobarbital 3.24 mg/ml;
- (44) Belladonna Alkaloids with Phenobarbital, elixir, NDC 00737-1283: phenobarbital 3 mg/ml;
- (45) Belladonna Alkaloids with Phenobarbital, tablet, NDC 51079-0168: phenobarbital 16.20 mg;
- (46) Belladonna Alkaloids and Phenobarbital, tablet, NDC 00143-1140: phenobarbital 16.20 mg;
- (47) Bellalphen, tablet, NDC 00223-0425: phenobarbital 16.20 mg;
- (48) Bellamine Tablets, tablet, NDC 00904-2548: phenobarbital 40 mg;
- (49) Bellamor Tablets, tablet, NDC 00839-7370: phenobarbital 40 mg;
- (50) Bellergal-S, sustained release tablet, NDC 00078-0031: phenobarbital 40 mg;
- (51) Bellophen, tablet, NDC 00115-2400: phenobarbital 16.20 mg;
- (52) Bilezyme Plus, tablet, NDC 00249-1112: phenobarbital 8 mg;
- (53) Bladder Mixture Plus Phenobarbital, liquid, NDC 11326-1624: phenobarbital 2.92 mg/ml;
- (54) Blue Cross Butalbital, APAP and Caffeine Tablets, tablet, NDC 00879-0567: butalbital 50 mg;
- (55) Broncholate, capsule, NDC 00563-0277: phenobarbital 8 mg;
- (56) Broncomar, elixir, NDC 12939-0128: butabarbital 1 mg/ml;
- (57) Bucet Capsules, capsule, NDC 00785-2307: butalbital 50 mg;
- (58) Bucet Tablets, tablet, NDC 00785-2307: butalbital 50 mg;
- (59) Butace, capsule, NDC code 00539-0906: butabarbital 50 mg;
- (60) Butacet Capsules, capsule, NDC 53121-0133: butalbital 50 mg;
- (61) Butalbital, Acetaminophen and Caffeine Capsules, capsule, NDC 46672-0228: butalbital 50 mg;
- (62) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 52555-0079: butalbital 50 mg;
- (63) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 54696-0513: butalbital 50 mg;
- (64) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 00302-0490: butalbital 50 mg;
- (65) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 46672-0053: butalbital 50 mg;
- (66) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 46672-0059: butalbital 50 mg;
- (67) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 00832-1102: butalbital 50 mg;
- (68) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 52446-0544: butalbital 50 mg;
- (69) Butalbital and Acetaminophen Tablets, tablet, NDC 00879-0543: butalbital 50 mg;
- (70) Butalbital and Acetaminophen Tablets 50/325, tablet, NDC 46672-0099: butalbital 50 mg;
- (71) Butalbital and Acetaminophen Tablets 50/650, tablet, NDC 46672-0098: butalbital 50 mg;
- (72) Butalbital, APAP and Caffeine, tablet, NDC 00302-0490: butalbital 50 mg;
- (73) Butalbital, APAP and Caffeine Tablets, tablet, NDC 00182-1274: butalbital 50 mg;
- (74) Butalbital Compound Capsules, capsule, NDC 53506-0103: butalbital 50 mg;
- (75) Butalbital with Acetaminophen and Caffeine Tablets, tablet, NDC 00143-1787: butalbital 50 mg;
- (76) Butibel Elixir, elixir, NDC 00037-0044: butabarbital sodium 3 mg/ml;
- (77) Butibel Tablets, tablet, NDC 00037-0046: butabarbital sodium 15 mg;
- (78) Cafatine-PB Tablets, tablet, NDC 00904-1750: pentobarbital sodium 30 mg;
- (79) Cafegot P-B Suppository, suppository, NDC 00078-0035: pentobarbital 60 mg;
- (80) Cafegot P-B Tablets, tablet, NDC 00078-0036: pentobarbital sodium 30 mg;
- (81) C.D.P. Plus Capsules, capsule, NDC 00182-1856: chlordiazepoxide HCl 5 mg;
- (82) Cephadyn, tablet, NDC 95702-0650: butalbital 50 mg.;
- (83) Charspast, tablet, NDC 00377-0500: phenobarbital 16.20 mg;
- (84) Chlordiazepoxide HCl and Clidinium Br., capsule, NDC 57247-1003: chlordiazepoxide 5 mg;
- (85) Chlordiazepoxide HCl 5 mg and Clidinium BR 2.5 mg, capsule, NDC 52446-0096: chlordiazepoxide HCL 5 mg;
- (86) Chlordiazepoxide Hydrochloride + Clidinium Bromide, capsule, NDC 47679-0268: chlordiazepoxide HCl 5 mg;
- (87) Chlordiazepoxide with Clidinium Bromide, capsule, NDC 46193-0948: chlordiazepoxide HCl 5 mg;
- (88) Chlordinium, capsule, NDC 00719-1208: chlordiazepoxide HCl 5 mg;
- (89) Chlordinium Sealets, capsule, NDC 00580-0084: chlordiazepoxide HCl 5 mg;
- (90) Clindex, capsule, NDC 00536-3490: chlordiazepoxide HCL 5

- mg;
- (91) Clinibrax Capsules, capsule, NDC 00832-1054: chlordiazepoxide HCl 5 mg;
- (92) Clinoxide, capsule, NDC 00879-0501: chlordiazepoxide HCl 5 mg;
- (93) CON-TEN, capsule, NDC 11584-1029: butalbital 50 mg;
- (94) Digestokraft, tablet, NDC 00796-0237: butabarbital sodium 8 mg;
- (95) Digestokraft, tablet, NDC 00377-0460: butabarbital sodium 8 mg;
- (96) Dilantin with Phenobarbital 1/2, capsule, NDC 00071-0531: phenobarbital 32 mg;
- (97) Dilantin with Phenobarbital 1/4, capsule, NDC 00071-0375: phenobarbital 16 mg;
- (98) Dolmar, capsule, NDC 12939-0812: butalbital 50 mg;
- (99) Donalixir, elixir, NDC 00471-0095: phenobarbital 3.24 mg/ml;
- (100) Donna-Sed, elixir, NDC 00298-5054: phenobarbital 3.24 mg/ml;
- (101) Donnatal Capsules, capsule, NDC 00031-4207: phenobarbital 16.20 mg;
- (102) Donnatal Elixir, elixir, NDC 00031-4221: phenobarbital 3.24 mg/ml;
- (103) Donnatal Extentabs, sustained release tablet, NDC 00031-4235: phenobarbital 48.60 mg;
- (104) Donnatal No 2, tablet, NDC 00031-4264: phenobarbital 32.40 mg;
- (105) Donnatal Tablets, tablet, NDC 00031-4250: phenobarbital 16.20 mg;
- (106) Donnazyme, enteric coated tablet, NDC 00031-4649: phenobarbital 8.10 mg;
- (107) Donphen, tablet, NDC 00093-0205: phenobarbital 15 mg;
- (108) E-Caff PB Tablets, tablet, NDC 00185-0982: pentobarbital 30 mg;
- (109) Endolar, capsule, NDC 00588-7777: butalbital 50 mg;
- (110) Ephedrine and Sodium Phenobarbital, tablet, NDC 00377-0109: phenobarbital sodium 16.20 mg;
- (111) Ephedrine with Phenobarbital, tablet, NDC 00463-6086: phenobarbital 15 mg;
- (112) EQUI-CET Tablets, tablet, NDC 57779-0111: butalbital 50 mg;
- (113) Ergocaff-PB Tablets, tablet, NDC 00536-3801: pentobarbital sodium 30 mg;
- (114) Esgic Capsules, capsule, NDC 00456-0631: butalbital 50 mg;
- (115) ESGIC-PLUS, NDC 00456-0676, tablet, contains butalbital 50 mg;
- (116) Esgic Tablets, tablet, NDC 0456-0630: butalbital 50 mg;
- (117) Espasmotex, tablet, NDC code 11475-0835: phenobarbital 20 mg;
- (118) Ezol, capsule, NDC 45985-0578: butalbital 50 mg;
- (119) Fabophen Tablets, tablet, NDC 00904-3280: butalbital 50 mg;
- (120) Febridyne Plain Capsules, capsule, NDC 05383-0001: butalbital 50 mg;
- (121) FEMCET Capsules, capsule, NDC 50474-0703: butalbital 50 mg;
- (122) Fioricet, capsule, NDC 00078-0084: butalbital 50 mg;
- (123) G-1 Capsules, capsule, NDC 43797-0244: butalbital 50 mg;
- (124) G.B.S., tablet, NDC 00456-0281: phenobarbital 8 mg;
- (125) Gustase Plus, tablet, NDC 00249-1121: phenobarbital 8 mg;
- (126) Hybephen, tablet, NDC 00029-2360: phenobarbital 15 mg;
- (127) Hyosital White, tablet, NDC 00361-2131: phenobarbital 16.20 mg;
- (128) Hyosophen Capsules, capsule, NDC 00536-3926: phenobarbital 16 mg;
- (129) Hyosophen Tablets, tablet, NDC 00536-3920: phenobarbital 16.20 mg;
- (130) Hypnaldyne, tablet, NDC 00298-1778: phenobarbital 16.20 mg;
- (131) Hytrophen, tablet, NDC 00917-0244: phenobarbital 16.20 mg;
- (132) IDE-Cet Tablets, tablet, NDC 00814-3820: butalbital 50 mg;
- (133) ISOCET Tablets, tablet, NDC 00536-3951: butalbital 50 mg;
- (134) Isolate Compound, elixir, NDC 00472-0929: phenobarbital 0.40 mg/ml;
- (135) Isolate Compound Elixir, elixir, NDC 00364-7029: phenobarbital 0.40 mg/ml;
- (136) Isopap Capsules, capsule, NDC 11735-0400: butalbital 50 mg;
- (137) Isophed, liquid, NDC 00298-5680: phenobarbital 0.40 mg/ml;
- (138) Isuprel, elixir, NDC 00024-0874: phenobarbital 0.40 mg/ml;
- (139) Isuprel Compound, elixir, NDC 00057-0874: phenobarbital 0.40 mg/ml;
- (140) Kinesed, tablet, NDC 00038-0220: phenobarbital 16 mg;
- (141) Levsin with Phenobarbital Elixir, elixir, NDC 00091-4530: phenobarbital 3 mg/ml;
- (142) Levsin with Phenobarbital Tablets, tablet, NDC 00091-3534: phenobarbital 15 mg;
- (143) Levsin-PB, drops, NDC 00091-4536: phenobarbital 15 mg/ml;
- (144) Levsinex with Phenobarbital, sustained release capsule, NDC 00091-3539: phenobarbital 45 mg;
- (145) Librax, capsule, NDC 00140-0007: chlordiazepoxide HCl 5 mg;
- (146) Lufyllin-EPG Elixir, elixir, NDC 00037_0565: phenobarbital 1.60 mg/ml;
- (147) Lufyllin-EPG Tablets, tablet, NDC 00037-0561: phenobarbital 16 mg;
- (148) Malatal, tablet, NDC 00166-0748: phenobarbital 16.20 mg;
- (149) Margesic Capsules, capsule, NDC 00682-0804: butalbital 50 mg;
- (150) Medigesic Tablets, tablet, NDC 52747-0311: butalbital 50 mg;
- (151) Menrium 5-2, tablet, NDC 00140-0023: chlordiazepoxide 5 mg;
- (152) Menrium 5-4, tablet, NDC 00140-0024: chlordiazepoxide 5 mg;
- (153) Menrium 10-4, tablet, NDC 00140-0025: chlordiazepoxide 10 mg;
- (154) Micomp-PB Tablets, tablet, NDC 55053-0525: pentobarbital sodium 30 mg;
- (155) Milprem-200, tablet, NDC 00037-5501: meprobamate 200 mg;
- (156) Milprem-400, tablet, NDC 00037-5401: meprobamate 400 mg;
- (157) Mudrane, tablet, NDC 00095-0050: phenobarbital 8 mg;
- (158) Mudrane GG Elixir, elixir, NDC 00095-0053: phenobarbital 0.50 mg/ml;
- (159) Mudrane GG Tablets, tablet, NDC 00095-0051: phenobarbital 8 mg;
- (160) Pacaps Capsules, capsule, NDC 10892-0116: butalbital 50 mg;
- (161) Pacaps Modified Formula, capsule, NDC 48534-0884: butalbital 50 mg;
- (162) Panzyme, tablet, NDC 00377-0491: phenobarbital 8.10 mg;
- (163) Panzyme, tablet, NDC 00314-0310: phenobarbital 8.10 mg;
- (164) PB Phe-Bell, tablet, NDC 12908-7006: phenobarbital 16.20 mg;
- (165) Phedral C.T., tablet, NDC 00298-1173: phenobarbital 8.10 mg;
- (166) Phenerbel-S Tablets, tablet, NDC 00536-4234: phenobarbital 40 mg;
- (167) Phenobarbital, Ergotamine and Belladonna Tablets, tablet, NDC 00781-1701: phenobarbital 40 mg;
- (168) Phenobarbital and Hyoscyamine Sulfate, tablet, NDC 00764-2057: phenobarbital 16.20 mg;
- (169) Phrenilin, tablet, NDC 00086-0050: butalbital 50 mg;
- (170) Phrenilin Forte, capsule, NDC 00086-0056: butalbital 50 mg;
- (171) PMB-200, tablet, NDC 00046-0880: meprobamate 200 mg;
- (172) PMB-400, tablet, NDC 00046-0881: meprobamate 400 mg;
- (173) Private Formula No 3095, tablet, NDC 00252-3095: phenobarbital sodium 15 mg;
- (174) Pulsaphen, tablet, NDC 00377-0652: phenobarbital 15 mg;
- (175) Pulsaphen Gray, tablet, NDC 00917-0113: phenobarbital 15 mg;

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(176) Quadrinal Suspension, suspension, NDC 00044-4580: phenobarbital 2.40 mg/ml;
 (177) Quadrinal Tablets, tablet, NDC 00044-4520: phenobarbital 24 mg;
 (178) Quibron Plus Capsules, capsule, NDC 00087-0518: butabarbital 20 mg;
 (179) Quibron Plus Elixir, elixir, NDC 00087-0511: butabarbital 1.33 mg/ml;
 (180) Repan Capsules, capsule, NDC 00642-0163: butalbital 50 mg;
 (181) Repan Tablets, tablet, NDC 00642-0162: butalbital 50 mg;
 (182) Rexatal Tablets, tablet, NDC 00478-5477: phenobarbital 16.52 mg;
 (183) Rogesic Capsules, capsule, NDC 31190-0008: butalbital 50 mg;
 (184) Sangesic, tablet, NDC 00511-1627: butalbital 30 mg;
 (185) Sedapap-10 Tablets, tablet, NDC 00259-1278: butalbital 50 mg;
 (186) Sedapar Elixir, elixir, NDC 00349-4100: phenobarbital 3.24 mg/ml;
 (187) Sedapar Tablets, tablet, NDC 00349-2355: phenobarbital 16.20 mg;
 (188) Sedarex No 3, tablet, NDC 00144-1575: phenobarbital 16.20 mg;
 (189) Seds, tablet, NDC 00418-4072: phenobarbital 16.20 mg;
 (190) Soniphen, enteric coated tablet, NDC 0456-0429: phenobarbital 16 mg;
 (191) Spaslin, tablet, NDC 00165-0029: phenobarbital 16.20 mg;
 (192) Spasmalones, tablet, NDC 00653-0002: phenobarbital 16 mg;
 (193) Spasmolin, tablet, NDC 00115-4652: phenobarbital 15 mg;
 (194) Spastemms Elixir, elixir, NDC 00463-9023: phenobarbital 3.24 mg/ml;
 (195) Spastemms Tablets, tablet, NDC 0463-6181: phenobarbital 15 mg;
 (196) Spastolate, tablet, NDC 00814-7088: phenobarbital 16.20 mg;
 (197) Spastrin Tablets, tablet, NDC 54580-0124: phenobarbital 40 mg;
 (198) Susano, elixir, NDC 00879-0059: phenobarbital 3.24 mg/ml;
 (199) Susano, tablet, NDC 00879-0058: phenobarbital 16.20 mg;
 (200) Tedral SA, sustained release tablet, NDC 00071-0231: phenobarbital 25 mg;
 (201) Tencet, tablet, NDC 47649-0370: butalbital 50 mg;
 (202) Tencet Capsules, capsule, NDC 47649-0560: butalbital 50 mg;
 (203) T-E-P, tablet, NDC 00364-0266: phenobarbital 8.10 mg;
 (204) T.E.P., tablet, NDC 00157-0980: phenobarbital 8 mg;
 (205) Theodrine Tablets, tablet, NDC 00536-4648: phenobarbital 8 mg;
 (206) Theophen, tablet, NDC code 12634-0101: phenobarbital 8 mg;
 (207) Theophenyllin, tablet, NDC 00839-5111: phenobarbital 8 mg;
 (208) Theophylline Ephedrine and Phenobarbital, tablet, NDC 00143-1695: phenobarbital 8 mg;
 (209) Triad, tablet, NDC 00785-2306: butalbital 50 mg;
 (210) Triad Capsules, capsule, NDC 00785-2305: butalbital 50 mg;
 (211) Triaprin, capsule, NDC 00217-2811: butalbital 50 mg;
 (212) Truxaphen, tablet, NDC 00377-0541: phenobarbital 16.20 mg;
 (213) Two-Dyne Revised, tablet, NDC 00314-2229: butalbital 50 mg;
 (214) Wescophen-S, tablet, NDC 00917-0135: phenobarbital 30 mg;
 (215) Wescophen S-II, tablet, NDC 00377-0628: phenobarbital 30 mg;
 (216) Wesmatic Forte, tablet, NDC 00917-0845: phenobarbital 8 mg; and
 (217) Wesmatic Forte, tablet, NDC 00377-0426: phenobarbital 8.10 mg; and
 (218) Zebutal, capsule, NDC 59630-0170: butalbital 50.

RICE C. LEACH, MD, Commissioner
 JOHN H. MORSE, Secretary
 JOHN H. WALKER, Attorney

APPROVED BY AGENCY: September 14, 1999

FILED WITH LRC: September 15, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held October 21, 1999 at 9 a.m. in the Cabinet for Health Services Auditorium, 1st Floor, Department Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by October 14, 1999. 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. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments to: Kevin Devlin, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4 W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 Fax.

REGULATORY IMPACT ANALYSIS

Contact person: Danna Droz

(1) Type and number of entities affected: 14,000 health care professionals including pharmacists, physicians, dentists, and veterinarians in the Commonwealth are affected by this administrative regulation.

