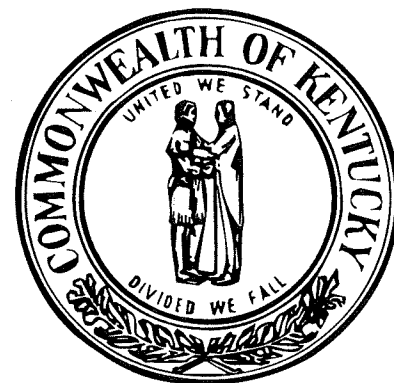


ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 26, NUMBER 6
WEDNESDAY, DECEMBER 1, 1999

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MEETING NOTICE

The Administrative Regulation Review Subcommittee is **tentatively** scheduled to meet on December 14, 1999, at 10:30 a.m. in Room 149 of the Capitol Annex. See **tentative agenda** on pages 1065-1067 of this Administrative Register.

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

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

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

PERSONNEL BOARD

Board

101 KAR 1:325. Probationary periods.

BOARDS

Board of Pharmacy

201 KAR 2:040. Registration of pharmacist interns.

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 Speech-Language Pathology and Audiology

201 KAR 17:011. Requirements for interim licensure. (Deferred from November)

201 KAR 17:012. Requirements for licensure.

201 KAR 17:013. Repeal of 201 KAR 17:010, 201 KAR 17:080, and 201 KAR 17:091. (Deferred from November)

201 KAR 17:015. Board members, expenses. (Deferred from November)

201 KAR 17:025. Requirements for an interim license as a speech-language pathology assistant. (Deferred from November)

201 KAR 17:027. Supervision requirements for a speech-language pathology assistant. (Deferred from November)

201 KAR 17:030. License fees.

201 KAR 17:041. Professional code of ethics. (Deferred from November)

201 KAR 17:070. Complaint procedure. (Deferred from November)

201 KAR 17:090. Continuing education requirements. (Deferred from November)

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

Fish

301 KAR 1:085. Mussel shell harvesting.

Game

301 KAR 2:225E. Dove, wood duck, teal and other migratory game bird hunting. (Deferred from November)

**JUSTICE CABINET
Department of Corrections**

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

501 KAR 3:010. Definitions.

501 KAR 3:040. Personnel.

501 KAR 3:060. Security; control.

501 KAR 3:070. Safety; emergency procedures.

501 KAR 3:110. Classification.

501 KAR 3:120. Admission; release.

501 KAR 3:140. Inmate rights.

Ninety-six (96) Hour Local Confinement Facilities

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.

Office of the Secretary

501 KAR 6:130. Western Kentucky Correctional Complex.

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.

Juvenile Holding Facilities

501 KAR 9:001. Repeal of 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.

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

Kentucky Law Enforcement Council

503 KAR 1:110E. Department of Criminal Justice Training basic training; graduation requirements; records. (Deferred from October)

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Department of Criminal Justice Training

General Training Provision

503 KAR 3:010. Basic law enforcement training course recruit conduct requirements; procedures and penalties. (Public Hearing)

Law Enforcement Foundation Program Fund

503 KAR 5:090E. Participation: requirements; application; withdrawal. (Deferred from October)

TRANSPORTATION CABINET

Department of Highways

Traffic

603 KAR 5:120. Access control of highways.

603 KAR 5:150. Encroachment permits.

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Board of Education

Department of Education

Kindergartens and Nursery Schools

704 KAR 5:051. Repeal of 704 KAR 5:050.

EDUCATION PROFESSIONAL STANDARDS BOARD

Board

704 KAR 20:300. Part-time adjunct instructor certificate.

704 KAR 20:475. Probationary certificate for teachers of technology education.

704 KAR 20:590. Alternative training program eligibility requirements for middle school and secondary school teachers.

704 KAR 20:610. Kentucky Primary Alternative Certification Program.

704 KAR 20:690. Kentucky Teacher Internship Program.

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.

PUBLIC PROTECTION AND REGULATION CABINET

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Health Insurance Contracts

806 KAR 17:205E. High-cost condition codes and severity questionnaire. (Deferred from September)

Department of Housing, Buildings and Construction

Plumbing

815 KAR 20:020. Parts or materials list.

Electrical Inspectors

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

CABINET FOR HEALTH SERVICES

Department for Public Health

Division of Adult and Child Health

Maternal and Child Health

902 KAR 4:040E. Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

Health Services and Facilities

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

Division of Adult and Child Health

Controlled Substances

902 KAR 55:020E. Schedule II substances. (Deferred from November)

902 KAR 55:025E. Schedule III substances. (Deferred from November)

Department for Medicaid Services

Medicaid Services

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

907 KAR 1:013E. Payments for hospital inpatient services. (Deferred from October)

907 KAR 1:025E. Payments for nursing facility and intermediate care facility for the mentally retarded services. (Deferred from October)

907 KAR 1:060. Medical transportation. (Amended After Hearing).

907 KAR 1:061. Payments for medical transportation. (Amended After Hearing).

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 4:020 & E. Kentucky Children's Health Insurance Program.

Department for Mental Health and Mental Retardation Services

Division of Substance Abuse

Substance Abuse

908 KAR 1:310. Certification standards and administrative procedures for driving under the influence programs. (Amended)

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After Hearing) (Deferred from May)

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**

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921 KAR 2:006E. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP).

921 KAR 2:016E. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP).

921 KAR 2:017E. Kentucky Works supportive services.

921 KAR 2:370E. Technical requirements for Kentucky Works.

Protection and Permanency

Day Care

922 KAR 2:090E. Child care facility licensure. (Deferred from November)

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, NOVEMBER 15, 1999

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

October 29, 1999

(1) **11 KAR 5:130**. Student application.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an amendment to Sections 1 and 3 of the administrative regulation governing the subject matter listed above, particularly, the process by which a student may apply for a KHEAA Grant.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Tuesday, December 21, 1999, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

2. A minimum of 5 persons, or the administrative body or association, 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 Tuesday, December 21, 1999, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, Fax 696-7293.

(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 Higher Education Assistance Authority 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 application for a KHEAA grant is KRS 164.744(2), 164.746(6), 164.753(4), 164.7535, 164.780 and 164.785.

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will amend an existing administrative regulation, 11 KAR 5:130, as follows: Section 1 of the above cited administrative regulation currently requires a student to complete and submit, in accordance with the instructions provided, the 1999-2000 Free Application for Federal Student Aid (FAFSA). The Kentucky Higher Education Assistance Authority intends to amend that section of the administrative regulation to require the submission of the 2000-2001 academic year FAFSA.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendment is necessary to update the version of the Free Application for Federal Student Aid (FAFSA) that is used for the KHEAA grant programs, consistent with its use for other programs of student financial assistance.

(d) The benefits expected from the administrative regulation are: The student can use a single application for KHEAA grants and institutional and federal programs of student financial assistance at no processing cost to the student.

(e) The administrative regulation will be implemented as follows: The administrative regulation will require that a student complete and submit in accordance with the instructions provided the 2000-2001 Free Application for Federal Student Aid (FAFSA) in order to be considered for a KHEAA Grant. Section 3 of the above cited administrative regulation currently incorporates by reference the 1999-2000 Free Application for Federal Student Aid (FAFSA). Kentucky Higher Education Assistance Authority intends to amend that section of the administrative regulation to incorporate by reference the 2000-2001 Free Application for Federal Student Aid (FAFSA).

October 29, 1999

(1) **11 KAR 6:010**, KHEAA Work Study Program.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an amendment to Section 1 to raise the allowable expense for mileage from 25 cents per mile to 30 cents per mile in the definition of "cost of education."

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Tuesday, December 21, 1999, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601-4323.

(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 Tuesday, December 21, 1999, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, Fax 696-7293.

(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 Higher Education Assistance Authority 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 13A.100, 13A.110, 164.748(4)

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will amend 11 KAR 6:010, as follows: Section 1. The Kentucky Higher Education Assistance Authority intends to amend that section of the administrative

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regulation by changing the definition of "cost of education" to increase the allowable expense that may be included in the student budget for mileage from 25 cents per mile to 30 cents per mile.

(c) The necessity and function of the proposed administrative regulation is as follows: To revise the rate at which mileage expense incurred by a student may be included in the budget of educational costs.

(d) The benefits expected from the administrative regulation are: Students incurring mileage expense for transportation to and from their work site will have their budgeted educational costs, that are reimbursable under this program, increased from 25 cents per mile to 30 cents per mile.

(e) The administrative regulation will be implemented as follows: Participating institutions are responsible for preparing the budget of students' educational costs. Those institutions will budget mileage at 30 cents per mile rather than the current 25 cents per mile.

October 29, 1999

(1) **11 KAR 8:030**, Teacher scholarships.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an amendment to Section 3 of the administrative regulation governing the subject matter listed above, particularly, calculation of maximum scholarship awards and clarification that awards are available to eligible students enrolled less than full time only in the last semester during which a baccalaureate, postbaccalaureate or master's degree is completed.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Tuesday, December 21, 1999, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

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

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, 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 Tuesday, December 21, 1999, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, Fax 696-7293.

(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 Higher Education Assistance Authority 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 teacher scholarships is KRS 164.748(4), 164.753(3), 164.769(5), (6)(f).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to amend will specify that a maximum award is calculated by determining the student's total cost of education minus expected family contribution and the amount of financial aid received or expected to be received during the academic period. The proposed amendment specifies that the amount of financial aid received or expected to be received during an academic period will not include any amounts from student loans or work study programs. The Kentucky Higher Education Assistance Authority also intends to amend existing Section 3(3) of the above cited administrative regulation to clarify that awards to eligible students enrolled less than full time are available only in the last semester during which a baccalaureate, postbaccalaureate or master's degree is completed. The Kentucky Higher Education Assistance Authority also intends to amend existing Section 4 of the above cited administrative regulation to provide a procedure for distribution of teacher scholarships by electronic funds transfer.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 164.744(2) authorizes the authority to provide scholarships, and KRS 164.753(3) requires the Kentucky Higher Education Assistance Authority to promulgate administrative regulations pertaining to standards for scholarship programs. KRS 164.769 establishes a teacher scholarship program and requires the Kentucky Higher Education Assistance Authority to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority. This administrative regulation establishes selection criteria, disbursement procedures, cancellation of repayment procedures and repayment obligations related to scholarships provided under the program. The proposed amendment is a necessary change to clarify the calculation for maximum awards, to clarify the academic period during which awards are available to an eligible student enrolled less than half time and to establish a procedure for disbursement by electronic funds transfer.

(d) The benefits expected from the administrative regulation are: This administrative regulation is intended to assist individuals preparing to teach in Kentucky by delineating selection criteria, disbursement procedures, cancellation of repayment procedures, repayment obligations and award maximums for each academic year, semester, and summer session related to scholarships provided under the program.

(e) The administrative regulation will be implemented as follows: Maximum awards will be calculated pursuant to the amended regulation. Awards will be granted to eligible students enrolled less than full time only in the last semester during which a baccalaureate, post-baccalaureate or master's degree is completed.

October 29, 1999

(1) **11 KAR 14:030**, Osteopathic Medicine Scholarship Program disbursement process.

(2) The Kentucky Higher Education Assistance Authority intends to amend an existing administrative regulation governing the subject matter listed above, particularly, procedures for the disbursement of monies awarded under the Osteopathic Medicine Scholarship Program.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Tuesday, December 21, 1999, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

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at least 10 days prior to Tuesday, December 21, 1999, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 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.

(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 Higher Education Assistance Authority at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of the administrative regulation is KRS 164.748(4) and 164.7891(9).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to amend will provide that the sum of all Osteopathic Medicine Scholarship Program funds awarded to eligible students shall be transmitted directly to the school by electronic funds transfer only. The school shall be responsible for delivering the funds to the eligible student or applying the scholarship funds to the eligible student's tuition and fees owed to the school. The school shall also receive a disbursement roster containing each recipient's name and Social Security number. The school shall retain a copy of the disbursement roster for its records and shall return the original to Kentucky Higher Education Assistance Authority.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 164.7891 establishes the Osteopathic Medicine Scholarship Program and requires the authority to administer the program and to promulgate administrative regulations for administration of the program. This administrative regulation amends the procedures for disbursement of the monies awarded under the Osteopathic Medicine Scholarship Programs to conform with the current method of technology commonly used in the industry for transferring funds.

(d) The benefits expected from the administrative regulation are: The proposed amendment is intended to provide guidelines for the disbursement of monies awarded under the Osteopathic Medicine Scholarship Program with minimum burden to the promulgating agency, the institution and the students, while ensuring the integrity of the program.

(e) The administrative regulation will be implemented as follows: The monies awarded under the Osteopathic Medicine Scholarship Program will be transmitted directly to the school in the form of electronic funds transfer. The school will receive a disbursement roster containing each recipient's name and Social Security number. The monies awarded under the Osteopathic Medicine Scholarship Program shall be disbursed annually to the recipient within 30 days of receipt by the authority of the signed original promissory note.

October 29, 1999

(1) **11 KAR 14:060**, Osteopathic Medicine Scholarship Program application of payments.

(2) The Kentucky Higher Education Assistance Authority intends to amend an existing administrative regulation governing the subject matter listed above, particularly, the definition of "disbursement."

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Tuesday, December 21, 1999, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

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

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, 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 Tuesday, December 21, 1999, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 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.

(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 Higher Education Assistance Authority at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of the administrative regulation is KRS 164.748(4) and 164.7891(9).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to amend will change the definition of "disbursement" to mean the date the school indicates on the disbursement roster that funds were either credited to the student's account or disbursed to the student.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 164.7891 establishes the Osteopathic Medicine Scholarship Program and requires the authority to administer the program and to promulgate administrative regulations for administration of the program. This administrative regulation amends the definition of "disbursement" to conform with the current industry practice for transferring funds electronically.

(d) The benefits expected from the administrative regulation are: The proposed amendment is intended to provide for the efficient transfer of funds in a manner protective of the agency, the institution and the student.

(e) The administrative regulation will be implemented as follows: Disbursement will be defined as the date the school indicates on the disbursement roster that funds were either credited to the student's account or disbursed to the student.

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UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

November 10, 1999

(1) **12 KAR 4:170.** Maximum chlorine guarantee for tobacco fertilizers.

(2) The University of Kentucky, College of Agriculture, Division of Regulatory Services 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 Thursday, December 27, 1999, at 10 a.m. in Room 109 of the University of Kentucky, Regulatory Services Building, Lexington, 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 10 days prior to December 27, 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: Wilbur Frye, Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275, FAX: (606) 323-9931, Phone: (606) 257-2785.

(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 Division of Regulatory Services 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 maximum chlorine guarantee for tobacco fertilizers is KRS 250.421.

(b) The administrative regulation that the University of Kentucky, College of Agriculture, Division of Regulatory Services intends to promulgate will amend 12 KAR 4:170, as follows: Section 1 will be amended to change the expression of the maximum chlorine content of tobacco fertilizers from 2.5% to a per-acre basis.

(c) The necessity and function of the proposed administrative regulation is as follows: To prescribe the specific format and conditions for maximum chlorine guarantees for tobacco fertilizers, which is necessary for production of quality tobacco.

(d) The benefits expected from the administrative regulation are: To allow fertilizer manufacturers to use more of the least expensive source of potassium (muriate of potash) to manufacture tobacco fertilizers, thereby decreasing fertilizer costs to tobacco farmers without decreasing the quality of marketed tobacco.

(e) The administrative regulation will be implemented as follows: Fertilizer manufacturers will be informed of the change upon approval of the administrative regulation and fertilizer samples collected by inspectors thereafter will be analyzed to ensure compliance with the maximum chlorine requirement.

COUNCIL ON POSTSECONDARY EDUCATION

September 15, 1999

(1) **13 KAR 2:020.** Guidelines for undergraduate admissions to the state-supported higher education institutions. The subject matter of the proposed amendment to the administrative regulation is the setting of minimum admissions requirements to Kentucky's state-supported postsecondary education institutions.

(2) The Council on Postsecondary Education (CPE) is charged by KRS 164.020 with responsibility for determining minimum admissions to the state-supported postsecondary education institutions. The current administrative regulation needs to be revised to recognize the new minimum high school graduation requirements and the new programs of study.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 21, 1999, at 1 p.m., in the conference room, Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601.

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

1. It is requested, in writing, by at least 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 5 persons, or an administrative body or association, request this public hearing and agree in writing to be present at the public hearing, it will be held as scheduled.

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

(5)(a) Persons wishing to request a public hearing should mail their written request no later than December 10, 1999, to the following address: Council on Postsecondary Education, Attn: Roger Sugarman, Associate Director for Research and Policy Studies, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601. The phone number is (502) 573-1555; the fax number is (502) 573-1535.

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

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

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

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

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

(a) The statutory authority for the promulgation of an administrative regulation relating to the admissions process is KRS 164.020.

(b) The administrative regulation the CPE intends to promulgate is a new regulation as 13 KAR 2:020, Undergraduate admissions to

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state-supported higher education institutions.

(c) The necessity and function of the proposed administrative regulation is as follows: In order to implement effectively the provisions of KRS 164.020, CPE revise the standards for admission to state-supported postsecondary education institutions.

(d) The benefit expected from the administrative regulation is to ensure that students are able to understand the requirements for admission to state-supported postsecondary education institutions.

(e) This administrative regulation will be implemented as follows: By the CPE, KHEAA and KDE with participation by local education agencies and, by public and private postsecondary education institutions.

November 12, 1999

(1) **13 KAR 2:090.** Kentucky Educational Excellence Scholarship (KEES) Program. The subject matter of the proposed amendment to the administrative regulation is a scholarship program for high school students.

(2) The Council on Postsecondary Education (CPE) is charged by KRS 164.7871-164.7885 with responsibility for determining minimum admissions to the state-supported postsecondary education institutions. The current administrative regulation needs to be revised to recognize the new minimum high school graduation requirements and the new programs of study.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 21, 1999, at 9 a.m., in the conference room, Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601.