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

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

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

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

1. First year following implementation: There is no compliance, reporting or paperwork required by these amendments.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no anticipated costs or savings to the administrative agency because the amendment merely adds one product to the list.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by these amendments.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The administration of drug regulations is financed by the general fund.

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

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

(b) Kentucky: No comments received related to this issue.

(7) Assessment of alternative methods: reasons why alternatives were rejected: Alternatives were rejected because additional recordkeeping would be required of health professionals if the product is not listed.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The benefit is conformity with federal regulations and the elimination of recordkeeping requirements for those products included in this regulation.

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

(c) If detrimental effect would result, explain detrimental effect: If the administrative regulation is not implemented, controls on this product will be more stringent than federal requirements, which could inhibit availability to citizens of the Commonwealth.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy conflicts, overlaps or duplicates this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied because the exclusion applies to all pharmacists or other dispensers regardless of specialty, location or type of practice.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal laws and regulations are 84 Stat. 1242 and 21 CFR 1308.32.

2. State compliance standards. The criteria for exemption are set forth in KRS 218A.020(3) and 218A.090(4)(i).

3. Minimum or uniform standards contained in the federal mandate. The criteria for substances to be exempt are set forth in 84 Stat. 1241 and 21 CFR 1308.31.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards are not imposed by the amendments.

CABINET FOR HEALTH SERVICES Department for Public Health Division of Adult and Child Health (Amendment)

902 KAR 55:090. Exempt anabolic steroid products.

RELATES TO: KRS 218A.010 to 218A.030, 218A.080 to 218A.090, 21 CFR 1308.13, 1308.33-1308.34

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, [194.050;] 211.090, 218A.020, 218A.250[; EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: [Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services.] KRS 218A.020(3) provides that if any controlled substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice is given to the Cabinet for Health Services, the Cabinet for Health Services may similarly control the substance under KRS Chapter 218A by administrative regulation. The purpose of this administrative regulation is to exempt certain anabolic steroid products from the provisions of KRS Chapter 218A that have been exempted pursuant to federal regulation.

Section 1. Exempt Anabolic Steroid Products. The Cabinet for Health Services exempts the following anabolic steroid containing compounds, mixtures, or preparations from the provisions of KRS 218A.150 - 218A.180 and 218A.200:

(1) Androgyn L.A.®, vial, NDC number 0456-1005: testosterone enanthate 90 mg/ml, estradiol valerate 4 mg/ml;

(2) Andro-Estro 90-4®, vial, NDC number 0536-1605: testosterone enanthate 90 mg/ml, estradiol valerate 4 mg/ml;

(3) DepANDROGYN®, vial, NDC number 0456-1020: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;

(4) DEPO-T.E.®, vial, NDC number 52765-257: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;

(5) depTESTROGEN®, vial, NDC number 51698-257: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;

(6) Duomone®, vial, NDC number 52047-360: testosterone enanthate 90 mg/ml, estradiol valerate 4 mg/ml;

(7) DURATESTIN®, vial, NDC number 43797-016: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;

(8) DUO-SPAN II®, vial, NDC number 0684-0102: testosterone cypionate 50 mg/ml, esterified cypionate 2 mg/ml;

(9) Estratest®, tablet, NDC number 0032-1026: esterified estrogens 1.25 mg, methyltestosterone 2.5 mg;

(10) Estratest HS®, tablet, NDC number 0032-1023: esterified estrogens 0.625 mg, methyltestosterone 1.25 mg;

(11) Menogen®, tablet, NDC number 59243-0570: esterified estrogens 1.25 mg, methyltestosterone 2.5 mg;

(12) Menogen HS®, tablet, NDC number 59243-0560: esterified estrogens 0.625 mg, methyltestosterone 1.25 mg;

(13) PAN ESTRA TEST®, vial, NDC number 0525-0175: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;

(14) [(12)] Premarin with Methyltestosterone®, tablet, NDC number 0046-0879: conjugated estrogens 1.25 mg, methyltestosterone 10.0 mg;

(15) [(13)] Premarin with Methyltestosterone®, tablet, NDC number 0046-0878: conjugated estrogens 0.625 mg, methyltestosterone 5.0 mg;

(16) [(14)] Synovex H in-process bulk pellets [in-process], drum: testosterone propionate 25 mg., estradiol benzoate 2.5 mg.;

(17) [(15)] Synovex H Pellets in-process granulation, drum: testosterone propionate 10 parts, estradiol benzoate 1 part;

(18) Synovex Plus®, in-process bulk pellets, drum: trenbolone acetate 25 mg., estradiol benzoate 3.5 mg.;

(19) Synovex Plus®, in-process granulation, drum: trenbolone acetate 25 parts, estradiol benzoate 3.5 parts;

(20) [(16)] TEST-ESTRO Cypionates®, vial, NDC number 0536-9470: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;

(21) [(17)] Testagen®, vial, NDC number 55553-257: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;

(22) Testoderm®, 4 mg/d, patch, NDC number 17314-4608: testosterone 10 mg.;

(23) Testoderm®, 6 mg/d, patch, NDC number 17314-4609: testosterone 15 mg.;

(24) Testoderm®, with Adhesive, 6 mg/d, patch, NDC number 17314-2836: testosterone 15 mg.;

(25) Testoderm®, in-process film, sheet: testosterone 0.25 mg/cm²;

(26) Testoderm®, with Adhesive, in-process film, sheet: testosterone 0.25 mg/cm²;

(27) [(18)] Testosterone Cyp 50 Estradiol Cyp 2, vial, NDC number 0814-7737: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;

(28) [(19)] Testosterone Cypionate-Estradiol Cypionate Injection, vial, NDC number 54274-530: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;

(29) [(20)] Testosterone Cypionate-Estradiol Cypionate Injection, vial, NDC number 0182-3069: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;

(30) [(21)] Testosterone Cypionate-Estradiol Cypionate Injection, vial, NDC number 0364-6611: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;

(31) [(22)] Testosterone Cypionate-Estradiol Cypionate Injection, vial, NDC number 0402-0257: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;

(32) [(23)] Testosterone Cypionate-Estradiol Cypionate Injection, vial, NDC number 0009-0253: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;

(33) [(24)] Testosterone Enanthate-Estradiol Valerate Injection, vial, NDC number 0182-3073: testosterone enanthate 90 mg/ml, estradiol valerate 4 mg/ml;

(34) [(25)] Testosterone Enanthate-Estradiol Valerate Injection, vial, NDC number 0364-6618: testosterone enanthate 90 mg/ml, estradiol valerate 4 mg/ml;

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(35) [(26)] Testosterone Enanthate-Estradiol Valerate Injection, vial, NDC number 0402-0360: testosterone enanthate 90 mg/ml, estradiol valerate 4 mg/ml; and

(36) [(27)] Tilapia Sex Reversal Feed (Investigational), plastic bags: methyltestosterone fish feed, 60 mg/1 kg.

RICE C. LEACH, MD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: September 14, 1999

FILED WITH LRC: September 15, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held October 21, 1999 at 9 a.m. in the Cabinet for Health Services Auditorium, 1st Floor, Department Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by October 14, 1999. 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. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments to: Kevin Devlin, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4 W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 Fax.

REGULATORY IMPACT ANALYSIS

Contact person: Danna Droz

(1) Type and number of entities affected: Approximately 14,000 health care professionals including pharmacists, physicians, dentists, and veterinarians in the Commonwealth are affected by this administrative regulation.

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

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

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

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

1. First year following implementation: There is no compliance, reporting or paperwork required by this regulation.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no anticipated costs or savings to the administrative agency.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this administrative regulation.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The administration of drug regulations is financed by the general fund.

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

(a) Geographical area in which administrative regulation will be implemented: No comments were received related to this issue.

(b) Kentucky: No comments were received related to this issue.

(7) Assessment of alternative methods: reasons why alternatives were rejected: Alternatives were rejected because nonconformity with federal regulation would result.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of

the geographical area in which implemented and on Kentucky: The benefit is conformity with federal regulations and the elimination of recordkeeping requirements for those substances included in this regulation.

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

(c) If detrimental effect would result, explain detrimental effect: If the administrative regulation is not implemented, controls on the substances will be more stringent than federal requirements, which could inhibit their availability to citizens of the Commonwealth.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy conflicts, overlaps or duplicates this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied because the provisions of KRS Chapter 218A apply to all health care professionals regardless of specialty, location or type of practice.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal laws and regulations are 21 USC 802 (41)(A), (B); 21 USC 812(c),(e) and 21 CFR 1308.34.

2. State compliance standards. The criteria for exemption are set forth in KRS 218A.090(4)(i).

3. Minimum or uniform standards contained in the federal mandate. The criteria for substances to be exempt are set forth in 21 CFR 1308.33.

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

5 Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards are not imposed.

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Member and Provider Services (Amendment)

907 KAR 1:675. Program integrity.

RELATES TO: KRS 205.8453, 42 CFR 455.12, 455.13, 455.16(c)(4)

STATUTORY AUTHORITY: KRS 194A.030, 194A.050[; 205.6318, 205.8453, 42 CFR 455.12, 455.13, 455.16(c)(4), 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 in the Cabinet for Health Services.] KRS 205.520 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. KRS 205.8453(4) directs the Cabinet for Health Services to institute other measures necessary or useful in controlling fraud and abuse. This administrative regulation institutes an administrative process which provides due process prior to disqualification or request for repayment of Medicaid benefits paid on behalf of a recipient. Action taken under the administrative process shall not relieve the cabinet from pursuing criminal action through law enforcement officials. This administrative regulation establishes [sets forth] the provisions relating to enhanced program integrity of the Medicaid Program and [- This administrative

regulation] applies to all Kentucky Medicaid recipients.

Section 1. Definitions. (1) "Benefits" means as defined in KRS 205.8451.

(2) "Department" means the Department for Medicaid Services or [and] its designated agent [agents].

(3) "Disqualification hearing" means a hearing conducted by a Cabinet for Health Services hearing officer if an adult recipient or responsible party has been found, through an investigative process, to have committed MA IPV and the individual has appealed the finding.

(4) "Eligibility-based MA IPV" means a program violation which occurs as a result of an individual's ineligibility for Medicaid benefits for one (1) or more months.

(5) "Extraordinary circumstance" means a medical condition other than pregnancy or postpartum which results from a communicable disease or other condition that creates a risk to public health, or a condition which, if not treated, could result in immediate grave bodily harm.

(6) "Judicial review" means a review of final agency orders by the appropriate circuit court, plus any further appeal to the Kentucky Court of Appeals or Kentucky Supreme Court.

(7) "Medicaid intentional program violation" (MA IPV) means an action in which a recipient or responsible party makes a false or misleading statement, or misrepresents, conceals or withholds a fact or commits a violation of any state or federal law relating to the Medicaid program which results in a financial loss to the department.

(8) "Noneligibility based MA IPV" means an abuse of the Medicaid Program by an individual other than the one (1) listed on the Medical Assistance Identification (MAID) card who uses the MAID card inappropriately to obtain services.

(9) "Penalty" means an administrative action taken by the department which restricts or revokes a recipient's participation in the Medicaid program or requires the repayment of the value of the benefits received.

(10) "Recipient" means as defined in KRS 205.8451.

(11) "Responsible party" means an individual who is either:

(a) A parent or legal guardian of a minor child who is a Medicaid recipient;

(b) A Medicaid recipient who is eighteen (18) years old or older;

(c) A spouse aged eighteen (18) years old or older of a Medicaid recipient;

(d) An individual who possesses a power of attorney for the Medicaid recipient; or

(e) A legal guardian for an incompetent adult Medicaid recipient. ["Intentional program violation" means confirmation that a responsible party knowingly made a false or misleading statement, or misrepresented, concealed or withheld a fact or facts or committed a violation of any state or federal law relating to the Medicaid Program. In addition, a financial loss to the department resulted from:

(a) Ineligibility of the recipient after all possible determinations have been made for Medicaid Program eligibility; or

(b) The responsible party knowingly abused the Medicaid Program after full Medicaid benefits were established following a period in lock-in status. Provider abuse shall be handled in accordance with 907 KAR 1:674.

(4) "Lock-in" means the program in which a recipient who has utilized Medicaid services at a frequency or amount that is not medically necessary may be restricted from receiving Medicaid services from anyone other than one (1) physician and one (1) pharmacy except for emergency services furnished to the recipient. A referral shall be required from the lock-in physician for other medical services or equipment.

(5) "Penalty" or "penalties" mean an administrative action taken by the department which restricts or revokes a recipient's participation in the Medicaid Program or requires the repayment of the value of the benefits received.

(6) "Recipient" means as defined in KRS 205.8451.

(7) "Responsible party" means an individual who is either:

(a) A parent or legal guardian of a minor child who is a Medicaid recipient;

(b) A Medicaid recipient who is eighteen (18) years old or older;

(c) Spouse of a Medicaid recipient who is eighteen (18) years or older;

(d) An individual who possesses a power of attorney for the Medicaid recipient; or

(e) A legal guardian for an incompetent adult Medicaid recipient.]

Section 2. Medicaid Intentional Program Violation. Medicaid intentional program violation occurs if the Medicaid recipient or responsible party, age eighteen (18) or older, caused a financial loss to Medicaid by:

(1) Making a false or misleading statement to obtain Medicaid benefits;

(2) Misrepresenting, concealing, or withholding a fact to obtain Medicaid benefits;

(3) Committing a violation of a state or federal law or regulation relating to the Medicaid Program;

(4) Defrauding the department during the Medicaid eligibility process;

(5) Abusing the Medicaid program by allowing an individual other than the one (1) listed on the MAID card to obtain health care benefits by use of the household's card; or

(6) Inappropriately obtaining a covered service.

Section 3. Medicaid Intentional Program Violation [Preliminary] Identification Procedures. (1) The department shall notify a Medicaid Program recipient [recipients] of a change [changes] in Medicaid policy for which he [they] shall be held liable with respect to a Medicaid [an] intentional program violation in accordance with the criteria specified in this administrative regulation.

(2) The department shall provide a Medicaid recipient [recipients shall be given] a toll free number to report an [any] allegation of possible fraud or abuse of the Medicaid Program by a recipient or provider [recipients or providers].

(3) The department shall identify that a possible Medicaid intentional program violation occurred through:

(a) Computer matches;

(b) Collateral contacts;

(c) Hotline referrals;

(d) Quality control reviews; or [and]

(e) Other valid reports or information previously unknown to the department.

Section 4. Medicaid Intentional Program Violation Referral Procedures. (1) If a finding from a preliminary investigation in accordance with Section 3 of this administrative regulation warrants a full investigation shall [{}] the department shall [if information warrants];

(a) Interview the responsible party and request verification of any information previously unknown to the department for the specified period of time that the alleged Medicaid intentional program violation occurred;

(b) Allow the responsible party the opportunity to review and refute evidence obtained by the department; and

(c) Calculate the value of the covered services rendered based on Medicaid payments made on behalf of the recipient for the time period that the recipient received covered services through an alleged Medicaid intentional program violation, [-and]

(2) Within ten (10) days of the date of the interview, the following shall occur:

(a) The department shall provide the recipient or responsible party the opportunity to review and refute findings of the investigation; and

(b) [(d) Allow] The responsible party shall be allowed to reimburse the Medicaid Program in full for all covered services received during a period of eligibility based on the Medicaid intentional program violation; [and]

(c) [(e)] If the responsible party does not agree to the repayment or with the evidence he reviews, and wishes to request a disqualification hearing, he shall sign form MAP-800 and the disqualification hearing shall be scheduled in accordance with Section 6 of this administrative regulation; or

(d) If the responsible party does not appear for the interview identified in subsection (1)(a) and (b) of this section or request a disqualification hearing he shall be disqualified effective with the first administratively feasible month.

Section 5. Continued Participation in the Medicaid Program

While Awaiting a Disqualification Hearing. A pending hearing shall not affect the recipient's right to participate in the Medicaid program until the hearing officer rules that the responsible party committed a Medicaid intentional program violation and revokes the recipient's eligibility.

~~[1. Provided the department has documented evidence indicating that a responsible party appears to have committed an act of intentional program violation; and~~

~~2. Regardless of the current eligibility of the recipient.]~~

Section 6. [3.-Advance Notice of] Disqualification Hearing Process. (1) The recipient or responsible party shall have thirty (30) days from the date on form MAP-800 to request a hearing through the department.

(2) Upon receipt of the hearing request, the Cabinet for Health Services, shall conduct the disqualification hearing for a responsible party suspected of a Medicaid intentional program violation in accordance with the requirements of KRS Chapter 13B and 42 CFR Part 431, Subpart E.

~~(3) [(4)] The department shall;~~

~~(a) Provide written notice in accordance with KRS [Chapter] 13B.050 to the responsible party suspected of a Medicaid [an] intentional program violation at least twenty (20) [thirty (30)] days before the date the [administrative] disqualification hearing is scheduled;~~

~~(b) Arrange the time and place of the hearing so that the hearing is accessible to the responsible party accused of Medicaid intentional program violation;~~

~~(c) Indicate on the advance written notice an individual or organization who may be available to provide free legal representation; and~~

~~(d) Conduct a telephonic hearing if the responsible party and any party or witness required to testify under oath or affirmation consents.~~

~~[(2) The advance notice shall indicate an individual or organization who may be available to provide free legal representation.~~

Section 4. Scheduling the Disqualification Hearing. (1) The time and place of the hearing shall be arranged so that the hearing is accessible to the responsible party accused of intentional program violation.

(2) If the responsible party and any party or witness required to testify under oath or affirmation consents, a telephonic hearing may be conducted.

(3) If the responsible party fails to attend a disqualification hearing and is determined to have committed an intentional program violation, but a hearing official later determines that the responsible party or representative had good cause, as defined in subsection (4) of this section, for not appearing:

(a) The previous decision shall not remain valid;

(b) The department shall conduct a new administrative disqualification hearing; and

(c) The hearing official who originally ruled on the case may also conduct the new administrative disqualification hearing.

(4) The responsible party shall have ten (10) days after the date of the scheduled hearing to present good cause for failure to appear. Reasons for good cause shall include:

(a) The responsible party was away from home during the entire hearing advance notice time period;

(b) The responsible party is unable to read or to comprehend the hearing notice;

(c) The responsible party moved resulting in inadequate notice;

(d) Serious illness of the responsible party or immediate family member;

(e) The delay was determined to be no fault of the responsible party; or

(f) Failure on the part of the responsible party to receive notification.

(5) A hearing official shall enter a decision for good cause into the record in addition to the date and time of the rescheduled hearing as specified in subsection (3) of this section.