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

1. It is requested, in writing, by at least 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 5 persons, or an administrative body or association, request this public hearing and agree in writing to be present at the public hearing, it will be held as scheduled.

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

(5)(a) Persons wishing to request a public hearing should mail their written request no later than December 10, 1999, to the following address: Council on Postsecondary Education, Attn: Norma Northern, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, Phone: (502) 573-1555; Fax (502) 573-1535.

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

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

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

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

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

(a) The statutory authority for the promulgation of an administrative regulation relating to the 13 KAR 2:090, Kentucky Educational Excellence Scholarship (KEES) Program 164.7871-164.7885.

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

(c) The necessity and function of the proposed administrative regulation is as follows: In order to implement effectively the provisions of the Kentucky Educational Excellence Scholarship Program, the council needs to revise the administrative regulation to address a number of issues that have risen in the first year of the program.

(d) The benefit expected from the administrative regulation is to ensure that students are able to understand the requirements for admission to state-supported postsecondary education institutions.

(e) This administrative regulation will be implemented as follows: By the CPE, KHEAA and KDE with participation by local education agencies and, by public and private postsecondary education institutions.

**ATTORNEY GENERAL'S OFFICE
Department of Law**

October 26, 1999

(1) **40 KAR 6:020.** Funding assistance for child sexual abuse medical examinations.

(2) The Attorney General intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 21, 1999 at 10 a.m. in Conference Room A - Attorney General's Office, Second Floor, 1024 Capital Center Drive, Frankfort, Kentucky.

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their request to the following address: John Patterson, Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 696-5312, Fax (502) 573-8315.

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

1. "I will 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 John Patterson, Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This administrative regulation authorizes the Child Sexual Abuse and Exploitation Prevention Board, to fund, from the Child Victim's Trust Fund created pursuant to KRS 41.400, the cost of medical examinations of victims of suspected child sexual abuse to the extent the fee for an examination is a

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service not eligible to be paid for by Medicaid or private insurance.

(d) The benefits expected from this regulation are: This administrative regulation will provide funding assistance for the case-management aspects of child sexual abuse examinations. Currently there is a shortfall statewide wherein the cost of the examination is not covered fully by third-party reimbursement rates.

(e) The administrative regulation will be implemented as follows: The Child Sexual Abuse and Exploitation Board will approve or deny applications for funding assistance submitted by providers. Once accepted, providers may submit forms evidencing the number of medical examinations performed on sexually abused children. Providers will be eligible to receive a fee limited to \$150 per examination.

PERSONNEL CABINET

November 1, 1999

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

(2) The Personnel Cabinet intends to promulgate an amendment 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 December 21, 1999 at 1:30 p.m. at 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601.

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

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Daniel F. Egbers, General Counsel, Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, Telephone: (502) 564-4460, Fax: (502) 564-7603, E-Mail: Dan.egbers@mail.state.ky.us.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Personnel Cabinet intends to promulgate will amend 101 KAR 2:102, Classified leave administrative regulation. It will correct the language of the regulation in Section 10(1) to eliminate contradictory language relating to inclement weather policies.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The regulation as amended will govern the leave for all positions in the classified service of state government and clarify when classified employees shall use accumulated leave in the event of an inclement weather emergency.

(d) The benefits expected from administrative regulation are: Clarification of the use of leave in the event of inclement weather situations.

(e) The administrative regulation will be implemented as follows: Upon approval by the Governor and review by the State Personnel Board, the proposed changes will amend the classified leave administrative regulation and replace 101 KAR 2:102E as soon as administratively feasible.

November 1, 1999

(1) **101 KAR 3:015.** Leave administrative regulations for the unclassified service.

(2) The Personnel Cabinet intends to promulgate an amendment 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 December 21, 1999 at 1:30 p.m. at 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601.

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

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Daniel F. Egbers, General Counsel, Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, Telephone: (502) 564-4460, Fax: (502) 564-7603, E-Mail: Dan.egbers@mail.state.ky.us.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the classification plan for the classified service is KRS 18A.030, 18A.110, and 18A.155.

(b) The administrative regulation that the Personnel Cabinet intends to promulgate will replace 101 KAR 3:015E and amend 101 KAR 3:015, Leave administrative regulations for the unclassified service. It will correct the language of the regulation in Section 10(1) to eliminate contradictory language relating to inclement weather policies.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The regulation as amended will govern the leave for all positions in the unclassified service of state government and clarify when unclassified employees shall use accumulated leave in the event of an inclement weather emergency.

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(d) The benefits expected from administrative regulation are: Clarification of the use of leave in the event of inclement weather situations.

(e) The administrative regulation will be implemented as follows: Upon approval by the Governor and review by the State Personnel Board, the proposed changes will amend the leave administrative regulations for the unclassified service and replace 101 KAR 3:015E as soon as administratively feasible.

BOARD OF PHARMACY

October 27, 1999

(1) **201 KAR 2:045.** Technicians.

(2) The Kentucky Board of Pharmacy intends to amend an administrative regulation, 201 KAR 2:045 relating to the utilization of technicians in a nuclear pharmacy in the Commonwealth.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 29, 1999 at 9:15 a.m. local prevailing time, at 1024 Capital Center Drive, Suite 210-Board Room, 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 December 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: Michael A. Moné, Executive Director, Kentucky Board of Pharmacy, 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601, voice: (502) 573-1580; fax (502) 573-1582.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Board of Pharmacy 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 use of technicians in a nuclear pharmacy is found at KRS 315.010(18), (25), 315.020(4)(b) and 315.191(1)(a).

(b) The amendment to the administrative regulation that the Board of Pharmacy intends to promulgate will address the criteria for training for a nuclear technician to be considered a Certified Pharmacy Technician in the Commonwealth.

(c) The necessity, function, and conformity of the proposed amendment to the administrative regulation is as follows: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations governing pharmacy technicians. KRS 315.191(1)(l) authorizes the board to promulgate administrative regulations establishing the qualifications required for a pharmacy technician to practice under the general supervision of a pharmacy, and establish the scope of practice for a pharmacy technician.

(d) The benefit expected from the amendment to the administrative regulation is the adoption of a functionally relevant program so technicians in a nuclear pharmacy can be considered having met a higher standard of training. This would permit those nuclear pharmacy technicians to be classified as certified for purposes of working under general supervision.

(e) The amendment to the administrative regulation will be implemented as follows: The board proposes to establish the passing of specialized nuclear pharmacy training through the University of Tennessee as the method for nuclear pharmacy technicians to be classified as certified pharmacy technicians.

(8) Any person with a disability for which the Board of Pharmacy needs to make an accommodation in order for the person to participate in the public comment hearing should notify Michael A. Moné at the above-mentioned address no later than December 13, 1999.

October 27, 1999

(1) **201 KAR 2:230.** Special limited pharmacy - central refill pharmacy.

(2) The Kentucky Board of Pharmacy intends to promulgate an administrative regulation, 201 KAR 2:230 relating to the requirements for the establishment of a central refill pharmacy in the Commonwealth.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 29, 1999 at 9 a.m. local prevailing time, at 1024 Capital Center Drive, Suite 210-Board Room, 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 December 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: Michael A. Moné, Executive Director, Kentucky Board of Pharmacy, 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601, voice: (502) 573-1580; fax (502) 573-1582.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Board of Pharmacy 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 establishment of a central refill pharmacy is found at KRS 315.020, 315.030, and 315.191(1)(a).

(b) The promulgation of this administrative regulation that the Board of Pharmacy intends to promulgate will address the procedures and requirements for the use of a central refill pharmacy for the preparation of refill prescriptions.

(c) The necessity, function, and conformity of the proposed amendment to the administrative regulation is as follows: KRS 315.020,

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315.030 and 315.191(1)(a) requires the board to promulgate administrative regulations to prescribe the criteria for obtaining a pharmacy permit to dispense legend drugs and the procedures for the safe dispensing of legend drugs to citizens of the Commonwealth. This administrative regulation will identify the manner by which a central refill pharmacy can be permitted in the Commonwealth and the minimum information that must be provided to the patient on the label or in labeling.

(d) The benefit expected from the amendment to the administrative regulation is a greater efficiency in the dispensing of legend drugs in the Commonwealth while maintaining an audit trail of the dispensing steps and professionals involved in the process.

(e) The new administrative regulation will be implemented as follows: The board proposes to establish a new permit for the dispensing of refill prescriptions.

(8) Any person with a disability for which the Board of Pharmacy needs to make an accommodation in order for the person to participate in the public comment hearing should notify Michael A. Moné at the above-mentioned address no later than December 13, 1999.

BOARD FOR SPECIALISTS IN HEARING INSTRUMENTS

October 20, 1999

(1) **201 KAR 7:015. Fees.**

(2) The Board for Specialist in Hearing Instruments intends to promulgate the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 21, 1999 at 10 a.m., EST, at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky.

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to fees is KRS 334.050, 334.080, 334.090, 334.110, 334.150 and Chapter 13A.

(b) The administrative regulation the Board for Specialist in Hearing Instruments intends to promulgate will amend 201 KAR 7:015, Fees. The regulation sets the fees which must be paid in connection with the application licensure.

(c) The necessity and function of the proposed amendment to the administrative regulation is to increase the examination fee for the National Institute for Hearing Instrument Studies Examination from \$35 to \$95 for tests administered after December 15, 1999 to reimburse the Board for Specialist in Hearing Instruments its cost to provide and administer that examination to its applicants.

(d) The benefit expected from this administrative regulation is it will provide the necessary funding for the Board for Specialist in Hearing Instruments to administer examinations to its applicants and meet its statutory mandate.

(e) The regulation will be implemented by the Board for Specialist in Hearing Instruments. The implementing body will merely adhere to the provisions as outlined in the regulation.

BOARD OF NURSING

October 19, 1999

(1) **201 KAR 20:070. Licensure by examination.**

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 22, 1999, at 10 a.m. (EST) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky, 40222.

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

1. it is requested in writing by at least 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 is not received at least 10 days prior to December 22, 1999, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 329-7009, fax (502) 329-8206.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the regulation of nursing is KRS 314.131.

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- (b) The administrative regulation that the Board of Nursing intends to promulgate amends an existing administrative regulation.
- (c) The necessity and function of the proposed administrative regulation is as follows: The amendment will require foreign applicants to maintain proof of legal immigrant status.
- (d) The benefits expected from the administrative regulation are: The board will no longer have to receive immigration documents.
- (b) The administrative regulation will be implemented as follows: Through the normal administrative procedures of the agency.

October 19, 1999

- (1) **201 KAR 20:110.** Licensure by endorsement.
- (2) The Board of Nursing intends to promulgate the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 22, 1999, at 10 a.m. (EST) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky, 40222.
- (4)(a) The public hearing will be held if:
 - 1. it is requested in writing by at least 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 is not received at least 10 days prior to December 22, 1999, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 329-7009, fax (502) 329-8206.
- (b) On a request for public hearing, a person should state:
 - 1. "I agree to attend the public hearing."; or
 - 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the regulation of nursing is KRS 314.131.
 - (b) The administrative regulation that the Board of Nursing intends to promulgate amends an existing administrative regulation.
 - (c) The necessity and function of the proposed administrative regulation is as follows: The amendment conforms the administrative regulation to statutory requirements concerning nurses licensed in other countries, requires foreign nurses to maintain proof of legal immigrant status, and recognizes the Canadian nursing examination.
 - (d) The benefits expected from the administrative regulation are: The administrative regulation will conform to the statute, the board will no longer have to receive immigration documents, and Canadian nurses will be able to endorse into Kentucky.
 - (b) The administrative regulation will be implemented as follows: Through the normal administrative procedures of the agency.

October 19, 1999

- (1) **201 KAR 20:240.** Fees for applications and for services.
- (2) The Board of Nursing intends to promulgate the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 22, 1999, at 10 a.m. (EST) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky, 40222.
- (4)(a) The public hearing will be held if:
 - 1. it is requested in writing by at least 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 is not received at least 10 days prior to December 22, 1999, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 329-7009, fax (502) 329-8206.
- (b) On a request for public hearing, a person should state:
 - 1. "I agree to attend the public hearing."; or
 - 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the regulation of nursing is KRS 314.131.
 - (b) The administrative regulation that the Board of Nursing intends to promulgate amends an existing administrative regulation.
 - (c) The necessity and function of the proposed administrative regulation is as follows: The amendment deletes the provisions regarding refunds of overpayments or underpayments and provides that incorrect application fees should be returned to the applicant.
 - (d) The benefits expected from the administrative regulation are: The burden will be on the applicant to provide the correct fee and the agency will not process applications with incorrect fees.
 - (b) The administrative regulation will be implemented as follows: Through the normal administrative procedures of the agency.

October 19, 1999

- (1) **201 KAR 20:390.** Nursing incentive scholarship fund.
- (2) The Board of Nursing intends to promulgate the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 22, 1999, at 10 a.m. (EST) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky, 40222.

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- (4)(a) The public hearing will be held if:
1. it is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing and agreement to attend the public hearing is not received at least 10 days prior to December 22, 1999, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 329-7009, fax (502) 329-8206.
- (b) On a request for public hearing, a person should state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the regulation of nursing is KRS 314.131.
- (b) The administrative regulation that the Board of Nursing intends to promulgate amends an existing administrative regulation.
- (c) The necessity and function of the proposed administrative regulation is as follows: The amendment increases the consideration given to financially needy Kentucky residents.
- (d) The benefits expected from the administrative regulation are: Financially needy residents will receive scholarships.
- (b) The administrative regulation will be implemented as follows: Through the normal administrative procedures of the agency.

October 19, 1999

- (1) **201 KAR 20:411.** Sexual assault nurse examiner program standards and credential requirements.
- (2) The Board of Nursing intends to promulgate the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 22, 1999, at 10 a.m. (EST) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky, 40222.
- (4)(a) The public hearing will be held if:
1. it is requested in writing by at least 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 is not received at least 10 days prior to December 22, 1999, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 329-7009, fax (502) 329-8206.
- (b) On a request for public hearing, a person should state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the regulation of nursing is KRS 314.131.
- (b) The administrative regulation that the Board of Nursing intends to promulgate amends an existing administrative regulation.
- (c) The necessity and function of the proposed administrative regulation is as follows: To improve the course content and clinical requirements for sexual assault nurse examiners.
- (d) The benefits expected from the administrative regulation are: Improved SANE training programs.
- (b) The administrative regulation will be implemented as follows: Through the normal administrative procedures of the agency.

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

November 15, 1999

- (1) **301 KAR 1:018.** Use of boat ramps.
- (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 December 21, 1999 at 10 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least 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 December 21, 1999, 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

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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 13A.350 and 150.025.

(b) The administrative regulation that the department intends to promulgate will regulate the use of the property surrounding and including boat ramps to ensure their safe and efficient use.

(c) The necessity and function of the proposed administrative regulation is to regulate activities permitted on department owned or controlled property.

(d) The benefits expected from the administrative regulation are: Better use of public property.

(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**

November 15, 1999

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:030, as follows:

1. Correctional Psychiatric Treatment Unit (KSR 10-02-08) shall be added to establish a procedure describing the operation of the new mental health unit at the Kentucky state Reformatory and its staffing, staff responsibilities, and population description.

2. Hazardous Materials and Chemicals Safety Data Sheets (KSR 08-00-10) shall be amended to conform policy with required LRC language.

3. Inmate Correspondence and Mailroom Operations (KSR 16-00-02) shall be amended to conform policy with required LRC language and to reflect recent physical plant changes at the Kentucky State Reformatory.

4. Visiting Regulations (KSR 16-01-01) shall be amended with minor word changes to conform with CPP 16.1, adjust the days of the week for visiting, and reflect recent physical plant changes at the Kentucky State Reformatory.

5. Night Visit Regulations (KSR 16-01-03) shall be amended to designate Friday as the night for night visits, establish new eligibility requirements for a night visit, and comply with required LRC language.

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

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

2. This administrative regulation updates operating procedures at the Kentucky State Reformatory to comply with KRS Chapter 13A and to reflect current operating procedures.

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

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

November 15, 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 December 22, 1999, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

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

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, De-

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partment of Corrections, Tamela Biggs, Staff Attorney, Office of General Counsel, Room 200, State Office Building, Frankfort, Kentucky 40601, Telephone (502) 564-2024, Facsimile (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: Smoking Policy (WKCC 01-08-01) shall be established to designate all WKCC buildings as nonsmoking.

(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.

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

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

**JUSTICE CABINET
Department of Juvenile Justice**

November 10, 1999

(1) **500 KAR 6:011**, Repeal of 500 KAR 6:010, 6:020, 6:030, 6:040, 6:050, 6:060, 6:070, 6:080, 6:090, 6:100, 6:110, 6:120, 6:130, 6:140, 6:150, 6:160, 6:170, 6:180, 6:190, 6:200, 6:210, and 6:220, Juvenile detention facilities.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 21, 1999, at 10 a.m. in the conference room of the Department of Juvenile Justice, 1025 Capital Center Drive, Building 3, Third Floor, 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 agrees, in writing, to be present at the public hearing.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to 500 KAR 6:011, is KRS 15A.160.

(b) The administrative regulation that the Justice Cabinet intends to promulgate will repeal 500 KAR Chapter 6, as the authority to regulate juvenile detention facilities was transferred to the Department of Juvenile Justice by KRS 15A.210.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 15A.210 transferred the authority to regulate juvenile detention facilities to the Department of Juvenile Justice. This regulation repeals the regulations promulgated by the Justice Cabinet and permits the Department of Juvenile Justice to promulgate its own regulations for the management of juvenile detention facilities.

(d) The benefits expected from the administrative regulation are the establishment of regulations by the Department of Juvenile Justice to govern the management of juvenile detention facilities.

(e) The administrative regulation will be implemented by the governing authorities and staff of all juvenile detention facilities in the Commonwealth. Compliance will be monitored and enforced by the Department of Juvenile Justice.

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

November 1, 1999

(1) **805 KAR 7:030**, Annual retraining.