Section 5. Continued Participation in the Medicaid Program while Awaiting a Disqualification Hearing. A pending hearing shall not affect

the recipient's right to participate in the Medicaid Program until the hearing official rules that the responsible party committed an intentional program violation and revokes the recipient's eligibility for those individuals currently receiving Medicaid benefits.

Section 6. Hearing Procedures. (1) The department shall conduct administrative disqualification hearings for a responsible party suspected of an intentional program violation in accordance with the requirements of KRS Chapter 13B and 42 CFR Part 431, Subpart E.]

(4) [(2)] If requested by the responsible party, another [other] designated person or his legal counsel, the department shall provide one (1) free copy of the portions of the case file that are relevant to the hearing.

(5) Pursuant to KRS 13B.110, [(3)] within sixty (60) [ninety (90)] days of the date the responsible party requests a hearing [is notified] in writing [that a hearing has been scheduled], the department shall:

(a) Schedule the hearing;

(b) Conduct the hearing;

(c) [(b)] Arrive at a recommended decision; and

(d) [(c)] Notify the responsible party and the Cabinet for Families and Children, Department for Community-Based Services of the decision.

[(4) The responsible party or legal representative shall be entitled to one (1) postponement not to exceed thirty (30) days from the date the administrative disqualification hearing was originally scheduled. The request for postponement shall be made at least ten (10) days in advance of the date of the scheduled hearing.

(5) If the hearing is postponed, the time limits specified in subsection (10) of this section shall be extended for as many days as the hearing is postponed.]

(6) The hearing decision shall:

(a) Comply with federal law and regulation and shall be based on the hearing record;

(b) The hearing record shall comply with the requirements of KRS 13B.130; and

1. Be binding on the department in that the department shall bear the burden of proof based on the preponderance of evidence;

2. Summarize the facts of the case;

3. Specify the reasons for the decision; and

4. Identify:

a. The supporting evidence;

b. Kentucky Revised Statutory citations, if applicable;

c. Kentucky administrative regulations; and

d. Corresponding federal law.

(7) A final order shall be issued by the commissioner of the department to the responsible party or legal counsel and the Department for Community-Based Services pursuant to KRS 13B.120. The final order shall include the following: [Social Insurance shall each be notified in writing by the department of:]

(a) The [administrative] disqualification hearing decision;

(b) The reasons for the decision; and

(c) If a current recipient, the continuance or revocation of the Medicaid benefits for the recipient, and the amount of repayment due to the department as determined by the hearing officer. [official; and

(d) After notification of a hearing decision which upholds the department's action, the responsible party shall be notified of the right to pursue judicial review of the decision if the department's decision is upheld.

(e) If a judicial review results in the administrative disqualification hearing decision being overturned, the Medicaid benefits of the recipient shall be restored to the date of discontinuance and all repayment collected from the responsible person shall be returned.]

(8) The hearing record shall be retained:

(a) For a period of five (5) [three (3)] years from the month of origin of each record, for program records; and

(b) For a period of five (5) [three (3)] years from the date of fiscal or administrative closure, for fiscal records and accountable documents.

(9) This hearing record shall be available to the responsible party, designated person or legal counsel during the normal business week, Monday through Friday, excluding state holidays from 8 a.m. through 4:30 p.m. (eastern standard time) for copying and inspection.

(10) One (1) copy of the hearing material shall be provided to the

responsible party. If additional copies are required, an appropriate fee which approximates cost shall be paid by the responsible party in accordance with KRS 61.872.

Section 7. Failure to Appear or Postponement of the Hearing. (1) If the responsible party fails to attend a disqualification hearing and is determined to have committed a Medicaid intentional program violation, but a hearing officer later determines that the responsible party or representative had good cause for not appearing, as defined in subsection (2) of this section:

- (a) The previous decision shall be void;
- (b) The department shall conduct a new disqualification hearing;

and

- (c) The hearing officer who originally ruled on the case may also conduct the new disqualification hearing.

(2) The responsible party shall have ten (10) days after the date of the scheduled hearing to present good cause for failure to appear. Reasons for good cause shall include:

- (a) The responsible party was away from home during the entire hearing advance notice time period;
- (b) The responsible party is unable to read or to comprehend the hearing notice;
- (c) The responsible party moved resulting in inadequate notice;
- (d) Serious illness of the responsible party or immediate family member;

(e) The failure to appear for the disqualification hearing was determined to be no fault of the responsible party; or

(f) Failure on the part of the responsible party to receive notification.

(3) A hearing officer shall enter a decision for good cause into the record in addition to the date and time of the rescheduled hearing as specified in subsection (2) of this section.

(4) The responsible party or legal representative shall be entitled to one (1) postponement not to exceed thirty (30) days from the date the disqualification hearing was originally scheduled. The request for postponement shall be made at least ten (10) days in advance of the date of the scheduled hearing.

(5) If the hearing is postponed, the time limits specified in Section 6(5) of this administrative regulation shall be extended for as many days as the hearing is postponed. [Exemptions from Disqualifications. (1) Recipients who shall be exempt from disqualification for an intentional program violation include:

- (a) Children under eighteen (18) years of age; and
- (b) Pregnant women.

(2) Individuals meeting the criteria for extraordinary circumstances, as specified in KRS 205.8455 and 205.8455(5), may be permitted to participate in the Medicaid Program on a restricted basis, in accordance with Section 11 of this administrative regulation.]

Section 8. Penalties for Medicaid Intentional Program Violations.

(1) If the disqualification hearing officer determines that the responsible party committed a Medicaid [an] intentional program violation, the department shall:

(a) Disqualify the recipient from participation in the Medicaid Program for a period not to exceed one (1) year or until all money expended for benefits by the department during the period of eligibility obtained by Medicaid intentional program violation is repaid, whichever comes first;

(b) Provide to the responsible party a written notice prior to imposing the disqualification;

(c) Inform the responsible party of the period of time for which the recipient shall be disqualified;

(d) Advise the responsible party when the disqualification shall take effect; and

(e) Inform the responsible party of the final value of the benefits received, as calculated at the time of the [administrative] disqualification hearing, which shall be repaid to the department.

(2) If during a preliminary investigation [a determination of an intentional program violation is made through an administrative disqualification hearing, the department shall refer the case to the appropriate state agency for investigation. If] a criminal offense is suspected, a case [cases] shall be referred for possible prosecution. In order to facilitate criminal investigative action, the department shall, at

the request of the state agency conducting the criminal investigation, provide:

(a) Access to, and free copies of, any records or information kept by the department or its contractors;

(b) Computerized data stored by the department or its contractors; and

(c) Access to any information, kept by providers, to which the agency is authorized as specified in 907 KAR 1:672.

(3) If the recipient is no longer receiving Medicaid benefits, the department [notice] shall inform the responsible party in writing that the period of disqualification shall begin with the first administratively feasible month and continues for eleven (11) consecutive months. [be deferred until the individual:

(a) Reapplies for Medicaid; and

(b) Is determined otherwise eligible for program benefits.]

(4) A notice of their rights and eligibility status shall be provided to other Medicaid recipients residing in a household with a responsible party determined to have committed a Medicaid [an] intentional program violation.

(5) If more than one (1) Medicaid intentional program violation determination has been made, the twelve (12) month periods of disqualification are served consecutively.

(6) If the responsible party committed the Medicaid intentional program violation, the responsible party shall be disqualified, but the recipient shall not be disqualified.

Section 9. Exemptions from Disqualifications. (1) A recipient who shall be exempt from disqualification for a Medicaid intentional program violation shall include:

(a) A child under eighteen (18) years of age; and

(b) A pregnant women through postpartum.

(2) An individual meeting the criteria for extraordinary circumstances, as determined by the department's peer review organization, may be permitted to participate in the Medicaid Program on a restricted basis, in accordance with Section 10 of this administrative regulation.

[Section 9. Repayment of Medicaid Benefits. (1) A responsible party shall be liable for the repayment of the value of the benefits when a determination is made that the benefits were obtained by committing an intentional program violation:

(2) Repayment of the value of benefits shall be accomplished by:

(a) Lump sum payments:

1. If the responsible party states he is financially able to pay the entire amount of the claim at one (1) time, as a cash payment, the department shall collect a lump sum payment; however

2. The responsible party shall not be required to liquidate all of its resources to make this lump sum payment.

(b) Installments:

1. The department shall negotiate a payment schedule with the responsible party for repayment of any amounts of the claim not repaid through a lump sum payment.

2. Payment shall be accepted by the department in regular installments and shall be paid no later than the tenth day of the month.

(c) Civil action for garnishment or liens in a court of competent jurisdiction.

(d) A lien on any property owned by the recipient or the responsible party in accordance with KRS 205.8471.

Section 10. Collecting Claims Against the Responsible Party. The department shall upon receipt of the hearing decision, initiate collection action against the responsible party unless the responsible party is unable to be located or has repaid the value of benefits owed to the department.]

Section 10. [11:] Consideration of Extraordinary Circumstances during the Eligibility Revocation Period. (1) If a recipient, who is the responsible party for the Medicaid case has his eligibility revoked as a result of a Medicaid [an] intentional program violation, the remaining family members shall have eligibility determined for potential Medicaid benefits, in accordance with eligibility criteria contained in Medicaid administrative regulations 907 KAR 1:011, 907 KAR 1:605, 907 KAR 1:640, 907 KAR 1:645, and 907 KAR 1:660.

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(2) The department shall [may] reinstate within ten (10) working days a recipient whose eligibility has been revoked due to a Medicaid [an] intentional program violation and has reapplied for benefits under extraordinary circumstances [in accordance with KRS 205.8455 and 907-KAR 1:677].

(3) If a recipient's eligibility has been revoked and then reinstated under extraordinary circumstances as specified in subsection (2) of this section, that person shall serve the balance, if any, of the disqualification period, when the extraordinary circumstance no longer exists. If the disqualification time period expires during the extraordinary circumstance period, no additional ineligibility period shall be imposed on the individual. [remain obligated to serve the period of ineligibility at a future time to be determined by the department.]

(4) A determination of extraordinary circumstances due to pregnancy shall be made at the local Department for Community-Based Services [Social Insurance] office for a recipient who provides a written statement from a physician verifying pregnancy.

Section 11. Judicial Review. (1) After notification of a final hearing decision which upholds the department's action, the department shall:

(a) Notify the responsible party of the right to pursue judicial review of the decision in accordance with KRS 13B.140; and

(b) Impose the Medicaid intentional program violation disqualification regardless of any pending action by the judicial review.

(2) Reversal of a hearing decision by judicial review shall result in:

(a) Medicaid benefits of the recipient being restored to the date of discontinuance; and

(b) All repayment collected from the responsible person being returned by the department within ninety (90) days of the decision.

Section 12. Collecting Claims Against the Responsible Party. The department shall upon receipt of the hearing decision or voluntary agreement to repay signed by the recipient or responsible party, initiate collection action against the recipient or responsible party unless the recipient or responsible party is unable to be located or has repaid the value of benefits owed to the department.

Section 13. Repayment of Medicaid Benefits. (1) A recipient or responsible party shall be liable for the repayment of the value of the benefits to the department when a determination is made that the benefits were obtained by committing a Medicaid intentional program violation.

(2) Repayment of the value of benefits shall be accomplished by:

(a) Lump sum payments.

1. If the recipient or responsible party states he is financially able to pay the entire amount of the claim at one (1) time, the department shall collect a lump sum payment by cashier's check, money order or personal check; and

2. The recipient or responsible party shall not be required to liquidate all of his resources to make this lump sum payment; or

(b) Installments.

1. The department shall negotiate a payment schedule with the recipient or responsible party for repayment of any amount of the claim not repaid through a lump sum payment.

2. Payment shall be accepted by the department in regular installments and shall be paid no later than the tenth day of each month.

(c) Civil action for garnishment or liens in a court of competent jurisdiction; or

(d) A lien on property owned by the recipient or the responsible party in accordance with KRS 205.8471.

(3) If the benefits are not repaid within thirty (30) days of notice from the department, disqualification shall be applied in accordance with Section 8(1) of this administrative regulation.

Section 14. Incorporation by Reference. (1) Form Map-800, Notice of Fraud and/or Abuse Committed Against The Medicaid Program, Department for Medicaid Services, 8/99 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the

Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

[Section 12. Appeal Rights. (1) A further departmental administrative appeal shall not exist after an administrative disqualification hearing finds that an intentional program violation was committed;

(2) The responsible party may seek relief in a court of competent jurisdiction in accordance with KRS 13B.140.

(3) The period of disqualification may be subject to legal stay by:

(a) A court of competent jurisdiction; or

(b) Other injunctive remedy.]

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: August 27, 1999

FILED WITH LRC: August 27, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 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 October 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 or Karen Doyle

(1) Type and number of entities affected: All Medicaid eligibles who receive Medicaid benefits through fraudulent means.

(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: Some paperwork required in order to refund the federal government the federal matching funds for all claims identified through this process.

(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 were received.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will act as a deterrent to Medicaid recipients who may choose to provide misinformation in order to obtain Medicaid eligibility or services fraudulently. A decrease in this activity would result in those funds being more accessible to those individuals who are in need.

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

(c) If detrimental effect would result, explain detrimental effect: Failure to implement this administrative regulation would result in an increase in fraudulent activity among Medicaid recipients resulting in a decrease in available funds for those who are in need of Medicaid.

(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 administrative regulation is determined to be budget neutral due to the small amount of Medicaid benefits which will be recovered. In addition, all claims must be reported to HCFA, which demands their federal share even though the full amount of the claim may not be recovered.

(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.

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(Amendment)

921 KAR 1:380. Child Support Program application process.

RELATES TO: KRS 194B.050(1), 205.705, 205.710-205.800, 205.992, 213.046(4), 405.430(5), 405.520, 406.021, 406.025, 407.5101-407.5902, 45 CFR 302.31, 302.33-302.36, 302.50, 302.65, 302.80, 303.2, 303.3-303.15, 303.30-303.31, 303.70, 42 USC 651 et seq., EO 98-731

STATUTORY AUTHORITY: KRS 194B.050(1), 205.705, 205.710-205.800, 405.520, 42 USC 651 et seq., EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: KRS 205.712(2) requires the cabinet to establish and enforce child support obligations and laws. KRS 205.795 and 405.520 provide that the secretary shall develop administrative regulations to operate the CSP in accordance with federal law and regulations. This administrative regulation specifies the process by which an individual may apply for child support services and the scope of services available.

Section 1. Kentucky Transitional Assistance Program (K-TAP) Process for Child Support Services. (1) As a condition of eligibility for assistance, each applicant for, or recipient of K-TAP shall make an assignment of rights to the state for support that the applicant or recipient may have from any other person in accordance with KRS 205.720(1).

(a) The assignment shall include all members of the case for whom support rights apply.

(b) The assignment shall be completed at the time of application for K-TAP benefits.

(2) A client shall cooperate in all phases of child support activity if his needs are included in a K-TAP case, as specified in 921 [904] KAR 2:006, Section 16.

(3) If the client states that "good cause" for noncooperation exists,

he shall have the opportunity to establish his claim according to criteria contained in 921 [904] KAR 2:006, Section 16.

(4) The child support agency shall not attempt location, establishment, modification or enforcement if it has reason to believe allegations of child abuse or domestic violence pursuant to [in accordance with] KRS 205.730(1).

(5) The child support agency shall open a case and determine needed action within twenty (20) calendar days of receipt of a referral from the public assistance agency.

(6) A service [Services] provided to a K-TAP recipient through the Child Support Program shall include:

(a) Location of the noncustodial parent, or obligor;

(b) Establishment of paternity based upon the receipt of either:

1. A court order; or

2. An affidavit from the Office of Vital Statistics that a signed, notarized voluntary acknowledgement of paternity has been registered;

(c) Establishment of child support and medical support obligations;

(d) Review and modification of child support and medical support orders when appropriate;

(e) Enforcement of child support, medical support, and spousal support obligations; and

(f) Collection and distribution of:

1. Child support amounts; and

2. Medical support amounts; and

3. Spousal support if the client is the spouse or ex-spouse.

Section 2. Foster Care Process for Child Support Services. (1) The child support agency shall collect and disburse child support on behalf of a child [children] for whom:

(a) The state is making a foster care maintenance payment [payments] as required by 42 USC 657; and

(b) An assignment of rights has been made.

(2) The worker with responsibility for the foster care child shall:

(a) Cooperate with the child support agency;

(b) Complete a [and forward the] foster care child support referral;

(c) Complete a [and forward the foster care child support] change of status [form] when changes occur that [which] relate to the child support process; and

(d) Forward a copy [copies] of court documents pertaining to the child support process.

(3) Good cause for nonenforcement of child support for a foster care child exists if criteria contained in 921 [904] KAR 2:006, Section 16 are met.

(4) Evidence for determination of good cause shall be pursuant to [as specified in 904] KAR 2:006, Section 16(5).

(5) The child support agency shall not attempt location, establishment, modification or enforcement if it has reason to believe an allegation [allegations] of child abuse or domestic violence pursuant to [in accordance with] KRS 205.730(1).

(6) The child support agency shall open a case and determine needed action within twenty (20) calendar days of receipt of a foster care referral.

(7) A service [Services] available to a foster care recipient shall include:

(a) Location of the noncustodial parent, or obligor;

(b) Establishment of paternity;

(c) Establishment of child support and medical support obligations;

(d) Enforcement of child support and medical support obligations;

(e) Review and modification of child support and medical support orders when appropriate; and

(f) Collection and disbursement to the social services agency for distribution of a child support payment [payments].

Section 3. Medicaid Only Process for Child Support Services. (1) If a public assistance referral is received, the child support agency shall obtain the following information:

(a) The Medicaid case number;

(b) The name of the noncustodial parent, or obligor;

(c) The Social Security number of the noncustodial parent, or obligor;

(d) The name and Social Security number of the child;

(e) The home address of the noncustodial parent, or obligor; and

(f) The name and address of the noncustodial parent's, or obli-

gor's, place of employment.

(2) An application for Medicaid shall include an assignment of rights for medical support, pursuant to [as specified in] 907 KAR 1:011, Section 9.

(3) Except for a custodial parent who is pregnant or in her post partum period pursuant to [as specified in] 907 KAR 1:011, Section 10, a custodial parent shall cooperate in all phases of medical support activity if his needs are included in a Medicaid case.

(4) If the Medicaid client states that "good cause" for noncooperation exists, he shall have the opportunity to establish the claim pursuant to 921 [according to criteria contained in 904] KAR 2:006, Section 16.

(5) Evidence for determination of good cause shall be pursuant to 921 [as specified in 904] KAR 2:006, Section 16(5).