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

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for December 21, 1999, at 1 p.m., (ET), in the first floor Hearing Room, Department of Mines and Minerals, 1025 Capital

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Center Drive, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to December 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: Stephan L. Taylor, General Counsel, Department of Mines and Minerals, PO Box 2244, Frankfort, Kentucky 40602-2244, telephone (502) 573-0140, or facsimile the request to (502) 573-0152.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

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

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

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

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

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

November 15, 1999

(1) **806 KAR 6:075**, Valuation of life insurance policies.

(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 December 27, 1999, at 10 a.m. (ET), at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601.

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

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at 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 December 27, 1999, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Russell R. Coy II, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602. Phone - (502) 564-6032. Fax - (502) 564-1456.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of this administrative regulation is KRS 304.2-110, 304.6-130 to 304.6-180, and 304.15-410.

(b) The administrative regulation that the department intends to promulgate will not amend an existing regulation. It will provide (i) tables of select mortality factors and rules for their use, (ii) rules concerning a minimum standard for the valuation of plans with nonlevel premiums or benefits, and (ii) provide rules concerning a minimum standard for the valuation of plans with secondary guarantees. The method for calculating basic reserves defined in the regulation will constitute the Commissioners' Reserve Valuation Method for policies to which this regulation is applicable. This regulation is commonly referred to as "Regulation Triple X."

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation provides mortality tables and minimum reserving requirements for life insurance policies with nonlevel premiums and benefits or secondary guarantees. These are needed to ensure that insurers maintain adequate reserves for these types of policies.

(d) The benefits expected from the administrative regulation are as follows: This regulation assures that life insurers maintain proper and adequate reserves based on the mortality tables, rules, and minimum reserving standards provided by this regulation that specifically apply to policies with nonlevel premiums and benefits or secondary guarantees.

(e) The administrative regulation will be implemented as follows: Insurers will comply with the regulation and maintain adequate reserves for policies with nonlevel premiums and benefits or secondary guarantees. The department monitors reserves and reserve calculations as part of its financial examination and analysis functions.

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PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

November 15, 1999

- (1) **806 KAR 17:230**, Patient protection provisions.
- (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 December 22, 1999, at 9 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 December 22, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Char Hummel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Phone - (502) 564-6032, Fax - (502) 564-1456.
- (b) On a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing"; or
 2. "I will not attend the public hearing".
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Insurance at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of this administrative regulation is KRS 304.17A-565, 304.17A-505 and 304.2-110.
 - (b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will clarify the patient protection provisions as enacted in KRS 304.17A-500 through 304.17A-590 and establish requirements for implementation of the statutory provisions by insurers. The requirements established by this administrative regulation will clarify the responsibilities of an insurer and a managed care plan regarding specified issues such as confidentiality, disclosure requirements, enrollment and termination of providers, quality assurance, and access and adequacy standards. Additionally, the administrative regulation will establish requirements for submission of information and the conduct of on-site reviews necessary for the commissioner to evaluate and enforce compliance with the patient protection provisions.
 - (c) The necessity and function of the proposed administrative regulation is as follows: KRS 304.17A-565 requires the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS 304.17A-500 through 304.17A-570. It is necessary for the Commissioner of Insurance to define certain terms unique to a managed-care plan, collect information, and establish requirements relating to the patient protection provisions of KRS 304.17A-500 through 304.17A-590. This administrative regulation defines terms, establishes requirements related to patient protections, and establishes guidelines for the submission of information to the department, including the criteria for approving or disapproving special services networks. The information submitted pursuant to this administrative regulation will assist the department in verifying that the insurer and managed care plan have properly implemented and complied with the statutory patient protection provisions.
 - (d) The benefits expected from the administrative regulation are as follows: Insurers, including managed care plans, will benefit from this administrative regulation by receiving clarification of the provisions of KRS 304.17A-500 through 304.17A-590 regarding patient protections. The clarification of the patient protection provisions will also specify activities by insurers and managed care plans necessary to implement and demonstrate compliance with KRS 304.17A-500 through KRS 304.17A-590. This administrative regulation will specify for insurers and managed care plans a simplified administrative procedure required for implementation and compliance with KRS 304.17A-500 through 304.17A-590.
 - (e) The administrative regulation will be implemented as follows: An insurer or managed care plan that offers health benefits in the state of Kentucky shall be required to comply with the patient protection provisions established by KRS 304.17A-500 through 304.17A-590 and, in order for the department to verify compliance, report the information required by this administrative regulation to the Commissioner of Insurance. In addition, insurers and managed care plans will be required to implement patient protection provisions as directed by this administrative regulation.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions

November 8, 1999

- (1) **808 KAR 10:030**, Conduct of broker-dealers and employees; investment advisers and representatives.
- (2) The Department of Financial Institutions 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 December 21, 1999 at 10 a.m. at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, 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 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 December 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: Colleen Keefe, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Phone (502) 573-3390, Fax (502) 573-8787.
- (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."

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(6)(a) KRS Chapter 13A provides that person 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 Financial Institutions at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the proposed administrative regulation is KRS 292.500(3) and 292.330(12)(f).

(b) The proposed administrative regulation will amend an existing regulation. It sets forth information that an investment adviser must provide to clients.

(c) The necessity and function of the proposed administrative regulation is as follows: The statutes authorizing this regulation provide that the commissioner may prescribe rules for the conduct of business by investment advisers which he finds appropriate in the public interest and for the protection of investors. It is appropriate to require advisors to disclose information to clients that would be material to the clients decision to retain the adviser.

(d) The benefits expected from the proposed administrative regulation are: The regulation will provide protection to clients of an investment adviser.

(e) The proposed administrative regulation will be implemented as follows: It will be published in financial institution law publications that are available to the regulated entities and the public.

November 8, 1999

(1) **808 KAR 10:040**, Dishonest or unethical practice defined.

(2) The Department of Financial Institutions 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 December 21, 1999 at 10 a.m. at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, 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 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 December 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: Colleen Keefe, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Phone (502) 573-3390, Fax (502) 573-8787.

(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 person 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 Financial Institutions at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the proposed administrative regulation is KRS 292.500(3) and 292.330(13)(a)7.

(b) The proposed administrative regulation will amend an existing regulation. It sets forth information that an investment adviser must include in a client contract.

(c) The necessity and function of the proposed administrative regulation is as follows: To establish that the commissioner considers certain activities to be a dishonest or unethical practice in the investment advisory business.

(d) The benefits expected from the proposed administrative regulation are: The regulation will provide protection to clients of an investment adviser.

(e) The proposed administrative regulation will be implemented as follows: It will be published in financial institution law publications that are available to the regulated entities and the public.

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

November 1, 1999

(1) **815 KAR 7:105**; Kentucky Building Code/1997.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Tuesday, December 21, 1999, at 10 a.m., local time, in the department's conference room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

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

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 198B.040(7) and 198B.050.

(b) The department intends to amend 815 KAR 7:105, Kentucky Building Code/1997 in accordance with a board approved amendment to amend Section 410 to include local jail terminology for the purpose of applying the special requirements of Section 410.9 to local jails. This amendment was approved by the Board of Housing but was developed at the request of the Department of Corrections.

(c) The necessity and function of the proposed administrative regulation is as follows: The intended amendment is necessary to implement changes proposed by a special agreement between the department and the Department of Corrections.

(d) The benefits expected from this administrative regulation are: Improved fire safety in local county jails.

(e) This administrative regulation will be implemented by the Department of Housing, Buildings and Construction.

**CABINET FOR HEALTH SERVICES
Department for Medicaid Services**

November 15, 1999

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

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 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 December 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, (502) 564-7905, (502) 564-7573 (Fax).

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to mental health center services for treatment of substance abuse are KRS 194.050, 24 CFR 440.130, 42 USC 1396a-d, KRS 47 Appendix A Part IX 25m.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:044 to allow coverage of substance abuse services.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation establishes the coverage and limitations on coverage of services provided through mental health centers by the Department for Medicaid Services.

(d) The benefits expected from administrative regulation are: Reduction of birth defects in newborn children due to fetal alcohol syndrome; reduction of other birth defects due to substance abusing mothers; reduction in low weight infants, better health outcomes for pregnant women who stop abusing substances; reduction in behavioral health related services to children whose mothers have stopped abusing substances; reduction in overall Medicaid expenditures in the long term.

(e) The administrative regulation will be implemented as follows: By the Division of Behavioral Health within the Department for Medicaid Services, and with the assistance of Department for Mental Health and Mental Retardation Services within the Cabinet for Health Services.

October 15, 1999

(1) **907 KAR 3:110**, Community mental health center substance abuse services.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 29, 1999 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 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, (502) 564-7905, (502) 564-7573 (Fax).

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to Substance Abuse Services KRS 194A.030(5); 42 CFR 440.130, 440.250, 440.210, and 447.325; 42 USC 1396a-d; and KRS 47 Appendix A Part IX 25m.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will establish 907 KAR 3:110 in order to provide substance abuse services for pregnant women and postpartum women up to the end of the month of 60 days following the date of delivery.