(6) The child support agency shall not attempt location, establishment, modification or enforcement if it has reason to believe an allegation [allegations] of child abuse or domestic violence pursuant to [in accordance with] KRS 205.730(1).

(7) The child support agency shall open a case and determine needed action within twenty (20) calendar days of the receipt of a referral from a public assistance agency.

(8) Services [available] to a Medicaid only client [clients] shall include:

- (a) Location of the noncustodial parent, or obligor;
- (b) Establishment of paternity;
- (c) Establishment of medical support obligation [obligations];
- (d) Enforcement of a medical support obligation [obligations];
- (e) Review and modification of the medical support aspect [aspects] of a support obligation [obligations] when appropriate;

(f) Application for health insurance coverage through an employer for the child if court or administratively ordered but not acquired by either parent;

(g) Collection and disbursement of a medical support payment [payments] if ordered.

(9) If enforcement becomes necessary and a lien is to be filed in order to collect past due support, the child support agency shall take an assignment of support rights and authority to collect from an individual receiving Medicaid only.

Section 4. Services to an Individual not Receiving K-TAP. (1) Child support services shall be made available to any individual who:

- (a) Assigns rights for medical support only; or
- (b) Files a nonpublic assistance application for services with the child support agency; or
- (c) Is a Medicaid only client who requests and gives consent for child support services in addition to medical support; or
- (d) Has been receiving child support services as a public assistance recipient and is no longer eligible for public assistance; or
- (e) Is receiving Medicaid only nonfoster care services.

(2) Notification shall be made within five (5) working days to the family no longer eligible for public assistance that services shall continue unless the child support agency is notified to the contrary by the family.

Section 5. Application Process for a Nonpublic Assistance Individual. (1) Upon the request of a nonpublic assistance applicant, an application packet shall be given to the applicant.

(a) If the request is made in person, the packet shall be provided the same day.

(b) If the request is made by telephone or mail, the packet shall be sent to the applicant within five (5) working days of the request.

(2) The application packet shall include:

- (a) Nonpublic assistance application form;
- (b) Nonpublic assistance services fact sheet;
- (c) Civil rights information pamphlet.

(3) The applicant shall be required to complete and return a notarized authorization and acknowledgment of no representation form.

(4) Services provided to a nonpublic assistance client through the CSP shall be those services listed in Section 1(6) of this administrative regulation. The child support agency shall obtain the following information from a nonpublic assistance applicant for child support services: [Medical support services shall be provided with the consent of a nonpublic assistance client. If a nonpublic assistance child support

application is provided to an individual requesting child support services, the child support agency shall:

(a) Inform the client that medical support establishment and enforcement are available; and

(b) Obtain the following information:

- (a) [1:] The name of the noncustodial parent, or obligor;
- (b) [2:] The [name and] Social Security number of the noncustodial parent, or obligor;

(c) [3:] The Social Security number of the child;

(d) [4:] The home address of the noncustodial parent, or obligor; and

(e) [5:] The name and address of the noncustodial parent's, or obligor's, place of employment.

(5) [If enforcement becomes necessary and a lien is to be filed in order to collect past due support, the child support agency shall take an assignment of support rights and authority to collect from an individual receiving nonpublic assistance child support services as prescribed by KRS 205.720(4):

(6) The child support agency shall open a case within twenty (20) calendar days of receipt of a nonpublic assistance application.

(6) [(7)] The nonpublic assistance application fee shall be a flat one (1) dollar fee. The CSP shall absorb the cost of the fee.

Section 6. Parent Locator Service and Associated Fee for Service.

(1) For a [all] public assistance case [cases] referred to the child support agency or a nonpublic assistance case [cases] for which child support services are being provided, the child support agency shall attempt to locate a noncustodial parent, or obligor, or a noncustodial parent's, or obligor's sources of income, assets, property and debt if location is necessary to take the next appropriate action. Location shall be attempted for a [all] public assistance case [cases] referred to the child support agency or a nonpublic assistance case [cases] for which child support services are being provided, unless the cabinet has reason to believe an allegation [allegations] of child abuse or domestic violence pursuant to 921 [as defined in 904] KAR 2:006 and [in accordance with] KRS 205.730(1).

(2) Location services may be provided upon application by a noncustodial parent pursuant to [as described in] KRS 205.730(2), (4).

(3) Upon the request of a putative father, location services shall not be provided unless requested for the purpose of establishing paternity pursuant to KRS 205.730(2), (4).

(4) Location services shall be provided in a parental kidnapping case to enforce state and federal law and to make or enforce a child custody or visitation order as required by KRS 205.730(4).

(5) For a nonpublic assistance case in which location is the only service requested, a one (1) dollar application fee shall be charged. For a parental kidnapping request, a one (1) dollar application fee shall be charged. The CSP shall absorb the cost of these application fees.

Section 7. Interstate Process for Child Support Services. (1) The child support agency shall extend to an interstate child support case the same services available to an intrastate case. These services shall include:

- (a) Location of the noncustodial parent, or obligor;
- (b) Location of the custodial parent for establishment of paternity;
- (c) Establishment of paternity;
- (d) Establishment of a child support obligation for a:
 - 1. [A] K-TAP or foster case;
 - 2. [A] Medicaid only case with the consent of the recipient; and
 - 3. [A] Nonpublic assistance case.
- (e) Establishment of medical support obligation for a:
 - 1. [A] Public assistance case; or
 - 2. [A] Nonpublic assistance case [with the consent of the applicant].

(f) Enforcement of support orders;

(g) Review and modification of child support or medical support orders, or both, if appropriate; and

(h) Collection and distribution of current and past due support payments.

(2) To enforce child support laws between states the child support agency shall:

- (a) Receive, distribute, and monitor an [all] incoming interstate

case [cases] and apprise other states of a change [changes] in an interstate case [cases]; and

(b) Establish an interstate central registry responsible for:

1. Receiving, processing and distributing an incoming interstate request [requests]; and

2. Responding to an inquiry [inquiries] received from another state [other states] on an interstate case [cases].

(c) Issue an administrative subpoena, pursuant to KRS 205.712(2)(k) and 405 KAR 430(10), to any individual or entity to secure information needed to establish, modify or enforce a support obligation.

(3) Within ten (10) working days of receipt of an interstate case, the central registry shall:

(a) Ensure review of submitted documentation for completeness;

(b) Forward the case to the appropriate functional unit for case processing;

(c) Acknowledge receipt of the case and request missing documentation from the initiating state, if needed; and

(d) Inform the initiating state of where the case has been forwarded for action.

(4) If case documentation is inadequate, the case shall be forwarded for any necessary action pending additional information from the initiating state.

(5) The central registry shall respond to other state inquiries within five (5) working days of receipt of request.

(6) The initiating state agency [state] shall:

(a) Use long-arm statutory authority to establish paternity and child support if statutory authority exists;

(b) Within twenty (20) calendar days of determining that the non-custodial parent, or obligor, is in another state, forward any necessary information and the case to the responding state's central registry for action.

(c) Provide the agency in the responding state sufficient and accurate information and documentation and the Interstate Child Support Enforcement Transmittal Form.

(d) Provide the child support agency or central registry in the responding state with any additional requested information or notify the responding state when the information will be provided within thirty (30) calendar days of receipt of the request.

(e) Notify the agency in the responding state within ten (10) working days of receipt of new information by submitting an updated form [forms] or additional information.

(f) Send a request for a review of a child support order to another state within twenty (20) calendar days of determining that a request for review of the order is needed.

(7) The responding state agency shall establish and use caseload procedures that [which] ensure provision of necessary services including maintenance of a case record [records]. The agency shall periodically review program performance on an interstate case [cases] to evaluate the effectiveness of responding state procedures.

(8) The state shall ensure that the organizational structure and agency staff are adequate to provide administration and supervision to provide the following functions:

(a) Intake;

(b) Establishment of paternity;

(c) Establishment of a child support obligation or medical support obligation, or both;

(d) Location;

(e) Collection of current and past due child support, medical support, and spousal support payments;

(f) Certification for state tax refund intercept, when requested by the initiating state;

(g) Monitoring;

(h) Enforcement of a child support obligation [obligations], medical support obligation [obligations], and spousal support obligation [obligations]; and

(i) Review and modification of child support and medical support obligations.

(9) Within seventy-five (75) calendar days of receipt of interstate forms and documentation, a responding state shall:

(a) Provide location services if requested or if the documentation does not include adequate location information; or

(b) If documentation is inadequate:

1. Notify the initiating state of necessary additions or corrections; and

2. Process the interstate case to the extent possible pending initiating state action;

(c) Within ten (10) working days of locating a noncustodial parent, or obligor, in a different jurisdiction within the state, the agency shall forward appropriate forms and documentation to that jurisdiction and notify the initiating state and the central registry of its action.

(d) Within ten (10) working days of locating a noncustodial parent, or obligor, in a different state, the agency shall return the forms and documentation to the initiating state's central registry, or, at the direction of the initiating state, forward forms and documentation to the central registry of the state where the noncustodial parent, or obligor, has been located. The initial responding state's central registry shall be notified where the case has been sent.

(e) The responding state shall provide any necessary service [services] as it would in an intrastate case by:

1. Establishing paternity and obtaining judgment for a prenatal cost [costs], birthing expense [expenses], and genetic test [tests] upon establishment;

2. Establishing a child support obligation or medical support obligation, or both;

3. Reviewing a case [cases] for possible modification;

4. Processing and enforcing an order [orders] referred by another state;

5. Collecting and monitoring any support payment from a non-custodial parent, or obligor and forwarding a collection [collections] to a location specified by the initiating state not later than fifteen (15) calendar days from the initial date of receipt;

6. Providing sufficient identifying information to identify the case and date of collection or [identify] that the payment was made through state income tax refund offset and include the responding state's identifying code;

7. Providing timely notice to the initiating state in advance of a formal hearing [hearings] to establish or adjust a child support order;

8. Notifying the initiating state within ten (10) working days of receipt of new information; and

9. Notifying the interstate central registry in the responding state when a case is closed.

(10) The child support agency in the responding state shall pay the costs it incurred in processing a state agency interstate case [cases]. However, the child support agency of the initiating state shall pay the costs of genetic testing to establish paternity.

(a) If the responding state is successful in establishing paternity, that state's child support agency shall attempt to obtain a judgment for the cost of a genetic test [tests] from the party who denied paternity.

(b) If costs are recovered, the responding state shall reimburse the initiating state.

(c) The responding state shall identify a fee [fees] and a cost [costs] deducted from a support payment [payments] when forwarding a payment [payments] to the initiating state.

Section 8. Public Awareness. The child support agency shall publicize the availability of its services and encourage their use pursuant to KRS 205.712(2)(g). This effort [These efforts] may include:

(1) Public service announcements;

(2) Posters;

(3) Press releases;

(4) Videos;

(5) Annual reports;

(6) Newsletters;

(7) Mail inserts;

(8) Pamphlets; and

(9) Letters.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) KIM-100 Supplement PP, AP Referral, edition 12/96;

(b) PA-121 "Good Cause Claim/Determination", edition 5/99;

(c) CS-11 "Authorization and Acknowledgement of No Legal Representation", edition 10/98;

(d) CS-33 "Non-K-TAP Application", edition 11/99;

(e) CS-37 "Non-K-TAP IV-D Services Fact Sheet", edition 11/99;

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(f) DSS-1260 "Title IV-E and Child Support Referral", edition 11/96;

(g) DSS-1263 "Title IV-E and Child Support Change of Status", edition 11/96;

(h) CS-65 "Statement of Income and Resources", edition 10/98;

(i) CS-98 "General Testimony", edition 5/98;

(j) CS-100 "Uniform Support Petition", edition 5/98;

(k) CS-103 "Child Support Enforcement Transmittal #1 - Initial Request", edition 5/98;

(l) CS-136 "Health Insurance Information Request", edition 2/97; and

(m) CS-140 "Assignment of Rights and Authorization to Collect Support", edition 10/96. [KIM-100 Supplement PP, (12/96 edition); Cabinet for Families and Children;

(b) PA-121, (8/97 Edition); Cabinet for Families and Children;

(c) CS-11 "Authorization and Acknowledgment of No Legal Representation", (10/98 Edition); Cabinet for Families and Children;

(d) CS-33 "Non-K-TAP Application", (2/97 Edition); Cabinet for Families and Children;

(e) CS-37 "Non-K-TAP IV-D Services Fact Sheet", (10/98 Edition); Cabinet for Families and Children;

(f) DSS-1260 "Title IV-E and Child Support Referral", (11/96 Edition); Cabinet for Families and Children;

(g) DSS-1263 "Title IV-E and Child Support Change of Status", (11/96 Edition); Cabinet for Families and Children;

(h) CS-65 "Statement of Income and Resources", (10/98 Edition); Cabinet for Families and Children;

(i) CS-98 "General Testimony", (5/98 Edition); Cabinet for Families and Children;

(j) CS-100 "Uniform Support Petition", (5/98 Edition); Cabinet for Families and Children;

(k) CS-103 "Child Support Enforcement Transmittal #1 - Initial Request", (5/98 Edition); Cabinet for Families and Children;

(l) CS-136 "Health Insurance Information Request", (2/97 Edition); Cabinet for Families and Children; and

(m) CS-140 "Assignment of Rights and Authorization to Collect Support", (10/96 Edition); Cabinet for Families and Children.]

(2) This material may be inspected, copied, or obtained at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: August 27, 1999

FILED WITH LRC: September 13, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1999, at 9 a.m. in the Health Services Auditorium, 1st Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 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 General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Director

(1) Type and number of entities affected: This administrative regulation specifies the process by which an individual may apply for child support services, the scope of services available and the process for interstate child support services. The changes incorporated within this administrative regulation will affect the services provided

in nonpublic assistance cases by making medical support services mandatory. There are approximately 126,855 existing nonpublic assistance cases and the majority of these cases are already receiving medical support services.

(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 needed

(6) To the extent available from public comments available, 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: Because of the necessity to conform to the federal final rule, no alternatives were considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. 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? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Although local contracting law enforcement officials judicially provide medical support enforcement services for nonpublic assistance clients, this amendment should have no noticeable affect since officials are already providing these services in the majority of the cases.

3. State the aspect or service of local government to which this administrative regulation relates. Medical Support services provided in nonpublic assistance cases.

4. How does this administrative regulation affect the local government or any service it provides? Essentially has no affect.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Interim final rule effective April 9, 1999, as it relates to the Personal Responsibility and Work Opportunity Reconciliation Act.

2. State compliance standards. There are no differing or additional state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. None

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

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, SEPTEMBER 15, 1999

KENTUCKY BOARD OF SPEECH-LANGUAGE
PATHOLOGY AND AUDIOLOGY
(New Administrative Regulation)

201 KAR 17:013. Repeal of 201 KAR 17:010, 201 KAR 17:080, and 201 KAR 17:091.

RELATES TO: KRS 334A.080(3)

STATUTORY AUTHORITY: KRS 334A.080(3)

NECESSITY, FUNCTION, AND CONFORMITY: 201 KAR 17:010 is no longer required because its provisions are either covered in KRS Chapter 334A or the administrative regulations promulgated thereunder. 201 KAR 17:080 is no longer needed because the procedures are included in KRS Chapter 13B. 201 KAR 17:091 is no longer needed because the provisions have been included in 201 KAR 17:090.

Section 1. The following regulations are hereby repealed:

- (1) 201 KAR 17:010. Application for licensure;
- (2) 201 KAR 17:080. Procedures for disciplinary hearings; and
- (3) 201 KAR 17:091. Continuing education requirements for licensees on inactive status; waiver.

GEORGE O. PURVIS, Chair

DIANE SCHULER FLEMING, Assistant Attorney General

APPROVED BY AGENCY: September 14, 1999

FILED WITH LRC: September 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 27, 1999, at 10 a.m. at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 1999, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nancy Black, Executive Director, Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, telephone (502) 564-3296, Fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS

Agency contact: Nancy Black

(1) Type and number of entities affected: Approximately 1900 licensees in speech-language pathology or audiology in the Commonwealth of Kentucky.

(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: No comments received.

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: No additional effects or changes.

(a) Direct or indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: No change in reporting and paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Not applicable.

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No comments received.

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation does not affect economic activity.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.

(8) Assessment of expected benefits: Elimination of unnecessary and outdated administrative regulations.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Board is not aware of any statute, regulation or government policy which may be in conflict or is duplicated by this proposed regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

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

(10) Any additional comments: None

(11) TIERING: Is tiering applied? No. The regulation applies equally to all speech-language pathology and audiology licensees.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
(New Administrative Regulation)

808 KAR 1:140. Bank annual assessment fee.

RELATES TO: KRS Chapter 287

STATUTORY AUTHORITY: KRS 287.480(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 287.480(1)(b) provides that each state bank shall pay an annual assessment based on the assets of the bank or branch. This administrative regulation establishes the schedule of fees for a state bank.

Section 1. Determination of Assets Subject to Assessment. A state bank shall pay an annual assessment according to the schedule in Section 2 of this administrative regulation based on its assets as reported to the department as of the 31st day of December of the previous year. The assets subject to the annual assessment shall not include assets held by the bank or branch in a fiduciary capacity.

Section 2. Assessment Fee Schedule.

ASSESSMENT FEE SCHEDULE

If the amount of total assets is:		Assessment will be:		
Over	But Not Over	This Amount	Plus	Of Excess Over
\$ 0	\$ 2 Million	\$ 0	\$ 0.001	\$ 0
\$ 2 Million	\$ 25 Million	\$ 2,000	0.00012	\$ 2 Million

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\$ 25 Million	\$ 50 Million	\$ 4,760	0.000055	\$ 25 Million
\$ 50 Million	\$ 75 Million	\$ 6,135	0.000045	\$ 50 Million
\$ 75 Million	\$ 100 Million	\$ 7,260	0.00004	\$ 75 Million
\$ 100 Million	\$ 125 Million	\$ 8,260	0.000035	\$ 100 Million
\$ 125 Million	\$ 150 Million	\$ 9,135	0.00003	\$ 125 Million
\$ 150 Million	\$ 175 Million	\$ 9,885	0.000025	\$ 150 Million
\$ 175 Million	\$ 200 Million	\$ 10,510	0.00002	\$ 175 Million
\$ 200 Million	\$ 500 Million	\$ 11,010	0.000019	\$ 200 Million
\$ 500 Million	\$ 1,000 Million	\$ 16,710	0.0000185	\$ 500 Million
\$ 1,000 Million		\$ 25,960	0.000018	\$ 1,000 Million

RONALD MCCLOUD, Secretary
ELLA ROBINSON, Deputy Commissioner
COLLEEN KEEFE, Counsel

APPROVED BY AGENCY: September 13, 1999

FILED WITH LRC: September 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation is scheduled for October 26, 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 October 19, 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 October 19, 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, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Telephone (502) 573-3390, Fax (502) 573-8787.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe

(1) Type and number of entities affected: Kentucky state banks. The number of Kentucky state banks is 194 as of September 13, 1999.

(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: The new fee structure should reduce reporting requirements because institutions subject to the fee will be able to budget for the fee unlike under the previous fee structure.

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: Amendments are revenue neutral.

2. Continuing costs or savings: Amendments are revenue neu-

tral.

(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: Not applicable.

(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 alternatives were rejected: This fee structure is more efficient than the previous structure because an institution and the department can be certain of the amount in advance and the fee is paid on an annual basis rather than at the time of examination of the institution. These factors will allow for more effective budgeting by both the institution and the department.

(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:

(11) TIERING: Is tiering applied? Yes, larger institutions are required to pay a greater fee than smaller institutions because more time is typically required to examine the larger institutions.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of September 14, 1999

The September meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, September 14, 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 August 10, 1999 meeting were approved.

Present were:

Members: John Arnold, Chairman; Senators Marshall Long, Richard Roeding 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, Biff Baker.

Guests: Rick Casey, Robin Thomerson, Jo Carole Ellis, KHEAA; Jennifer Black Hans, Sarah Jackson, Rosemary F. Center, Registry of Election Finance; Singer Buchanan, Carol Palmore, Daniel F. Egbers, Dale Shelton, Burr Lawson, Jackie Shrout, Personnel Cabinet; Lonnie Campbell, Barbara Buechler, Timothy A. Sturgill, Richard Ornstein, Department for Local Government; Karen Powell, Finance and Administration Cabinet; Nancy L. Black, Division of Occupations and Professions; Michael A. Mone, Board of Pharmacy; Larry Perkins, Board of Licensure for Professional Engineers and Land Surveyors; Cheryl Mooney, James Graw, Diane Fleming, Office of Attorney General; John P. Sohan, Board of Marriage and Family Therapists; Larry Sexton, Board of Certified Counselors; Timothy Robertson, Board for Certified Professional Counselors; Mark Mangeot, Natural Resources and Environmental Protection Cabinet; David Wicker, David Waldner, Petroleum Storage Tank Fund; Charles Harman, Transportation Cabinet; Charlotte Chowning, Allison C. Weber, Lydia Wells Sledge, Department of Education; Eileen Whaley, Mary Ellen Wiederwohl, Janet Banta, Marilyn Troupe, Education Professional Standards Board; Jim Nelson, Darrell Gabhart, Department of Libraries and Archives; Charles Bell, Don Hogan, Workforce Development Cabinet; Lisa Franklin, Franklin Reed, Steve Taylor, John Franklin, Department of Mines and Minerals, Mitch Mattingly, David Reichert, Department of Charitable Gaming; Eric Friedlander, Patricia Biggs, Betty Barber, Deborah Green, Troi M. Johnson, Elizabeth Scott, Teresa Goodrich, Mark Hooks, Philip Keremer, Betsy Dunnigan, Rice Leach, Mike Littlefield, Dennis Boyd, Karen Doyle, Ralph Von Derau, David Klee, David Nichols, Duane C. Dringerburg, Ann Gordon, Barbara Hadly Smith; Trish Howard, Cabinet for Health Services; Paula Woodworth, Debbie Salleng, Stephanie Brammer-Barnes, Althiria (Ali) McCreary, Shirley Eldridge, Thelma Cornett, Rosanne Barkley, Joyce Metts, Wanda Kinnaird, Cliff Jennings, Lane Kemp, Bart Baldwin, Cabinet for Families and Children; Andrew Corsig, Marie Alagia Cull, Steve Mitchell, PhRAM; Lyle D. Cobb, KAPA; Kathleen Moffett, Kentucky Chapter of National Association of Social Workers; Michael W. Wooden, Wooden and Associates; Jan Gould, Kentucky Retail Federation; Ted Bradshaw, IIAK; Ronny Pryor, Capitol Solutions, UC; William L. Bowers, Astra Zeneca; Michael Vandever, Bristol-Myers Squire Co.; Robert L. Barnett, Kentucky Pharmacists Association; John Brazel; Brian Yesowitca, KET.

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 12:020. General rules for investments and fund transfers. Richard Casey, General Counsel, represented the Authority. 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); 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).

Department Of State: Kentucky Registry of Election Finance: Reports and Forms

32 KAR 1:180. Twenty-four (24) hour gubernatorial slate reporting. Sarah Jackson, Executive Director, and Rosemary Center, General Counsel, represented the Registry.

In response to questions by Senator Roeding, Subcommittee staff stated that: (1) this administrative regulation did not violate the statutes; (2) the Sixth Circuit Court of Appeals ruled that it was unconstitutional to prohibit a candidate from contributing to his own campaign during the 28 days prior to the election; (3) in order to provide accurate reporting for all candidates, this administrative regulation was necessary; and (4) if a candidate wanted to put his own money into his campaign, those contributions had to be reported to the Registry.

In response to questions by Senator Roeding, Ms. Center stated that: (1) the Court recognized that a candidate had the right to contribute money to his own campaign; (2) a problem arose because a statute passed by the General Assembly in the 1992 Regular Session prohibited any contributions in the last 28 days before the election; (3) the reason for the law was the new public financing system; (4) the Registry recognized that anyone could contribute money to their own campaign; (5) in order to manage the public financing program, the Registry had to know when a person contributed to his own campaign during the last 28 days; (6) if the Registry did not know, the Registry would not be able to administer the public financing program; (7) candidates that participated in the program agreed to a spending limit of \$1.8 million; (8) if a non-participating candidate exceeded the \$1.8 million limit, the participating candidates were permitted to start fundraising again; (9) a candidate still had the right to make a campaign contribution; (10) the program was created by the General Assembly; (11) the Register was required to administer the program to the best of its ability; (12) requiring an auditor to constantly monitor the candidates was not feasible; and (13) the only other way to administer the program was to require disclosure.

Senator Roeding stated that: (1) the Registry should not monitor donations by a candidate to his own campaign; (2) it was the candidate's campaign to run; (3) the candidate should not have to tell when he was spending his own money, particularly in the last 28 days; and (4) he wanted to find this administrative regulation deficient.

Ms. Center stated that: (1) the General Assembly would have the opportunity to change the statute at the next Regular Session; (2) the Registry needed this administrative regulation to administer the program as required by current statute; and (3) there was a great public interest in campaign disclosure.

Senator Pendleton stated that: (1) he did not think that the Subcommittee had any choice but to follow through with the intent of the law; (2) the Subcommittee could look at amending the statute at the next Regular Session; (3) while he could understand Senator Roeding's point of view, the law had already been passed; and (4) the Subcommittee was required to comply with the ruling of the Court.

In response to a question by Senator Pendleton, Ms. Center stated that she thought there would be several proposals to amend this statute during the 2000 Regular Session.

Representative Bruce stated that there would be a lot of changes made to the law during the 2000 Regular Session.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; and (2) a new Section 4 was created to incorporate by reference the Election Finance Statement form.

Personnel Cabinet: Classified

101 KAR 2:160. Kentucky Employee Assistance Program (KEAP). Carol Palmore, Secretary, represented the Cabinet.

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 2 and 3 were amended to comply with the drafting requirements of KRS 13A.222(4).

Unclassified

101 KAR 3:050. Unclassified service; promotion, transfer and disciplinary actions. In response to a question by Senator Long, Secretary Palmore stated that this administrative regulation was amended to establish the same requirements for non-merit employees that existed for merit 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); (3) Sections 1, 2, 3, 4, 5, 7, and 8 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 7 was amended to establish the same requirements for notice of resignation or retirement of unclassified employees as classified employees under 101 KAR 2:095.

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. Karen Powell, General Counsel, represented the Cabinet.

In response to questions from Senator Roeding, Ms. Powell stated that: (1) from a state agency's perspective, this administrative regulation would not necessarily make it easier to privatize a service; (2) this administrative regulation would have no effect on a business seeking to do work for the state; and (3) this administrative regulation only carried out the statutory mandate to promulgate administrative regulations to set out the process for approval of privatization by the Secretary of Finance.

This administrative regulation was amended as follows: (1) the TITLE was amended for brevity; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to correct a statutory citation; (3) Section 1 was amended to comply with drafting and formatting requirements of KRS Chapter 13A; (4) Section 2 was amended to specify the bases of determination; and (5) Section 3 was amended to incorporate by reference necessary forms.

Board of Pharmacy

201 KAR 2:010. Schools approved by the board. Michael Moné, Executive Director, represented the Board.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and 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); (2) Section 1 was amended to specify the accreditation standards for approved pharmacy programs in the United States and Canada; (3) Sections 1 and 2 were amended to correct the name of the Canadian Council for Accreditation of Pharmacy Programs; and (4) Section 3 was amended to incorporate by reference the required accreditation standards.

Board of Registration for Professional Engineers and Land Surveyors

201 KAR 18:050. Branches of professional engineering for testing. Larry Perkins, Executive Director, and Cheryl Mooney, Assistant Attorney General, represented the Board.

Subcommittee staff stated that: (1) the initial staff review questioned the statutory authority for this administrative regulation; (2) the amendments to this administrative regulation clarified that: (a) KRS 322.040(1)(a)3.a. required a passing score on the Principles and Practice of Engineering Examination (PPEE); (b) KRS 322.080(2) required the board to prescribe the scope of the examination; and (c) because the PPEE was administered by discipline, it was necessary for the Board to establish the disciplines recognized

in Kentucky for the examination; and (3) the Board did have statutory authority to promulgate this administrative regulation.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); and (3) Section 1 was amended to specify that the examination required by KRS 322.040(1)(a)3.a. shall be administered in Kentucky for the specified branches of engineering.

201 KAR 18:080. Licensing certificates and cards. This administrative regulation was amended as follows: (1) the TITLE was amended to accurately reflect the subject matter of this administrative regulation; (2) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (3) 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 1 was amended to: (a) require a licensee to conspicuously display his license, rather than a card or certificate, in his place of business, to comply with KRS 322.110(1); and (b) comply with the: 1. format requirements of KRS 13A.220(4); and 2. drafting requirements of KRS 13A.222(4).

201 KAR 18:100. Seals. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (3) Section 1 was amended to delete language that repeated or summarized KRS 322.340(3), 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).

201 KAR 18:110. License renewals. This administrative regulation was amended as follows: (1) the TITLE was amended to accurately reflect the subject matter of this administrative regulation; (2) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (3) 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 (4) Section 1 was amended to: (a) delete provisions that repeated or summarized KRS 322.020 and 322.160, as required by KRS 13A.120(2)(e) and (f); and (b) comply with the: 1. format requirements of KRS 13A.220(4); and 2. drafting requirements of KRS 13A.222(4).

201 KAR 18:120. Reissuance of license certificate. This administrative regulation was amended as follows: (1) the TITLE was amended to accurately reflect the subject matter of this administrative regulation; (2) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (3) 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 (4) Section 1 was amended to: (a) specify that the fee for reissuance of a license shall be ten dollars; and (b) comply with the: 1. format requirements of KRS 13A.220(4); and 2. drafting requirements of KRS 13A.222(4).

Kentucky Board of Social Work

201 KAR 23:075. Continuing education. Nancy Black, Director, and James Grawe, Assistant Attorney General, represented the Division.

In response to questions by Senator Roeding, Mr. Grawe stated that: (1) the Division required continuing education to be relevant to the practice of social work; (2) Section 2 of this administrative regulation required a social worker to take courses in: (a) social work ethics; and (b) HIV/AIDS; and (3) the continuing education providers determined the content of courses relevant to social work.

Senator Roeding stated that: (1) as a professional, he took one hour of HIV/AIDS continuing education every year; (2) although mandated, he would take the course anyway; (3) sometimes he would take more than the minimum one hour; (4) if a course was mandated, a person could lose his license if the licensee did not

take the course for any reason; (5) it was wrong to take a person's license and fine the person for missing one hour of mandated continuing education; and (6) licensees should be permitted to make up the courses.

In response to questions by Senator Roeding, Mr. Grawe stated that: (1) the statute mandated continuing education; (2) social workers had a three year renewal period; (3) the one hour of continuing education was required every three years, rather than every year; (4) the statute provided authority for penalties in addition to loss of licensure; and (5) a social worker could be suspended or fined for failure to take the course.

Senator Long stated that the requirements imposed on social workers were not different from those placed on other occupations and professions.

Senator Roeding stated that: (1) he understood the requirement of continuing education; and (2) he did not like having specific subject matter mandated by a board.

This administrative regulation was amended as follows: (1) Section 1 was amended to alphabetize the definitions; and (2) Sections 1 and 3 were amended to comply with the drafting requirements of KRS 13A.222(4).

Board of Certification of Marriage and Family Therapists

201 KAR 32:010. Definitions. Nancy Black, Director, John Sohan, Board Chairman, and Diane Fleming, Assistant Attorney General, represented the Board.

In response to questions by Senator Roeding, Mr. Sohan stated that: (1) if the one-way mirror was used, clients were informed that there was someone behind the mirror; and (2) their National Code of Ethics prohibited use of one-way mirrors in therapy without informing the client.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) Section 1 was amended by deleting substantive material from the definitions; and (3) Section 1(2)(c) was deleted due to repeating and exceeding the requirements of Kentucky's Civil Rights statute.

201 KAR 32:020. 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; (2) Section 1 was deleted; (3) Section 7, the incorporation by reference section, was deleted and inserted in 201 KAR 32:045; and (4) Section 3 was amended to comply with the drafting requirements of KRS 13A.222(4).

201 KAR 32:025. Marriage and family therapist associate. This administrative regulation was amended as follows: (1) Section 2 was amended to comply with the formatting requirements of KRS 13A.220(4); and (2) Sections 1 and 4 were amended to comply with the drafting requirements of KRS 13A.222(4).

201 KAR 32:041. Coursework in psychopathology. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) Section 2 was amended to incorporate by reference the *Diagnostic and Statistical Manual of Mental Disorders*; and (3) Section 1 was amended to comply with the drafting requirements of KRS 13A.222(4).

201 KAR 32:045. Examination. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs and Section 2(2) were amended to correct statutory citations; (2) Section 2(1) was amended to list subjects to be covered in the examination; (3) a new Section 7 was created to incorporate by reference the application for licensure; and (4) Sections 1 and 2 were amended to comply with the: (a) formatting requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

201 KAR 32:050. Code of ethics. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) Section 1(2)(a) was deleted due to repeating and exceeding the Kentucky Civil Rights statute; and (3) Sections 3 and 7 were amended to comply with the drafting requirements of KRS 13A.222(4).

201 KAR 32:060. Continuing education requirements. In response to a question by Representative Bruce, Subcommittee staff

stated that: (1) KRS 335.340(7) required completion of not more than twenty clock hours per renewal period; and (2) this administrative regulation: (a) implemented the statute; and (b) established the method by which the Board would know that a counselor completed the requirements.

In response to questions by Representative Bruce, Ms. Black stated that: (1) she had read this administrative regulation; and (2) she understood that the Board should obtain legislation before promulgating administrative regulations on continuing education.

Ms. Fleming stated that: (1) the Board had gone from certification to licensure; and (2) there were a lot of statutorily mandated changes that the Board had amended in its 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 definitions in Section 1 were: (a) deleted; and (b) inserted in 201 KAR 32:010; and (3) Sections 3 and 5 were amended to comply with the drafting requirements of KRS 13A.222(4).

Board of Certification for Professional Counselors

201 KAR 36:060. Qualifying experience under supervision. Nancy Black, Director; Timothy Robertson, Board Chairman; and James Grawe, Assistant Attorney General, represented the Board.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to correct statutory citations; and (2) Sections 1 and 2 were amended to comply with the drafting requirements of KRS 13A.222(4).

Public Protection And Regulation Cabinet: Office of the Petroleum Storage Tank Environmental Assurance Fund

415 KAR 1:080 & E. Claims procedures. David Wicker, Counsel, and David Waldner, Director of Technical Operations, represented the Fund.

In response to a question by Senator Roeding, Mr. Wicker stated that this administrative regulation: (1) would make it easier to pay contractors; (2) required payment for disposal and treatment of contaminated soil to be reimbursed within thirty days; and (3) established procedures for Fund auditors to be in the field to combat potential fraud.

Representative Bruce stated that this administrative regulation should be reviewed as an existing administrative regulation if it did not work to help all those citizens suffering as a result of the program.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; and (2) Sections 1 to 8 and 11 to 13 were amended to: (a) conform with the formatting and drafting requirements of KRS Chapter 13A; and (b) clarify the meaning of terms.

415 KAR 1:120. Hearings. In response to a question by Representative Bruce, Mr. Wicker stated that this administrative regulation was amended to: (1) simplify the hearing process; and (2) delete material made obsolete by the passage of KRS Chapter 13B.

In response to a question by Senator Roeding, Mr. Wicker stated that: (1) a date listed for public hearing, November 1999, was a typographical error; (2) the public hearing was held in November 1998; and (3) comments were received but he could not recall if any were made on this particular administrative regulation.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) Sections 1 to 23 were deleted as repeating, summarizing, or conflicting with KRS Chapter 13B; and (3) Sections 1 to 7 were added to comply with KRS Chapters 13A and 13B.

Education Professional Standards 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, 704 KAR 20:245, 704 KAR 20:250, 704 KAR 20:270, 704 KAR 20:285, 704 KAR 20:350, 704 KAR 20:360, 704 KAR 20:370. Mary Ellen Wiederwohl, Legislative Liaison; Marilyn Troupe, Division Director for Teacher Education, Testing, and Internship; Janet

Banta, Division Director for Certification; and Eileen Whaley, Program Consultant, represented the Board.

This administrative regulation was amended as follows: Sections 6, 8, and 13 were amended to accurately state the titles of the administrative regulations being repealed.

704 KAR 20:021. Planned Fifth-year Program. In response to a question by Senator Roeding, Ms. Troupe stated that the fifth-year program was a fifth year of study beyond the Bachelor's Degree completed by a teacher to obtain a rank change.

This administrative regulation was amended as follows: the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations.

704 KAR 20:305. Written examination prerequisites for teacher certification. In response to questions by Senator Roeding, Ms. Wiederwohl stated that: (1) the passing scores for the examinations had been increased to a level at or above the average for the sixteen regional states surrounding Kentucky which participated in the Southern Regional Education Board; and (2) appropriate assessments were the Praxis examinations that tested content knowledge because: (a) the professional knowledge section in the core battery had been phased out by the test producers; and (b) a person who wanted to teach high school math should be tested in his knowledge of teaching high school mathematics.