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

(d) The benefits expected from this administrative regulation are: Reduction of birth defects in newborn children due to fetal alcohol syndrome; reduction of other birth defects due to substance abusing mothers; reduction in low birth weight infants; better health outcomes for pregnant women who stop abusing substances; reduction in behavioral health related services to children whose mothers have stopped abusing substances; reduction in overall Medicaid expenditures in the long term.

(e) The administrative regulation will be implemented as follows: By the Division of Behavioral Health within the Department for Medicaid Services, and with the assistance of the Department for Mental Health and Mental Retardation Services within the Cabinet for Health Services.

**CABINET FOR HEALTH SERVICES
Department for Medicaid Services**

November 15, 1999

(1) **907 KAR 4:030**, Kentucky Children's Health Insurance Program Medicaid Phase III.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 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 December 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, (502) 564-7905, (502) 564-7573 (Fax)

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to Kentucky Children's Health Insurance Program Phase III are KRS 205.6481-205.6497, 194A.030 and 42 USC 1397aa.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will establish the eligibility criteria, covered services, the approval process, grievance and appeal rights and the requirements for delivery of health services when providers wish to participate with the Commonwealth to provide health care coverage for KCHIP Phase III members through the provision of a separate health insurance program under Title XXI. The Kentucky Children's Health Insurance Program Phase III provides health care coverage and other coordinated services to children of the Commonwealth who are uninsured and otherwise not eligible for health insurance coverage.

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

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

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

November 15, 1999

- (1) **921 KAR 2:490**, Welfare-to-Work Grant Program.
- (2) Cabinet for Families and Children, Department for Community Based Services, intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 29, 1999, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or 1 person representing the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 calendar days prior to December 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, Regulation Coordinator, Cabinet for Families and Children, 275 East Main Street, 4th 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, Third Floor West, CHR Building, 275 East Main, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children's regulations may call toll free 1-800-372-2973 (V/TTY).
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the Kentucky Transitional Assistance Program (K-TAP) is KRS 205.200(2), 194B.050(1) and 42 USC 601 et seq.
 - (b) The administrative regulation that the Department for Community Based Services intends to promulgate is 921 KAR 2:490. The amended administrative regulation is necessary to implement revisions to the Kentucky's Welfare-to-Work Formula Grant Plan. The changes are as follows:
 1. Section 1, Definitions, add a definition for Local Workforce Investment Board, pursuant to Section 117 of PL 105-220, which amends 29 USC 2832.
 2. Section 1, Definitions, amend the definition of medical substance abuse treatment.
 3. Section 1, Definitions, amend the definition of nonmedical substance abuse treatment.
 4. Section 1, Definitions, amend the definition of poor work history.
 5. Section 2, Program Participation, include K-TAP recipients who shall become ineligible for K-TAP assistance within 12 months due to the 60 month limit on receipt.
 6. Section 2, Program Participation, include former K-TAP recipients who no longer receive K-TAP assistance due to the 60 month limit on receipt.
 7. Section 8, Incorporation by Reference, amend to reflect revisions to the material incorporated by reference.
 - (c) The necessity, function and conformity of the proposed administrative regulation is as follows: The amendments to this administrative regulation are necessary to enable the Cabinet for Families and Children to qualify to receive federal funds under the Welfare-to-Work Grant Program in accordance with 20 CFR Part 645 and 42 USC 603(a)(5).
 - (d) The benefits expected from administrative regulation are: This administrative regulation will assist long-term K-TAP recipients, noncustodial parents of minors whose custodial parents are long-term welfare recipients, K-TAP recipients who will lose eligibility within 12 months due to the 60 month limit and former K-TAP recipients ineligible due to the 60 month limit to move into unsubsidized employment and to become self-sufficient.
 - (e) The administrative regulation will be implemented as follows: The Cabinet for Families and Children will be responsible for implementing the administrative regulation.

November 15, 1999

- (1) **921 KAR 2:500**, Family Alternatives Diversion Program (FAD).
- (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 December 29, 1999, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or 1 person representing the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 calendar days prior to December 29, 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: Judy Trigg, Regulation Coordinator, Cabinet for Families and Children, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, FAX: (502) 564-7573.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to Family Division Program is KRS 194B.050(1), 205.010, 205.200(2), 42 USC 601 et seq., 1397, and EO 98-731.

(b) The administrative regulation that the Department for Community Based Services intends to promulgate is an amended administrative regulation 921 KAR 2:500, Family Alternatives Diversion (FAD) Program. This administrative regulation is necessary to:

1. Change the ERA eligibility period for a discontinued K-TAP recipient from a 3 consecutive calendar month period beginning with the first month after discontinuance from K-TAP to allow for a 12 month period beginning with the effective date of K-TAP discontinuance;

2. Revise Section 5(1)(c) to revise the language from "under 200 percent" to "at or below 200 percent" of the federal poverty level.

3. Revise the Incorporated by Reference material to reflect policy changes;

4. Make any necessary amendments to comply with KRS Chapter 13A; and

5. Clarify responsibility for repayment of overpayments.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The Cabinet for Families and Children has the responsibility under the provisions of KRS Chapter 205 to administer the public assistance programs. KRS 205.200(2) requires that the conditions of eligibility to receive money grants be prescribed by administrative regulations.

(d) The benefits expected from administrative regulation are: To more effectively assist a family to maintain their economic self-sufficiency after discontinuance from K-TAP as a result of employment.

(e) The administrative regulation will be implemented as follows: The Cabinet for Families and Children, the Department for Community Based Services, will be responsible for implementing the administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, NOVEMBER 15, 1999

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

STATEMENT OF EMERGENCY
40 KAR 6:020E

This emergency administrative regulation establishes standards and criteria governing the allocation of funding assistance for the case-management aspects of child sexual abuse medical examinations. Due to recent changes in the availability of third-party reimbursement for these services, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
A. B. CHANDLER III, Attorney General

OFFICE OF ATTORNEY GENERAL
Child Sexual Abuse and Exploitation Prevention Board
Victims Advocacy Division

40 KAR 6:020E. Funding assistance for child sexual abuse medical examinations.

RELATES TO: KRS 15.905 to 15.940, 18.1867, 41.400
STATUTORY AUTHORITY: KRS 15.180, 15.935(1)(b)
EFFECTIVE: October 27, 1999

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.935(1)(b) authorizes the Child Sexual Abuse and Exploitation Prevention Board to fund, from the Child Victims' Trust Fund created pursuant to KRS 41.400, the cost of medical examinations of victims of suspected child sexual abuse to the extent the fee for an examination is a service not eligible to be paid for by Medicaid or private insurance. The function of this administrative regulation is to establish standards and criteria governing the allocation of funding assistance for the case-management aspects of child sexual abuse medical examinations in accordance with KRS 15.935.

Section 1. Definitions. (1) "Applicant" means an eligible provider, as defined in this section, applying for child sexual abuse medical examination funding assistance.

(2) "Board" means the Child Sexual Abuse and Exploitation Prevention Board created pursuant to KRS 15.905.

(3) "Case management" means all administrative aspects of the child sexual abuse medical examination and may include, but is not limited to, the following:

- (a) Transcription of records;
- (b) Scheduling appointments;
- (c) Coordination of services;
- (d) Making referrals for services; and

(e) Consultation with multidisciplinary teams, court personnel, officers of the court, parents or guardians, social workers, law enforcement and any other party involved in the treatment or protection of the child.

(4) "Child" means a person under the age of eighteen (18).

(5) "Child sexual abuse medical examination" means a complete physical examination of a child with a special focus on the ano/genital area or oral cavity and the case management associated with the physical examination.

(6) "Eligible provider" means a private, nonprofit agency whose primary purpose is to provide, either directly or through contract, prevention, intervention, and treatment services to sexually abused children and their families within a child-focused multidisciplinary team approach.

Section 2. Application for Child Sexual Abuse Medical Examination Funding Assistance. (1) An eligible provider as defined in

Section 1 of this administrative regulation may annually apply to the board for child sexual abuse medical examination funding assistance to be provided from the Child Victims' Trust Fund created pursuant to KRS 41.400. Funding shall only be used to pay for the case-management aspects of a child sexual abuse medical examination. The term of the financial assistance shall be the state fiscal year.

(2) An applicant for child sexual abuse medical examination funding assistance shall use an application form provided by the board.

(3) The application form "Application for Child Sexual Abuse Medical Examination Funding Assistance" is hereby incorporated by reference. It may be inspected, copied, or obtained from the Director, Victims Advocacy Division, Office of Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601, 8 a.m. through 4:30 p.m., Monday through Friday.

Section 3. Funding Requirements. (1) The total funds annually awarded by the board to each applicant for child sexual abuse medical examination funding assistance shall be limited by the availability of funds and board approval.

(2) In no event shall reimbursement for the case-management aspects of a child sexual abuse medical examination exceed \$150 per case.