This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; (2) Sections 2 and 3 were amended to change the effective date for the new passing scores from January 14, 1999, to January 14, 2000, to comply with KRS 13A.100, 13A.120(6), 13A.130, and 13A.330; and (3) Sections 3, 4, 5, 6, and 7 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

704 KAR 20:670. Kentucky teaching certificates. This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 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 delete the definition of new teacher standards for preparation and certification because that term is not used in this administrative regulation, as required by KRS 13A.222(4)(f); and (4) Sections 1, 2, and 4 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

704 KAR 20:730. Standards for certified school personnel. In response to a question by Senator Roeding, Ms. Troupe stated that a technology standard had been added to the new and experienced teacher standards.

In response to questions by Representative Bruce, Ms. Wiederwohl stated that: (1) the standards established in this administrative regulation: (a) applied to teachers; and (b) did not apply to administrators; and (2) the Board would: (a) continue to streamline credentials as the General Assembly had mandated; and (b) amend this administrative regulation in the future to include standards for administrators.

In response to questions by Representative Bruce, Ms. Troupe stated that the higher education institutions were familiar with the standards, which: (1) would require the institutions to improve their programs of teacher education; and (2) were part of the accreditation process.

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) 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 specify that successful completion of the standards established in this administrative regulation shall be indicated using the criteria established in the specified documents; (4) Section 3 was amended to clarify the applicability of the experienced teacher standards for teachers who

have successfully completed the teacher internship program; (5) 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 (6) a new Section 4 was created to incorporate by reference the required material.

Department of Mines and Minerals: Division of Miner Training, Education and Certification: Miner Training, Education and Certification

805 KAR 7:010. Miner training, education and certification. John Franklin, Commissioner, and Steve Taylor, General Counsel, represented the Department.

In response to questions by Senator Roeding, Mr. Franklin stated that this administrative regulation: (1) decreased from 90 to 45 the number of days required to be considered an experienced miner to comply with changes enacted during the 1996 Regular Session of the General Assembly; and (2) would: (a) not cost the state money to implement; and (b) reduce the costs imposed on coal operators because the training requirements had been reduced.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) Sections 1(1), (3) and (4) were deleted because KRS 351.010 already defined "Board", "Commissioner", and "Department", as required by KRS 13A.120(2)(e) and (f) and 13A.222(4)(e); and (3) 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).

805 KAR 7:020. Training and certification of inexperienced miners. In response to a question by Senator Roeding, Mr. Franklin stated that this administrative regulation: (1) established the program of training for inexperienced miners; (2) streamlined the requirements for record-keeping and documentation; and (3) would reduce costs to the industry.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) Section 1 was amended to: (a) delete "the form prescribed by the commissioner"; and (b) clarify the information needed by the Department of Mines and Minerals upon completion of the miner training program; and (3) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and 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).

805 KAR 7:030. Annual retraining. In response to a question by Senator Roeding, Mr. Franklin stated that this administrative regulation did not increase or decrease costs to the industry.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) Section 1 was amended to: (a) delete "the form prescribed by the commissioner"; and (b) clarify the information required by the Department of Mines and Minerals upon completion of the annual miner retraining program; and (3) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and 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).

805 KAR 7:040. Training of newly employed miners. In response to a question by Senator Roeding, Mr. Franklin stated that this administrative regulation: (1) established better safety standards; and (2) did not increase or decrease costs to the industry.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) Section 1(4) was amended to: (a) delete "the form prescribed by the commissioner"; and (b) clarify the information required by the Department of Mines and Minerals upon completion of the newly employed miner training program; and (3) 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).

805 KAR 7:050. Training of miners for new work assignments. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) Section 1(2)(e) was amended to establish the requirement of the Mining and Mine Safety Related Issues course;

and (3) 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).

805 KAR 7:060. Program approval. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 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).

805 KAR 7:070. Record maintenance. In response to a question by Senator Roeding, Mr. Franklin stated that this administrative regulation was amended to delete the optional reporting requirements because: (1) applicable statutes required that training records be kept at the mine site; and (2) the optional reports were an unnecessary duplication of the required training records.

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 1 was amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

805 KAR 7:090. Hazard training. In response to a question by Senator Roeding, Mr. Franklin stated that this administrative regulation: (1) did not establish a time limit for the amount of training for visitors to mine sites; and (2) required: (a) for surface mines, that visitors be instructed to watch for certain vehicles and where to travel; and (b) for underground mines, that visitors be accompanied by an experienced miner.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) Section 1(1)(c) was amended to specify the Mining and Mine Safety Related Issues course; and (3) 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).

Department of Charitable Gaming

820 KAR 1:001. Definitions for 820 KAR Chapter 1. David Reichert and Mitch Mattingly, Staff Attorneys, represented the Department.

Section 1 of this administrative regulation was amended to insert the definition for "Twenty-four hour period".

820 KAR 1:030. Charity game ticket standards. Sections 1, 7, 8, and 9 of this administrative regulation were amended to comply with the drafting requirements of KRS 13A.222(4).

820 KAR 1:040. Bingo standards. This administrative regulation was amended to: (1) delete the definition of "twenty-four hour period"; and (2) Sections 2, 5, and 8 were amended to comply with the drafting requirements of KRS 13A.222(4).

820 KAR 1:070. Exempt activities. In response to a question by Representative Bruce, Mr. Reichert stated that: (1) the statutes exempted an organization that conducted a bingo or raffle from reporting quarterly or paying fees, if it raised no more than \$15,000 a year; and (2) the limit was raised from \$5,000 to \$15,000 during the 1998 Regular Session.

In response to a question by Senator Roeding, Mr. Reichert stated that: (1) he would look into identifying other organizations that should be exempted from the reporting requirements; and (2) it would require an amendment to the statutes.

Section 1 was amended to comply with the: (1) formatting requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

Cabinet For Health Services: Health Services and Facilities

902 KAR 20:160. Chemical dependency treatment services and facility specifications. Ralph Von Derau, Health Planner, represented the Department.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through

6 were amended to: (a) conform with drafting and formatting requirements of KRS Chapter 13A; and (b) clarify terms and increase readability.

Department for Medicaid Services

907 KAR 1:019. Pharmacy services. Phil Kramer, Director; Karen Doyle, Medicaid Services; Dennis Boyd, Commissioner; and Betsy Dunnigan, Nurse Service Administrator, represented the Department.

In response to a question by Representative Bruce, Subcommittee staff stated that the amendment specified that a prescription that required a pharmacist to combine more than one active ingredient shall not be refilled more than six (6) months after the original date of the prescription.

In response to a question by Representative Bruce, Mr. Boyd stated that the Department: (1) had worked very closely with Senator Roeding on this administrative regulation; and (2) at the request of Senator Roeding, clarified the language to stipulate that when a physician felt that the medication was contraindicated, the physician could request an exception without going through one of the older medications first.

Senator Roeding stated that: (1) he had distributed a written letter that expressed his concerns with this administrative regulation; (2) the promulgation of this administrative regulation had been an exhaustive process; (3) Senator Pendleton and he sponsored Senate Bill 351, enacted during the 1998 Regular Session, with the intent that this administrative regulation would be in compliance with the statutory provisions; (4) the intent of the General Assembly was: (a) to establish requirements that would be implemented by the Cabinet; and (b) not followed in this administrative regulation; (5) as the primary author and co-sponsor of Senate Bill 351, he found that this administrative regulation ignored and continued to undermine the intent of Senate Bill 351, which was to: (a) increase access to state of the art pharmaceuticals in Kentucky for Medicaid patients; (b) reduce the use of prior authorization; and (c) ensure: 1. that only necessary and appropriate prior authorization occurred in the patient population; and 2. the availability of the most appropriate drug to treat a specific disease; (6) while the Department tried to implement disease management, the Department made determinations based strictly on costs; (7) he had provided each Subcommittee member with a copy of an article from the Journal of Managed Care Pharmacy, which: (a) described a Kentucky HMO's experience with disease management for congestive heart failure; and (b) indicated that: 1. pharmacy costs increased sixty percent (60%); 2. hospital costs decreased seven percent (7%); and 3. nine million dollars in savings had resulted; (8) the Department should: (a) evaluate treatments in terms of the costs of achieving outcomes; (b) not focus solely on the costs of pharmaceuticals, which saved money in most instances; and (c) compare the effects of prescribing older medications with newer medications, including a prescription for: 1. an older antihistamine which caused drowsiness; and 2. a newer antihistamine that did not cause drowsiness; (9) Kentucky should: (a) not establish a separate review process for safety concerns; and (b) follow the decisions of the Food and Drug Administration relating to safety concerns; (10) Kentucky's system of drug review: (a) was convoluted because it had: 1. not saved money; and 2. chased some providers out of the system; and (b) should make it easier for: 1. patients to get treatment; and 2. providers to have control over their prescriptions; (11) while he had considered requesting that this administrative regulation be found deficient, he had decided to follow the suggestion of Senator Pendleton to: (a) approve this administrative regulation; and (b) monitor its implementation.

Senator Pendleton stated that he: (1) was not totally pleased with the amount of progress made on this administrative regulation; (2) was pleased that a lot of progress had been made; (3) appreciated the efforts of both sides; (4) wanted to: (a) monitor the Department's implementation of this administrative regulation; and (b) determine during the 2000 Regular Session if legislative amendments were required; and (5) wanted to hear the opinion of pharmaceutical representatives regarding this administrative regulation.

In response to a question by Representative Bruce, Senator Pendleton stated that he thought the Subcommittee should: (1) approve this administrative regulation as amended; (2) monitor the

Department's implementation; and (3) address necessary modifications at a later time, either through: (a) legislation during the 2000 Regular Session; or (b) amendments to this administrative regulation.

Chairman Arnold stated that: (1) he had read that over four billion prescriptions were written in the United States for 250 million people; and (2) prescriptions should be easier for the provider because patients needed to receive the medications prescribed by their physicians.

Mr. Boyd stated that: (1) Kentucky had one of the higher numbers of prescriptions per individual for: (a) all populations in Kentucky combined; and (b) the Medicaid population separately; (2) the Department agreed with Chairman Arnold's statement; (3) Senate Bill 351: (a) prohibited prior authorization during the first twelve months of a new drug unless that drug had extreme safety or cost repercussions to Kentucky; and (b) required the Department to review over a two year period all the drugs on prior authorization; (4) a drug not on prior authorization could be prescribed by a physician and received by the patient without special approval; (5) the Department: (a) had placed only four drugs on prior authorization during the last year; (b) had taken off of prior authorization over seventy percent (70%) of the medications reviewed; (c) believed its implementation of Senate Bill 351 had improved access; (d) supported disease management to ensure that the patients get the right medication; and (e) had established two Medicaid partnerships in Louisville and Lexington that: 1. indicated that, as pharmacy and disease management was applied: a. pharmacy costs increased; and b. hospital utilization decreased; 2. in Region 3 (Louisville) had a higher utilization of hospitalization and a lower pharmaceutical cost; and 3. in Region 5 (Lexington) had a lower utilization of hospitalization and a higher pharmaceutical cost; (6) he supported the suggestion by Senators Pendleton and Roeding to: (a) approve this administrative regulation; and (b) monitor its implementation; and (7) the Department: (a) held at least eight meetings and two public hearings on this administrative regulation; (b) spent untold hours of work on this administrative regulation; and (c) had demonstrated its willingness to work with the legislature to make improvements.

Senator Roeding stated that: (1) the special unit: (a) did not practice disease management; and (b) practiced cost management; (2) he wanted the Department to implement disease management; (3) if managed care focused on the recipient, health care costs would be lowered in all areas of health care; (4) a physician provider told him that: (a) physicians knew the identity of those people who abused the Medicaid system; (b) the focus should be on the recipient, rather than providers; and (c) the Department should educate the recipient; and (5) he agreed that educating the recipient would provide a greater return: (a) not in actual dollars back; and (b) in actual savings to the system.

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 paragraphs and 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); (3) Section 1 was amended to define necessary terms used in this administrative regulation; (4) Section 2 was amended to: (a) clearly establish the requirements for maintaining the drug file, including that: 1. the drug file be maintained in an electronic format; and 2. a copy of the current drug file be filed with the Regulations Compiler; (b) specify that a new drug shall be covered as specified in KRS 205.5632 unless the Commissioner documented pursuant to KRS 205.5634(3) that the drug posed a significant safety issue or imposed an inappropriate financial burden upon the Medicaid Program; (c) establish the nursing facility items for which the outpatient drug program shall not make payments; (d) specify that a prescription requiring a pharmacist to combine more than one active ingredient shall not be refilled more than six (6) months after the original date of the prescription; and (e) clearly establish the requirements governing prescriptions; (5) Section 3 was amended to clearly establish the requirements for the Prior Authorization Process; (6) Section 4 was amended to clearly establish the requirements for the drug status review process for the first twelve (12) months; (7) Section 5 was amended to clearly establish the requirements for the

drug status review process after the first twelve (12) months; (8) a new Section 6 was created to clearly establish the requirements for twenty-four (24) month review; (9) a new Section 7 was created to clearly establish the requested review process; (10) a new Section 8 was created to clearly establish the DMAB open meeting procedures; (11) a new Section 9 was created to clearly establish the appeals process; and (12) Section 6, renumbered as Section 10, was amended to: (a) incorporate by reference three required forms; and (b) delete the incorporation by reference of the Pharmacy Manual.

907 KAR 1:021. Amounts payable for drugs. Senator Roeding stated that he: (1) agreed with most of the dispensing fees established in this administrative regulation; and (2) believed there should be some flexibility in the established limit of four dispensing fees per drug within a calendar month for IV drugs because: (a) a person on an IV might need a new IV each day; and (b) there were costs associated with the preparation of IV bags.

Ms. Dunnigan stated that this administrative regulation did not establish an override for IV drugs because the limitation had not been an issue raised by providers or recipients.

Mr. Boyd stated that the Department: (1) had not experienced a problem with the IV drug limitation; (2) had not considered establishing an override; and (3) would consider the need for an override in the future.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) Sections 1 through 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (3) a new Section 1 was created to define necessary terms used in this administrative regulation; (4) Section 1, renumbered as Section 2, was amended to specify and clearly establish the requirements governing reimbursement limits; and (5) Section 3, renumbered as Section 4, was amended to specify that a participating dispensing physician who practiced in a county where a pharmacy was not located shall be reimbursed for the cost of the drug, with the cost computed in accordance with 907 KAR 3:010 for a free immunization through the Children's Vaccine Program.

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. Wanda Kinnaird, Internal Policy Analyst, Division of Child Support, and Joyce Metts, Policy Analyst, Division of Policy Development, represented the Cabinet.

This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 3 were amended to comply with the: (1) format requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

921 KAR 1:410. Child support collection and distribution. In response to questions by Representative Bruce, Ms. Kinnaird stated that: (1) the state now contracted with county attorneys for legal process for collection of child support; (2) payments were forwarded through the Division of Child Support; and (3) county attorneys were paid: (a) administrative fees for expenses; and (b) performance payment based upon the number of: 1. paternity cases established; and 2. child support collections completed.

This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 through 20 were amended to comply with the: (1) format requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

Food Stamp Program

921 KAR 3:050. Claims and additional administrative provisions. Rosanne Barkley and Lane Kemp, Internal Policy Analysts, Division of Policy Development, represented the Cabinet.

In response to questions by Senator Roeding, Ms. Barkley stated that: (1) this administrative regulation will permit the Division to collect on food stamp overissuances, including overissuances resulting from agency error; and (2) the agency will also be able to correct overissuances by posting to a food stamp debit card.

In response to a question by Senator Pendleton, Ms. Barkley stated that: (1) a food stamp applicant: (a) was not required to fill out forms; (b) provided information at a face-to-face interview which was entered directly into an existing computer system; and (c) was required to present documents only for verification of earnings, co-habitants, and other similar matters; and (2) the application process was relatively short.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct a statutory citation; (2) Section 5(1)(c) was amended to correct an administrative regulation citation; (3) Section 7(d)(3)3. was amended to clarify that the monthly installment was due at the agreed upon monthly schedule; and (4) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 10 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Protection and Permanency: Day Care

922 KAR 2:160. Child day care assistance program. Cliff Jennings represented the Department.

Sections 1, 2, and 6 were amended to comply with the: (1) formatting requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

The Subcommittee determined that the following administrative regulations complied with statutory authority:

Department For Local Government: County Budget

109 KAR 15:020 & E. State Local Finance Officer Policy Manual. Richard Ornstein, Staff Attorney, represented the Department.

In response to a question by Senator Roeding, Mr. Ornstein stated that: (1) the policy manual was revised only when required by legislative enactments; and (2) there had been no substantive changes to the policy manual.

Board of Registration for Professional Engineers and Land Surveyors

201 KAR 18:071. Repeal of 201 KAR 18:070. Larry Perkins, Executive Director, and Cheryl Mooney, Assistant Attorney General, represented the Board.

201 KAR 18:091. Repeal of 201 KAR 18:090.

Education, Arts And Humanities Cabinet: Department for Libraries and Archives: Division of Public Records: Archives

725 KAR 1:071E. Repeal of 725 KAR 1:070. Jim Nelson represented the Department.

Cabinet For Workforce Development: Department for Employment Services: Division of Unemployment Insurance: Unemployment Insurance

787 KAR 1:201. Repeal of 787 KAR 1:200. Charles Bell represented the Department.

In response to a question by Senator Roeding, Mr. Bell stated that: (1) the Department was required by KRS 341.380 to annually review and adjust the maximum weekly unemployment insurance benefits rate according to the formula established in that statute; and (2) the repeal of 787 KAR 1:200 did not affect the requirements imposed on, or the costs to, employers in Kentucky.

Department of Charitable Gaming

820 KAR 1:010. Temporary licensure. David Reichert and Mitch Mattingly, Staff Attorneys, represented the Department.

In response to questions by Senator Roeding, Mr. Reichert stated that: (1) the application forms for temporary and permanent licensure were revised to provide more information to an applicant; and (2) the application fee was not changed.

820 KAR 1:025. Quarterly reports of a licensed charitable organization. In response to questions by Senator Roeding, Subcommittee staff stated that: (1) KRS 238.570(1) required the Cabinet to charge 0.4% of gross receipts as an administration fee; and (2) the Cabinet did not have the authority to vary from the statute.

Mr. Reichert stated that the amendments to this administrative regulation were made to reflect statutory changes.

820 KAR 1:081. Repeal of 820 KAR 1:080. Charity fundraising event.

Cabinet For Health Services: Health Services and Facilities

902 KAR 20:221. Repeal of 902 KAR 20:220. Ralph von Derau, Health Planner, represented the Department.

In response to a question by Chairman Arnold, Mr. von Derau stated that: (1) acute care hospitals were once required to have a second license for long-term care; and (2) the requirement for a second license was repealed by legislation enacted during the 1998 Regular Session.

The Subcommittee and promulgating administrative bodies agreed to defer consideration of the following administrative regulations to the October 12, 1999 meeting of the Subcommittee:

General

In response to a question by Senator Pendleton, Subcommittee staff stated that: agencies generally were asked to defer the Subcommittee's consideration of emergency administrative regulations because: (1) the emergency administrative regulations became effective upon filing with the Regulations Compiler; (2) the Subcommittee was not authorized to amend an emergency administrative regulation; and (3) questions regarding an emergency administrative regulation could be considered at the same time the ordinary administrative regulation was considered.

Revenue Cabinet: Department of Law: Division of Tax Policy: Sales and Use Tax; General Exemptions

103 KAR 30:096. Repeal of 103 KAR 30:095.

Department For Local Government: Training Incentives

109 KAR 2:020 & E. Training incentive.

Finance And Administration Cabinet: Office of the Controller: Travel Expense and Reimbursement

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

Office of the Secretary: State Investment Commission

200 KAR 14:011. Qualified investments.

200 KAR 14:081. Repurchase agreement.

200 KAR 14:091. Guidelines for money market instruments.

Board of Pharmacy

201 KAR 2:020E. Examinations.

201 KAR 2:095. Dispensing responsibilities.

Board of Medical Licensure

201 KAR 9:175. Physician assistants; certification and supervision.

201 KAR 9:310. Continuing medical education.

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.

Kentucky Lottery Corporation

202 KAR 3:020. Procurement procedures. Representative Bruce stated that, when representatives of the Kentucky Lottery Corporation appear next month, they should be prepared to clarify their position with regard to whether or not the Corporation had the authority to place slot machines under law passed in 1991 or 1992 because he had heard rumors both that the Corporation: (1) was asserting that authority; and (2) was disclaiming the authority.

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.
- 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 31:020 & E. Sex offender registration system.

Education Professional Standards Board

- 704 KAR 20:210E. Substitute teachers and emergency school personnel.

Kentucky Community And Technical College System: Board of Regents

- 739 KAR 1:010E. Acquisition and disbursement of funds, accounting system - records and annual report.
- 739 KAR 1:020E. Delegation of financial management responsibility.
- 739 KAR 1:030E. Annual audit.
- 739 KAR 1:040E. Purchase - inventories - sale of surplus property procedures.
- 739 KAR 1:050E. Affiliated corporations.

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.

Department of Insurance: Health Insurance Contracts

- 806 KAR 17:205E. High-cost condition codes and severity questionnaire.

Department of Charitable Gaming

- 820 KAR 1:015. Permanent licensure. David Reichert and Mitch Mattingly, Staff Attorneys, represented the Department.

In response to questions by Senator Roeding, Mr. Reichert stated that: (1) the Department lowered the facility fees in counties that could not hold more than eight sessions; (2) the distributors' fees were raised; (3) the \$25.00 relicensure fee was applicable to an organization that: (a) changed its location; or (b) required the issuance of a new license; (4) there was a processing fee for: (a) application for initial licensure; and (b) certain other special events; (5) it took the Cabinet the same amount of time and effort to process the special event requests; (6) now that the Department had been reorganized, he was not sure if their budget would permit the lowering of fees; and (7) budget personnel told him that: (a) the budget for this

year would be about \$3 million; and (b) revenues were anticipated to be about \$2.7 million, which was a sizable deficit.

Senator Roeding stated that he could not vote for the raising of the fees without knowing the budget necessity for the increase.

At the request of the Subcommittee, Mr. Reichert stated that he would: (1) be willing to defer consideration of this administrative regulation until the October 12 Subcommittee meeting; and (2) obtain budget information for the Subcommittee to review.

Without objection, this administrative regulation was deferred until the October 12, 1999, meeting of the Subcommittee.

Cabinet For Health Services: Health Services and Facilities

- 902 KAR 20:240. Comprehensive physical rehabilitation hospital services.

Department for Medicaid Services

- 907 KAR 1:011E. Technical eligibility requirements.
- 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

- 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.

OTHER BUSINESS:

1. Cabinet for Health Services - On-site Sewage Disposal Systems

- 902 KAR 10:081. Construction standards for components of on-site sewage disposal systems.

- 902 KAR 10:085. Kentucky on-site sewage disposal systems.

Dr. Rice Leech, Commissioner, and Mark Hooks, Assistant Director, Division of Public Health Protection and Safety, represented the Cabinet.

Subcommittee staff stated that: (1) at the request of Representative Allen, representatives from the Department of Public Health were available to answer questions that had been raised concerning the implementation of: (a) KRS 211.350 through 211.380, relating to on-site sewage disposal; (b) 902 KAR 10:081; and (c) 902 KAR 10:085; and (2) Dr. Rice Leech, Commissioner, had forwarded a copy of an August 1979 LRC Study on On-Site Sewage Disposal in Rural Kentucky to each Subcommittee member.

Representative Allen stated that: (1) his constituents Bill and Kim Pharris: (a) were building a home in Butler County; and (b) had applied for a septic tank permit through the health department; (2) health inspector Joe Ives: (a) conducted an on-site inspection and survey; and (b) marked off the site where the septic tank was to be installed; (3) Mr. Pharris: (a) continued to build his home, which now had a roof; and (b) was notified that this site would not work after being assured that the site would be appropriate; (4) Mr. Ives: (a) came back to the property; and (b) said that a truck had: 1. ran over the area where the septic tank was to be installed; and 2. compacted the soil and dirt; (5) while Mr. Pharris originally thought he would have to abandon his new home, he had recently been told that he could pay between \$4000 and \$6000 to have top soil hauled over the area to alleviate the problem; (6) after this situation was publicized, he began receiving telephone calls throughout the county from people who had trouble receiving approval for septic tanks from Mr. Ives; (7) two inspectors from Bowling Green inspected the site, including: (a) Sarah Wells; and (b) David Burton; (8) while Mr. Bur-

ton seemed willing to work out a solution, he believed Mr. Ives and Ms. Wells were not willing to apply common sense to the situation; (9) because government belonged to the people, government employees should: (a) be able to work with people; and (b) use common sense; (10) these administrative regulations were: (a) not based on common sense; and (b) inconsistent in their provisions; and (11) he: (a) did not think a health inspector should: 1. approve a project; and 2. later disapprove the same program; (b) was aware that other homeowners experienced the same problems; (c) wondered why the Perk Test was not conducted; (d) wanted Dr. Leech to explain alternative methods of installation that were more economical; (e) was concerned that the process was becoming so expensive that people would stop building homes in Butler County; and (f) hoped that this problem would be solved without requiring the Subcommittee to find these administrative regulations deficient.

Dr. Leech stated that: (1) he wanted to: (a) work with Representative Allen and the Subcommittee; and (b) guarantee that these administrative regulations would be applied with common sense; (2) while he did not know the specific details regarding the Pharris's situation, he knew that: (a) Mr. Ives was a new employee; (b) the previous health inspector: 1. was held in high esteem in Butler County; and 2. found a way to solve problems; and (c) there had not been any problems from the systems previously installed; (3) while the Department issued between 24,000 and 25,000 permits a year, he became involved in about 18 cases at the request of legislators; including: (a) a majority of cases in which the health inspector did not seem to be providing the necessary slack to the homeowner and builder; and (b) a third of the cases in which gray water ran over onto a neighbor's property; (4) he understood from discussions with his employees that a solution had been reached for the Pharris's property, that would cost about \$4500; (5) he compared bread and soil, because, while the two items appear to have much in common: (a) bread will not rise after it was mashed; and (b) soil would rise after it was mashed; (6) while he understood that people questioned the difference a truck driven over soil would make, he knew that: (a) on dry lawns, water ran into the street; and (b) on moist and wet ground, the water would create problems; (7) the Department was required to ensure that the installation of a septic tank would not cause problems with gray water for neighboring property; (8) he: (a) usually was able to work out solutions when members of the General Assembly brought problems to his attention; (b) preferred to address specific situations individually; (c) had gathered information for a retired legislator that indicated that: 1. the sewage improvements had reduced the spread of disease; and 2. there were still two main problem areas in the state: a. the Kentucky River north of Beattyville; and b. waters in Pike County; (d) wanted to meet with Representative Allen; and (e) did not want his employees: 1. acting like food; or 2. being insensitive to community needs; and (9) the Department's central staff: (a) conducted reviews of local health department inspections as needed; (b) usually resolved the complaints brought to their attention; and (c) was not able to resolve complaints if a rock was next to the surface.

Representative Allen stated that: (1) the Department should not have to cut slack because these administrative regulations should be consistent; (2) because of the drought, the ground could not be packed if a D9 bulldozer ran over it; (3) the situation might be different if the ground was wet; (4) he: (a) believed some of the employees were merely using their authority; (b) was confident the Department would address the Pharris's situation because the problem had been brought to the Department's attention; and (c) was concerned about the problems encountered by other people who did not know to contact their legislators; (5) a coal line in streams: (a) was not caused by the installation of a septic tank; and (b) was caused by a straight pipe into the stream; (6) the Pharris's were: (a) trying to install a workable septic tank; (b) stopped by the local health inspector; and (c) probably not able to have a Perk Test because of the dry conditions; (7) he wanted people to: (a) build affordable homes; and (b) install reasonable septic tanks; (8) the additional \$3000 to \$6000 costs for state approval would: (a) typically be added to the home mortgage; (b) accrue interest; and (c) be doubled or tripled over the life of the mortgage; and (9) the health inspectors should: (a) use common sense; (b) not show their authority; (c) be

willing to compromise; and (d) not work for state government if the employees did not work for the state and its people.

Representative Lee stated that he: (1) had worked with Dr. Leech on a number of occasions pertaining to the budgets, health departments, and other issues; (2) knew Dr. Leech: (a) was a reasonable man; and (b) would go to great lengths to satisfy a problem brought to his attention; (3) recommended that Representative Allen, Dr. Leech, and his staff: (a) meet together; (b) review these administrative regulations, especially those sections that appeared to be: 1. unreasonable; or 2. lacking in common sense; and (c) reach an agreement; and (4) believed that if an agreement could not be reached, these administrative regulations would be found deficient at an upcoming Subcommittee meeting.

Representative Allen stated that he wanted to defer consideration of these administrative regulations to determine what agreements could be reached with the Department.

Dr. Leech stated that the Department agreed with that suggestion.

Chairman Arnold stated that he: (1) had experienced the same problems in Union County; (2) had received assistance from Dr. Leech whenever he called Dr. Leech to manage a situation; and (3) was in sympathy with Representative Allen and his constituents.

Without objection, the Subcommittee deferred its consideration of these existing administrative regulations.

2. Cabinet for Health Services, Department of Medicaid Services

907 KAR 1:671. Conditions of Medicaid provider participation; withholding overpayments, appeals process, and sanctions.

Subcommittee staff stated that: (1) at its August 10, 1999, meeting, the Subcommittee reviewed 201 KAR 38:060 & E, promulgated by the Board of Certification of Fee-Based Pastoral Counselors; (2) issues were raised regarding a provision in that 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; (3) during the discussion of that administrative regulation, the Subcommittee approved a motion to reconsider any existing administrative regulations that included language that prohibited discrimination based on sexual orientation; (4) 907 KAR 1:671: (a) was promulgated by the Department of Medicaid Services; and (b) included language in Sections 1(35)(l) and 9(2)(a) that prohibited discrimination based on sexual orientation; and (5) representatives from the Cabinet for Health Services: (a) were available to answer questions; and (b) planned to file a Notice of Intent to amend this administrative regulation to delete the language regarding discrimination.

3. Cabinet for Health Services, Office of Inspector General

906 KAR 1:110. Critical Access Hospital Services.

Subcommittee staff stated that: (1) at the July 13, 1999, meeting, the Subcommittee approved 906 KAR 1:110; (2) the Subcommittee then approved a motion requesting that the Kentucky Hospital Association require as hospital policy that nurses who operated emergency rooms located in rural areas be trained in advanced cardiac life support; (3) a letter to the Subcommittee from the Kentucky Hospital Association was received, in which the Association stated that it will: (a) strongly recommend critical access hospital members to have ACLS certified registered nurses on emergency room duty; and (b) explore the possibility of using federal grant moneys applied for by the Department for Public Health to be used to implement critical access hospitals to ensure that emergency personnel have ACLS training; and (4) the Kentucky Hospital Association's letter indicated complete compliance with the request of the Subcommittee.

4. Cabinet for Families and Children: Department for Community-Based Services: Division of Policy Development: Day Care

922 KAR 2:090, Child care facility licensure

Subcommittee staff stated that: (1) at the August 10, 1999, meeting, the Subcommittee approved a motion to request the Cabinet for Families and Children to respond to issues that had been raised concerning the status of licensure fees collected pursuant to 922 KAR 2:090 and KRS 199.896; (2) a letter had been received from the Cabinet for Families and Children that informed the Sub-

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committee of the Cabinet's intent to file an emergency administrative regulation to reduce the fees in compliance with KRS 199.896; and (3) the emergency administrative regulation was: (a) filed on September 8, 1999; and (b) scheduled for consideration at the Subcommittee's November meeting.

The Subcommittee adjourned at 12:35 p.m. until October 12, 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 HEALTH AND WELFARE
Meeting of August 18, 1999**

The following administrative regulations were available for consideration by the Interim Joint Committee on Health and Welfare during its meeting of August 18, 1999, having been referred to the Committee on May 17, 1999 and June 14, 1999 and deferred at the June 16, 1999 meeting, pursuant to KRS 13A.290(6):

201 KAR 9:320
902 KAR 20:140
907 KAR 1:780
920 KAR 1:060
921 KAR 3:030

The following administrative regulation was found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): 201 KAR 9:320.

The Committee rationale for the deficiency is attached to and made a part of this memorandum.

Danny Clark, Chairman of the Kentucky Board of Medical Licensure, said the Board was backed into taking the position on automatic external defibrillators (AED) when asked if use of the AED was within the statutory definition of practicing medicine. The Board decided that it was, and drafted this regulation to use as a stop gap measure until legislation could be passed to address the issue.

Dr. Dan O'Brien stated that the intention of the regulation is to promote the application of a relatively new technology, the automated external defibrillator. This computerized device will, if utilized appropriately, identify life-threatening arrhythmia and convert it into a profusing pulse, and it is restricted by the Food and Drug Administration for use by or under the direction of a physician who is responsible for its appropriate or inappropriate use. The Board has consulted the American Heart Association Training Guidelines to have a fully functioning first-responder AED Program with appropriate checks and balances and developed the regulation. There are operational issues on prescriptive authority and some required paperwork that will need legislative action.

Greg Brotzge, representing the American Heart Association, said the regulation was put together to deal with the situation two years ago with the Louisville Fire Department and whether having the AEDs on fire trucks constituted the unauthorized practice of medicine. One of the goals of the American Heart Association is to get the AEDs into public venues. These machines are sophisticated, have detailed instructions, and analyze whether the person in cardiac arrest needs shock. The American Heart Association agrees there needs to be physician involvement to purchase, and that training should be required. The machines work better used in conjunction with CPR, thus it is better if the responder also knows CPR. The main concern the American Heart Association has with the regulation is that it requires you to have a prescription to use the machine precluding its use by a Good Samaritan.

Statistics show that for every minute that a defibrillator is not used, the chances of survival go down 7% to 10%. The American Heart Association wants the machines available in shopping malls, airports, or places where there are a lot of people around and cut the time necessary to respond. There are also liability issues difficult to address in the regulation. Representative Jack Coleman plans to prefile legislation on AEDs. There are currently 39 states that have passed similar legislation.

Representative Burch asked if a layman would be affected if he or she used the AED and was touching the victim. Dr. O'Brien said if the patient was on dry ground, the layman would be okay. The devices are bullet-proof. The machine fails due to operator error. The

Board tried to create an environment where physicians would be comfortable signing off on authorizing the release of these devices into the community because they are restricted by the FDA.

Representative Burch asked how hard it would be to get a prescription once trained. Dr. O'Brien said the American Heart Association training program, which is 3 hours, recommends that user affiliate with a physician involved with one of the programs. After satisfactory training, the physician would sign off on these individuals to utilize the machine. Language regarding prescriptive authority had been recommended by LRC. Dr. O'Brien said he would be comfortable with a class roster that may have 20 or 30 names signed off by the medical director of the course that the individuals were trained and could utilize the device under their prescriptive authority. LRC, over the past 12 months, recommended the additional paperwork step which in Dr. O'Brien's opinion is unimportant. He said if it impeded the program he would be willing, with Dr. Clark's concurrence, to withdraw the requirement as long as there is a class roster of those taking the training, and signed off by the physician ultimately taking responsibility for the device.

Mr. Brotzge said the American Heart Association is trying to allow people who are Good Samaritans who do not have the training or ability to be able to use them. As the regulation is written, most people who have one of the machines would have to keep them secured so an unauthorized person could not use them. When you talk about cardiac arrest, defibrillation only works in certain instances. Another reason to require training is if the machine says no shock is necessary you would not know what to do if you were not trained. The American Heart Association supports and conducts training of the machines. Dr. O'Brien said states with the model program include indemnification for the physician who has released the devices into the community and for those individuals who have appropriate training to use them.

Senator Rose said that the regulation does not state that no person can operate an AED unless first receiving training, but rather the regulation only addresses physician training, it does not regulate people who do not take the training. Lloyd Vest, General Counsel for the Kentucky Board of Medical Licensure, said there is a statute that prohibits the unlicensed practice of medicine. It is a Class A misdemeanor for the first offense and a Class II felony for any subsequent offense. If you are doing what this is and practice medicine without a license or without the umbrella of this regulation, you would be subject to criminal liability.

Senator Rose said the administrative regulation is limited to ensuring the continuing professional competency of licensees, and her understanding was this only deals with physician, not with those who are being authorized. Mr. Vest said this was correct. One of the problems the Board ran into was that the Board was trying to do something that was beyond its statutory power. The Board can only regulate doctors and their licenses. In this instance, LRC asked the Board to do something because there is no regulation at all in the state for AEDs and they knew they were being used or distributed. The Board attempted to do this by regulating the physicians. There was a question about whether the Board had the legal authority to promulgate this regulation at all, and it voted to withdraw the regulation. LRC asked the Board to not withdraw it but press forward. Senator Rose asked if it was someone in particular at LRC who asked them to do this. Mr. Vest said it was Gregory Karambellas. Senator Rose asked if he was asking on behalf of a legislator or doing it on his own. Mr. Vest said he believed it was on behalf of the Administrative Regulations Review Subcommittee.