(3) Applicants for funding assistance shall provide assurances to the board that:

(a) Funding assistance will be used solely for the purpose of reimbursing the case-management aspects of child sexual abuse medical examinations as defined in Section 1 of this administrative regulation;

(b) Funding assistance will supplement and not replace existing funds received by the applicant from other sources for child sexual abuse medical examinations;

(c) Funding assistance will not be used to reimburse services for which there is private health insurance coverage, or where another third party has a legal obligation to pay; and

(d) Persons performing any child sexual abuse medical examination services comply with all applicable state and federal licensing or certification requirements.

Section 4. Funding Criteria. Allocation of funding assistance for child sexual abuse medical examinations shall be based on funds available in the Child Victims' Trust Fund created pursuant to KRS 41.400 and the following criteria:

(1) Whether the applicant is currently providing or plans to provide child sexual abuse medical examinations either directly or by contract with medical providers, for children believed to have been sexually abused;

(2) Whether the applicant demonstrates a need for financial assistance to be used to provide medical examinations in the geographic area served by the applicant; and

(3) Whether the applicant has the demonstrated ability to provide access to child sexual abuse medical examinations in the geographic region served by the applicant.

Section 5. Reporting Requirements. No later than ninety (90) days after the end of the state fiscal year, applicants receiving financial assistance under this administrative regulation shall submit a final report to the board containing the following information:

(1) The applicant's total child sexual abuse medical examination budget for the period funded, which includes the amount and sources of revenue for the child sexual medical examinations and the total amount expended on the examinations;

(2) The number of child sexual abuse medical examinations conducted for the period funded; and

(3) An itemized list of the actual costs for the child sexual abuse medical examinations conducted, including but not limited to, the fees paid to medical personnel, laboratory fees, billing, administrative costs, and the costs for any special procedures conducted.

Section 6. Appeals. Any applicant denied available funding under this administrative regulation shall have a right to appeal pursuant to KRS Chapter 13B.

A. B. CHANDLER III, Attorney General
 RICHARD CARROLL, Legal Counsel
 APPROVED BY AGENCY: October 27, 1999
 FILED WITH LRC: October 27, 1999 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Susan Blake, Director, Victims Advocacy Division

(1) Type and number of entities affected: This administrative regulation will affect directly providers of child sexual abuse medical examinations and indirectly children receiving the examinations. The number of providers is believed to be fewer than 25. The number of children will be approximately 1,000 in each 12 month period.

(2) Direct and indirect costs of 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: Not applicable.

(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: Not applicable.

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

1. First year following implementation: Providers of child sexual abuse medical examinations must submit a monthly report on the number and cost of examinations in order to receive reimbursement. Ninety days after the end of the state fiscal year, each provider must submit a report containing the budget for the period funded including revenues used for the examinations and the total amount expended on the examinations, the number of examinations conducted for the period funded, and an itemized list of the actual costs for the examinations.

2. Second and subsequent years: The same requirements in the first year apply to the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs of savings:

1. First year: Administrative costs of reviewing monthly reports, making preparations for reimbursement of providers, and of the final reports will be the only foreseeable cost.

2. Continuing costs or savings: The same costs identified for the first year will be continuing costs.

3. Additional factors increasing or decreasing costs: 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: Funds to pay providers for case management aspects of the child sexual abuse medical examinations come from the Child Victims' Trust Fund (KRS 41.400). Administrative tasks will be performed by staff of the Attorney General's Office.

(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: There is no anticipated economic impact.

(b) Kentucky: The response is the same as (6)(a).

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 15.935 provides for the use of funds from the Child Victims' Trust Fund to support child sexual abuse medical examinations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Improvement of the system by which examinations are made available results in several advantages for the protection and welfare of children. Providing child sexual abuse medical exams offers an opportunity for treating trauma, sexually transmitted diseases, and other physical conditions associated with the abuse. Further, it provides assistance to social workers who often must make decisions about further protection of the child. It also provides assistance to law enforcement and prosecutors by collecting medical evidence used in the investigation and prosecution of child sexual abuse cases.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Failure to implement this regulation would have a detrimental effect on children who are believed to be victims of sexual abuse, and on the agencies responsible for their protection.

(c) See the explanation in (8)(a).

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied. No area of the state or groups will be treated differently. All providers will be subject to the same terms and procedures.

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.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 101 KAR 2:102E

This emergency administrative regulation corrects ambiguous language contained in the current administrative regulation governing leave in the event of an inclement weather emergency (101 KAR 2:102, Section 10). The current administrative regulation is self-contradictory because as written, it states that employees have the option to decide whether to take off from work when governmental operations are suspended due to a weather emergency. This is clearly erroneous because if governmental operations are suspended, employees would be granted leave without having to use their own. The Personnel Cabinet believes that it is necessary to correct this error by an emergency administrative regulation in order to avoid confusion that may occur during a weather-related emergency. If employees believe that they might be subject to having to use their own leave or take leave without pay when governmental operations are suspended, the result would be that some of these employees would attempt to drive to work on unsafe roads in violation of orders to close the roads and create a hazard to their own safety as well as emergency crews. An emergency administrative regulation is neces-

sary to prevent this situation from occurring.

PAUL E. PATTON, Governor
CAROL M. PALMORE, Secretary

PERSONNEL CABINET

101 KAR 2:102E. Classified leave administrative regulations.

RELATES TO: KRS 18A.030, 18A.110, 18A.195, 61.394, 344.030, 29 USC 201, et seq., 2601, et seq.

STATUTORY AUTHORITY: KRS 18A.030, 18A.110, 18A.155, 344.030, 29 USC 201, et seq., 2601, et seq.

EFFECTIVE: November 4, 1999

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(7)(g) requires the Secretary of Personnel, with the approval of the Governor, to promulgate administrative regulations which govern annual leave, sick leave, special leaves of absence, and for other conditions of leave. This administrative regulation establishes the leave requirements for classified employees.

Section 1. Annual Leave. (1) Accrual of annual leave.

(a) Each full-time employee shall accumulate annual leave at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180-239 months	1 3/4 days per month; 21 per year
240 months & over	2 leave days per month; 24 per year

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 or more hours per month to accrue annual leave.

(c) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(d) In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

(e) A former employee who has been rehired, except as provided in paragraph (f) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(f) An employee, who has retired from a position covered by a state retirement system, is receiving retirement benefits and returns to state service, shall not receive credit for months of service prior to retirement.

(g) A part-time employee shall not be entitled to annual leave.

(2) Use and retention of annual leave.

(a) Annual leave shall be used in increments of hours or of one-quarter (1/4) hours.

(b) Except as provided in paragraph (c) of this subsection, an employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time earned that year, if the operating requirements of the agency permit.

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward under this administrative regulation.

(d) Absence due to sickness, injury, or disability in excess of the amount available for those purposes shall, at the request of the employee, be charged against annual leave.

(e) An employee shall use annual leave for an absence on a regularly scheduled workday.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated annual leave in the receiving agency.

(g) An employee who is eligible for state contributions for life insurance and health benefits under the provisions of KRS

Chapter 18A shall have worked or been on paid leave, other than educational leave, during any part of the previous month.

(h) Annual leave may be carried from one (1) calendar year to the next as provided in this paragraph:

Months of Service	Maximum Amount
0-59 months	Thirty (30) workdays
60-119 months	Thirty-seven (37) workdays
120-179 months	Forty-five (45) workdays
180-239 months	Fifty-two (52) workdays
240 months and over	Sixty (60) workdays

(i) Leave in excess of the maximum amounts specified in paragraph (h) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement.

(j) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(d) of this section.

(3) Annual leave on separation.

(a) If an employee is separated by proper resignation or retirement, he shall be paid in a lump sum for accumulated annual leave. The accumulated annual leave for which he is paid shall not exceed the amounts established by subsection (2)(h) of this section. Following payment of annual leave at resignation, leave remaining after the payment of the maximum provided shall be removed from the balance.

(b) If an employee is laid off, he shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who reverts to the classified service, or resigns one (1) day and is employed the next workday, shall retain his accumulated leave in the receiving agency.

(d) An employee who has been dismissed for cause related to misconduct or who has failed, without proper excuse, to give proper notice of resignation or retirement shall not be paid for accumulated annual leave.

(e) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(f) An employee may request in writing that his accumulated annual leave not be paid upon resignation, and that all or part of the amount of his accumulated annual leave that does not exceed the amount established by this section be waived, if:

1. He resigns, or is laid off from his position, because of an approved plan of privatization of the services he performed; and
2. The successor employer has agreed to credit him with an equal amount of annual leave.

Section 2. Sick Leave. (1) Accrual of sick leave.

(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee shall have worked or been on paid leave, other than educational leave, for 100 or more hours in a month to accrue sick leave.

(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(e) A full-time employee who completes 240 months of total service with the state shall be credited with another ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service. An employee with 240 or more months of service at the time of implementation of this section shall have the additional ten (10) days credited to the sick leave balance.

(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

(g) The total service shall be verified before the leave is credited to the employee's record.

(h) A former employee who has been rehired, except as provided in paragraph (i) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(i) A former employee who is appointed, reinstated or reemployed, other than a former employee receiving benefits under a state retirement system, shall be credited with the unused sick leave balance credited to him upon separation.

(j) Sick leave may be accumulated with no maximum.

(2) Use and retention of sick leave with pay.