Senator Rose asked if it was the Board's intention to get at the problem in Louisville with the fire department or to regulate everybody who wants to use the machines. She said if the Board is trying

to get to are the emergency response personnel, whether they be public or on corporation's emergency response team, the regulation could be written in such a way that would address this. If the Board is trying to get to everybody who would want to use these, then this is too broad. Dr. O'Brien said the EMTs and paramedics are already covered under their own regulations and statutes. The global issue was that someone with no formal medical training would utilize the device that was restricted by the FDA for use by or under the direction of a physician for someone in cardiac arrest. Developing appropriate clinical practice guidelines for physicians to supervising that care precipitated the regulation.

Senator Rose asked if other states required authorization of individuals. Dr. O'Brien said if you looked at the American Heart Association guidelines and their 3 hour training course, the 3-hour training course does not authorize an individual to utilize the device. This course is the necessary training to utilize the device, but the training also recommends a linkup with a physician who is taking responsibility for the program. In those states where the machine hung next to the fire extinguishers, the physicians that release these devices into the community are statutorily indemnified, although they still have to be released under his signature for FDA federal requirements.

Senator Rose said she did not see where this would help with liability because, if the doctors are training the individuals but they do not have any supervisory capacity with these individuals, additional liability is being created. Most of the people would be some type of emergency response personnel, whether it be public or private, but this opens up more potential for liability. Dr. O'Brien said that if a doctor agrees to participate, he increases his medical legal exposure. However, the benefit to the community is that those doctors choose to be involved will want to be. The intention of having this linkage with the training program and the doctor is that the doctor can rescind the authorization for an individual to utilize the device if by history or by training he does not demonstrate proficiency. If an individual who is not otherwise authorized by a physician to utilize the device goes ahead and uses it, the doctor would not be on the hook because he has not authorized that specific individual. Dr. O'Brien said the regulation addresses 90% of the issues. Ninety percent of the survivors from the use of the device are survivors who have had the device placed by designed responders. The concept of having the devices next to the fire extinguishers out in the community has been tested and the results have been less than stellar. Mr. Brotzge agreed that in most cases it is going to be authorized and trained people who will respond. The regulation addresses the issue of the fire departments and the first responders, but it does not address getting AEDs into large shopping malls, large employers, large airports, and other places.

Senator Rose asked about having one set standard of proficiency that everyone must meet to clearly delineate the line for legal liability purposes. Dr. O'Brien said there is a national guideline for training developed by the American Heart Association. The Board did not want to put that guideline into the regulation because it might be too restrictive to prevent the implementation in a mall. The Board wanted a local doctor who has knowledge in the use of the devices and knowledge of the necessary training to have authority to control the utilization and restrict access, if need be, to certain individuals.

Senator Rose said the Board had come to the decision that to use these devices constitutes the practice of medicine based upon the FDA saying that this is a prescriptive medical device and asked if everything the FDA considers prescriptive is seen by the Board as practicing medicine. Dr. Clark said he could not say "everything" because no one knows everything the FDA does but when one uses a medical device the Board has to assume it is a practice of medicine. There could be exemptions from the practice of medicine statutorily but the Board was asked for an opinion and gave one. Dr. Clark said the Board's intent is not to limit the usage of the devices, but if physicians are going to accept the responsibility for training, they have to offer physicians some guidelines as to what appropriate training is. He wondered about the liability not only for physicians who certify individuals and for individuals who use the device, but also about liability the corporations have who put them next to the fire extinguishers. These are issues that the legislature should address, along with immunity for the Good Samaritan. He did not know

whether Kentucky's Constitution would allow this. This is a big issue that will impede the circulation of the devices because there are not a lot of doctors who will want to assume responsibility for what happens when AEDs are used. If you certify that someone is competent to use the device, you are certify that they are competent to do CPR. This regulation is not something the Board got into because it wanted to, and is something they would like to get out of if they could.

Senator Rose expressed her concern because of the liability issue. She did not think the regulation gives much cover and is afraid it will open the doctors up for more liability. While she supports the whole concept they are trying to do, the regulation should stipulate that certain criteria be used as proficiency standards. There are several things that could be done to clean the regulation up to give physicians more cover, and she recommended that the Board work with Representative Coleman.

A motion to find 201 KAR 9:320 deficient was made by Senator Rose, seconded by Representative Ausmus, and approved by voice vote.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the August 18, 1999 meeting, which are hereby incorporated by reference.

INTERIM JOINT COMMITTEE ON EDUCATION Meeting of September 1, 1999

The following administrative regulations were available for consideration by the Interim Joint Committee on Education during its meeting of September 1, 1999, having been referred to the Committee on August 18, 1999, pursuant to KRS 13A.290(6):

11 KAR 12:010
11 KAR 12:060
11 KAR 12:070
11 KAR 15:040
704 KAR 3:285
703 KAR 5:111

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 September 1, 1999 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT Meeting of August 25, 1999

The following administrative regulations were available for consideration by the Interim Joint Committee on State Government during its meeting of August 25, 1999, and were approved by the Committee, having been referred to the Committee on August 18, 1999, pursuant to KRS 13A.290(6):

101 KAR 2:020 (Classification Plan)
101 KAR 2:034 (Classified Compensation Regulations)
101 KAR 2:037 (Repeal of 101 KAR 2:036 and 101 KAR 2:100)

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101 KAR 2:046 (Applications, Qualifications and Examinations)
101 KAR 2:056 (Registers)
101 KAR 2:066 (Certification and Selection of Eligibles for Appointment)
101 KAR 2:076 (Vacancies, Detail to Special Duty, and Temporary Overlap)
101 KAR 2:095 (Classified Service Administrative Regulations)
101 KAR 2:102 (Classified Leave Regulations)
101 KAR 2:105 (Sick Leave Sharing Procedures)
101 KAR 2:120 (Incentive Programs)
101 KAR 2:140 (Workers' Compensation Fund and Program)
101 KAR 2:150 (State Safety Program)
101 KAR 3:011 (Repeal of 101 KAR 3:010)
101 KAR 3:015 (Leave Regulations for the Unclassified Service)
101 KAR 3:045 (Compensation Plan and Pay Incentives)

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 25, 1999, meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON TRANSPORTATION Meeting of September 7, 1999

The following administrative regulations were available for consideration by the Interim Joint Committee on Transportation during its meeting of September 7, 1999, having been referred to the Committee on August 18, 1999, pursuant to KRS 13A.290(6):

601 KAR 1:040
601 KAR 14:010

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 September 7, 1999 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE Meeting of August 26, 1999

The following administrative regulation was available for consideration by the Interim Joint Committee on Appropriations and Revenue during its meeting of August 26, 1999, having been referred to the Committee on August 18, 1999, pursuant to KRS 13A.290(6): 802 KAR 1:010

The following administrative regulation was 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 regulation was approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulation was deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulation is reflected in the minutes of the August 26, 1999 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE Meeting of September 15, 1999

The following administrative regulations were available for consideration by the Interim Joint Committee on Health and Welfare during its meeting of September 15, 1999, having been referred to the Committee on August 18, 1999, pursuant to KRS 13A.290(6):

201 KAR 38:010 & E
201 KAR 38:020 & E
201 KAR 38:030 & E
201 KAR 38:040 & E
201 KAR 38:060 & E
907 KAR 3:035
908 KAR 2:210
908 KAR 3:160 & E
922 KAR 1:130
922 KAR 7:251

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 15, 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 D - 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 D - 11

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 D - 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
Expired		11-18-99
109 KAR 2:020E	2814	4-19-99
109 KAR 15:020E	2816	4-19-99
200 KAR 30:010E	2311	2-26-99
Replaced		9-16-99
200 KAR 30:020E	2312	2-26-99
Replaced		9-16-99
200 KAR 30:030E	2313	2-26-99
Replaced		9-16-99
200 KAR 30:040E	2314	2-26-99
Replaced		9-16-99
200 KAR 30:050E	2315	2-26-99
Replaced		9-16-99
200 KAR 30:060E	2316	2-26-99
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Replaced		9-16-99
201 KAR 2:020E	2818	4-22-99
201 KAR 38:010E	2317	3-4-99
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201 KAR 38:020E	2318	3-4-99
Replaced		9-15-99
201 KAR 38:030E	2319	3-4-99
Replaced		9-15-99
201 KAR 38:040E	2320	3-4-99
Replaced		9-15-99
201 KAR 38:060E	2322	3-4-99
Replaced		9-15-99
415 KAR 1:080E	2529	4-12-99
500 KAR 13:020E	2534	4-5-99
Replaced		9-16-99
501 KAR 6:020E	2819	5-14-99
Replaced		9-16-99
501 KAR 6:999E	2821	5-14-99
Replaced		9-16-99
806 KAR 17:066E	2323	3-12-99
900 KAR 6:050E	2536	3-26-99
908 KAR 3:160E	2353	3-9-99
Replaced		9-15-99

ORDINARY ADMINISTRATIVE REGULATIONS:

11 KAR 15:040		
Amended	2923	9-1-99
200 KAR 5:340	2709	(See Volume 26)
201 KAR 2:010		
Amended	2925	(See Volume 26)
201 KAR 2:095		
Amended	2926	
201 KAR 9:175		
Amended	2423	
201 KAR 9:310		
Amended	2427	
201 KAR 9:320	687	
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201 KAR 18:010		
Amended	2928	
Withdrawn		9-13-99

201 KAR 18:050		
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201 KAR 18:071	2983	
201 KAR 18:080		
Amended	2930	(See Volume 26)
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201 KAR 18:110		
Amended	2931	(See Volume 26)
201 KAR 18:120		
Amended	2932	(See Volume 26)
202 KAR 3:020		
Amended	2933	
401 KAR 47:110		
Amended	2433	(See Volume 26)
401 KAR 48:320	2476	(See Volume 26)
401 KAR 68:010	1747	
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401 KAR 68:020	1748	
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415 KAR 1:120		
Amended	1122	(See Volume 26)
418 KAR 1:020		
Amended	2938	(See Volume 26)
418 KAR 1:030		
Amended	2940	(See Volume 26)
418 KAR 1:040		
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418 KAR 1:050		
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802 KAR 1:010			907 KAR 1:019		
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Amended	880	(See Volume 26)	Amended	1937	(See Volume 26)
902 KAR 20:160			907 KAR 1:021		
Amended	2967	(See Volume 26)	Amended	1252	
902 KAR 20:240			Amended	1940	(See Volume 26)
Amended	2971		907 KAR 3:035	2732	(See Volume 26)
902 KAR 55:105	721		908 KAR 1:310		
Amended	1074		Amended	2017	
As Amended	1366		Amended	2632	
902 KAR 55:110	966		908 KAR 1:311	2484	(Volume 24)
As Amended	1367		908 KAR 1:370	2485	(Volume 24)
902 KAR 55:115	723		Amended	355	
As Amended	1369		922 KAR 7:251	2996	9-15-99
907 KAR 1:002			*Statement Of Consideration Not Filed By Deadline		
Amended	1731				
Withdrawn		9-10-99			

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EMERGENCY ADMINISTRATIVE REGULATIONS: (Note: Emergency regulations expire 170 days from publication; or 170 days from publication plus number of days of requested extension; or upon replacement or repeal, whichever occurs first)			ORDINARY ADMINISTRATIVE REGULATIONS:		
200 KAR 2:006E	341	7-1-99	11 KAR 3:100		
301 KAR 2:225E	703	8-31-99	Amended	847	
502 KAR 31:020E	24	5-26-99	11 KAR 5:001		
503 KAR 1:110E	536	8-10-99	As Amended	367	8-2-99
503 KAR 5:090E	538	8-10-99	11 KAR 12:010		
704 KAR 20:210E	345	7-6-99	Amended	85	
725 KAR 1:071E	346	6-28-99	As Amended	557	9-1-99
739 KAR 1:010E	348	6-22-99	11 KAR 12:020		
739 KAR 1:020E	349	6-22-99	Amended	86	
739 KAR 1:030E	350	6-22-99	Amended	626	
739 KAR 1:040E	351	6-22-99	As Amended	714	
739 KAR 1:050E	352	6-22-99	11 KAR 12:060		
803 KAR 2:300E	26	6-15-99	Amended	88	9-1-99
803 KAR 2:301E	27	6-15-99	11 KAR 12:070		
803 KAR 2:306E	29	6-15-99	Amended	89	
803 KAR 2:307E	31	6-15-99	As Amended	558	9-1-99
803 KAR 2:309E	33	6-15-99	20 KAR 1:040		
803 KAR 2:313E	35	6-15-99	Amended	409	
803 KAR 2:414E	37	6-15-99	Amended	790	
803 KAR 2:500E	38	6-15-99	20 KAR 1:070		
806 KAR 17:205E	353	6-24-99	Amended	411	
815 KAR 35:015E	541	7-30-99	20 KAR 1:080	491	
902 KAR 55:020E	705	8-20-99	32 KAR 1:180	492	
902 KAR 55:025E	706	8-20-99	As Amended	714	
907 KAR 1:011E	355	7-2-99	101 KAR 2:020		
907 KAR 1:013E	544	7-21-99	Amended	90	
907 KAR 1:025E	548	7-21-99	As Amended	558	8-25-99
907 KAR 1:155E	359	7-2-99	101 KAR 2:034	257	
907 KAR 1:640E	361	7-2-99	As Amended	559	8-25-99
907 KAR 4:020E	364	6-23-99	101 KAR 2:036		
921 KAR 4:120E	708	8-10-99	Repealed	562	8-25-99
922 KAR 2:090E	710	9-8-99	101 KAR 2:037	260	
			As Amended	526	8-25-99
			101 KAR 2:046		
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101 KAR 2:066			200 KAR 30:020	271	
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101 KAR 2:076			As Amended	585	9-16-99
Amended	96		200 KAR 30:040	274	
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101 KAR 2:095			200 KAR 30:050	274	
Amended	97		As Amended	586	9-16-99
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101 KAR 2:100			As Amended	586	9-16-99
Repealed	562	8-25-99	200 KAR 30:070	276	
101 KAR 2:102	261		As Amended	587	9-16-99
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101 KAR 2:105			As Amended	7-18-99	
Amended	100		201 KAR 2:020		
As Amended	572	8-25-99	Amended	866	
101 KAR 2:120			201 KAR 6:020		
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101 KAR 2:140			Amended	868	
Amended	103		201 KAR 9:041		
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101 KAR 2:150			201 KAR 9:084		
Amended	105		As Amended	370	8-16-99
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101 KAR 2:160			As Amended	371	8-16-99
Amended	412		201 KAR 9:335		
As Amended	715		As Amended	371	8-16-99
101 KAR 3:010			201 KAR 9:340		
Repealed	577	8-25-99	As Amended	372	8-16-99
101 KAR 3:011	265		201 KAR 16:015		
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101 KAR 3:015	266		201 KAR 16:080	498	
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Amended	106		Amended	869	
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Amended	413		Amended	871	
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103 KAR 20:020	665		Amended	871	
103 KAR 30:091			201 KAR 17:027		
Amended	415		Amended	873	
*Expired		9-10-99	201 KAR 17:041		
103 KAR 30:096	493		Amended	874	
109 KAR 2:020	494		201 KAR 17:070		
109 KAR 9:010			Amended	877	
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109 KAR 15:020	496		Amended	879	
200 KAR 2:006			201 KAR 18:050		
Amended	862		As Amended	718	
200 KAR 5:340			201 KAR 18:080		
As Amended	717		As Amended	719	
200 KAR 14:011			201 KAR 18:100		
Amended	418		As Amended	719	
200 KAR 14:081			201 KAR 18:110		
Amended	420		As Amended	719	
200 KAR 14:091			201 KAR 18:120		
Amended	422		As Amended	720	
200 KAR 21:010			201 KAR 20:420		
As Amended	41	6-23-99	As Amended	372	8-16-99
200 KAR 21:030			201 KAR 20:430		
As Amended	42	7-14-99	As Amended	373	8-16-99
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As Amended	720		Amended	150	
201 KAR 32:010			Amended	824	
Amended	109		401 KAR 47:110		
As Amended	722		Amended	73	
201 KAR 32:020			As Amended	374	
Amended	425		As Amended	730	9-8-99
As Amended	723		401 KAR 48:320		
201 KAR 32:025	500		Amended	75	
As Amended	724		As Amended	376	
201 KAR 32:041	501		As Amended	732	9-8-99
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201 KAR 32:045	279		As Amended	49	7-14-99
As Amended	726		401 KAR 57:005		
201 KAR 32:050			Repealed by 401 KAR 57:019		7-14-99
Amended	111		401 KAR 57:015		
As Amended	726		Repealed by 401 KAR 57:019		7-14-99
201 KAR 32:060			401 KAR 57:021		
Amended	426		Repealed by 401 KAR 57:019		7-14-99
As Amended	728		401 KAR 57:025		
201 KAR 36:060	280		Repealed by 401 KAR 57:019		7-14-99
As Amended	729		401 KAR 57:030		
201 KAR 38:010	282		Repealed by 401 KAR 57:019		7-14-99
As Amended	587	9-15-99	401 KAR 57:035		
201 KAR 38:020	283		Repealed by 401 KAR 57:019		7-14-99
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201 KAR 38:030	284		Repealed by 401 KAR 57:019		7-14-99
As Amended	588	9-15-99	401 KAR 57:045		
201 KAR 38:040	285		Repealed by 401 KAR 57:019		7-14-99
As Amended	589	9-15-99	401 KAR 57:050		
201 KAR 38:050	285		Repealed by 401 KAR 57:019		7-14-99
Withdrawn		8-10-99	401 KAR 57:055		
201 KAR 38:060	286		Repealed by 401 KAR 57:019		7-14-99
As Amended	589	9-15-99	401 KAR 57:130		
301 KAR 1:015			Repealed by 401 KAR 57:019		7-14-99
Amended	428		401 KAR 57:270		
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301 KAR 1:201			401 KAR 57:300		
Amended	113	9-8-99	Repealed by 401 KAR 57:019		7-14-99
301 KAR 1:400	288	9-8-99	401 KAR 59:450		
301 KAR 2:049			Repealed by 401 KAR 57:019		7-14-99
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301 KAR 2:140			Repealed by 401 KAR 57:019		7-14-99
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301 KAR 2:178			Repealed by 401 KAR 57:019		7-14-99
As Amended	44	7-14-99	401 KAR 59:465		
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