(a) An appointing authority shall grant or may require the use of accrued sick leave with pay if an employee:

1. Is unable to work due to medical, dental or optical examination or treatment;

2. Is disabled by illness or injury. The appointing authority may require the employee to provide a doctor's statement certifying the employee's inability to perform his duties for the days or hours sick leave is requested;

3. Is required to care for or transport a member of his immediate family in need of medical attention for a reasonable period of time. The appointing authority may require the employee to provide a doctor's statement certifying the employee's need to care for a family member;

4. Would jeopardize the health of himself or others at his work station because of a contagious disease or demonstration of behavior that might endanger himself or others;

5. Has lost by death a spouse, parent, grandparent, child, brother or sister, or the spouse of any of them and may be granted to include other relatives of close association. Leave under this subparagraph shall be limited to three (3) days; or

6. Requires leave for the birth, placement or adoption of a child.

(b) At the termination of sick leave with pay, the appointing authority shall return the employee to his former position.

(c) An employee eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than education leave, during any part of the previous month.

(d) Sick leave shall be used in increments of hours or increments of one-quarter (1/4) hours.

(e) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated sick leave in the receiving agency.

(f) An employee shall be credited for accumulated sick leave if he is separated by proper resignation, layoff or retirement.

(3) Sick leave without pay.

(a) An appointing authority shall grant sick leave without pay for the duration of an employee's impairment by injury or illness, if:

1. The total continuous leave does not exceed one (1) year; and

2. The employee has used or been paid for all accumulated annual, sick and compensatory leave unless he has requested to retain up to ten (10) days of accumulated sick leave.

(b) For continuous leave without pay in excess of thirty (30) working days, excluding holidays, the appointing authority shall notify the employee in writing of the leave without pay status.

(c) The appointing authority may require periodic doctor's statements during the year attesting to the employee's continued inability to perform the essential functions of his duties with or without reasonable accommodation.

(d) An appointing authority may grant sick leave without pay to an employee who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for a member of the immediate family for a period not to exceed thirty (30) working days.

(e) If an employee has given notice of his ability to resume his duties following sick leave without pay, the appointing authority shall return the employee to the original position or to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(f) If reasonable accommodation is requested, the employee shall:

1. Inform the employer; and

2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be considered to have resigned if he:

1. Has been on one (1) year continuous sick leave without pay;

2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of sick leave;

3. Is unable to return to his former position;

4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which he qualified and is capable of performing its essential functions with or without reasonable accommodation; and

5. Has not been placed by the appointing authority in a vacant position.

(h) Sick leave granted under this subsection shall not be renewable after the employee has been medically certified as able to return to work.

(i) An employee who has been resigned under paragraph (g) of this subsection shall retain reinstatement privileges that were accrued during service in the classified service.

(4) Workers' compensation.

(a) If an absence is due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used to maintain regular full salary.

(b) If paid sick leave is used to maintain regular full salary, workers' compensation pay benefits shall be assigned to the state for the period of time the employee received paid sick leave.

(c) The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits are assigned.

(5) Application for sick leave and supporting documentation.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examinations, and for sick leave without pay.

(c) If the employee is too ill to work, an employee shall notify the immediate supervisor or other designated person. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination or treatment.

(f) An appointing authority shall grant sick leave if the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.

Section 3. Family and Medical Leave. (1) An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 20 USC 2601, et seq., and the federal regulations implementing the Act, 29 CFR Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family leave if the employee has:

(a) Completed twelve (12) months of service; and

(b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar year basis.

(4) If both parents are employed by the state, each parent shall be entitled to twelve (12) weeks of unpaid family and medical leave for the birth, placement, or adoption of a child.

(5) While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.

(6) If the employee would qualify for family and medical leave,

but has an annual, compensatory or sick leave balance, the agency shall not designate the leave as FMLA leave until:

- (a) The employee's leave balance has been exhausted; or
- (b) The employee requests to reserve ten (10) days of accumulated sick leave and be placed on unpaid FMLA leave.

Section 4. Court Leave. (1) An employee shall be entitled to court leave during his scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with a subpoena by a court, or administrative agency or body of the federal or state government or any political subdivision thereof; or

(b) Serve as a juror or a witness, unless the employee or a member of his family is a party to the proceeding.

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of his assigned duties.

Section 5. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.

(a) An appointing authority shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 USC Chapter 8.

(b) An employee who is directed to, or who requests and is authorized to, work in excess of the prescribed hours of duty shall be granted compensatory leave and paid overtime subject to the provisions of the Fair Labor Standards Act, the Kentucky Revised Statutes and this administrative regulation.

(c) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be compensated for hours worked in excess of forty (40) per week as provided by subparagraphs 1 to 3 of this paragraph.

1. An employee who has not accumulated the maximum amount of compensatory leave shall have the option to accumulate compensatory leave at the rate of an hour and one-half (1 1/2) for each hour worked in excess of forty (40) per week in lieu of paid overtime.

2. The election to receive compensatory leave in lieu of paid overtime shall be in writing on the Overtime Compensation Form and shall remain in force for a minimum of six (6) months. The election shall be changed by the submission of a new form. The effective date of a change shall be the first day of the next work week following receipt of the election.

3. An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times the regular hourly rate of pay for all hours worked in excess of forty (40) hours per week.

(d) An employee deemed to be "exempt" under the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours worked in excess of the regular work schedule.

(e) Compensatory leave shall be accumulated or taken off in one-quarter (1/4) hour increments.

(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be 240 hours.

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain the compensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.

(a) An appointing authority may require an employee who has accrued at least 100 hours compensatory leave to use compensatory leave before annual leave and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.

(b) An employee who is not in a policy-making position may, after accumulating 151 hours of compensatory leave, request payment for fifty (50) hours at the regular rate of pay. If the appointing authority or the designee approves the payment, an employee's leave balance shall be reduced accordingly.

(c) An employee who is not in a policy-making position shall be paid for fifty (50) hours at the regular hourly rate of pay, upon accumulating at the end of the pay period, 240 hours of compensatory leave. The employee's leave balance shall be reduced accordingly.

(d) If an employee's prescribed hours of duty are normally less than forty (40) hours per week, the employee shall receive compensatory leave for the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; and

2. Do not exceed the maximum amount of compensatory time that is permitted.

(e) Only hours actually worked shall be used for computing paid overtime or time and one-half (1 1/2) compensatory time.

(f) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of his:

1. Regular hourly rate of pay; or

2. Average regular rate of pay for the final three (3) years of employment.

Section 6. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United State Public Health Service Reserve, or the Kentucky National Guard shall be relieved from the civil duties, to serve under order on training duty without loss of the regular compensation for a period not to exceed the number of working days specified in KRS 61.394 for a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds the number of working days specified in KRS 61.394 for a federal fiscal year shall be charged to annual leave, compensatory leave or leave without pay.

(4) The appointing authority may require a copy of the orders requiring the attendance of the employee before granting military leave.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of the duty not to exceed six (6) years. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 7. Voting and Election Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request, four (4) hours, for the purpose of voting.

(2) An election officer shall receive additional leave if the total leave for election day does not exceed a regular workday.

(3) The absence shall not be charged against leave.

(4) An employee who is not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. An employee who is permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis for the hours worked on election day.

Section 8. Special Leave of Absence. (1) If approved by the secretary, an appointing authority may grant a leave of absence for continuing education or training.

(a) Leave may be granted for a period not to exceed twenty-four (24) months.

(b) If granted, leave shall be granted either with pay (if the employee contractually agrees to a service commitment) or without pay.

(c) Leave shall be restricted to attendance at a college, university, vocational or business school for training in subjects that relates to the employee's work and will benefit the state.

(2) An appointing authority, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(3) If approved by the secretary, an appointing authority may

place an employee on special leave with pay for investigative purposes pending an investigation of an allegation of employee misconduct.

(a) Leave shall not exceed sixty (60) working days.

(b) The employee shall be notified in writing by the appointing authority that he is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(c) If the investigation reveals no misconduct by the employee, records relating to the investigation shall be purged from agency and Personnel Cabinet files.

(d) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. This notification shall be made to the employee, whether the employee has remained in state service, or has voluntarily resigned after being placed on special leave for investigative purposes.

Section 9. Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for the absence to the supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

(b) Be treated as leave without pay for an employee covered by the provision of the Fair Labor Standards Act; and

(c) Constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be considered to have resigned the employment.

Section 10. Absences Due to Adverse Weather. (1) ~~[If operations are suspended or temporarily closed due to localized adverse weather,]~~ An employee, who is not designated for mandatory operations and chooses not to report to work or to leave early in the event of adverse weather conditions, shall have the time of the absence reported as:

(a) Charged to annual or compensatory leave;

(b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or

(c) Deferred in accordance with subsections (3) and (4) of this section.

(2) An employee who is on prearranged annual, compensatory or sick leave shall charge leave as originally requested.

(3) Where operational needs allow, except for an employee in mandatory operations, management shall make every reasonable effort to arrange schedules whereby an employee will be given an opportunity to make up time not worked rather than charging it to leave.

(4) An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.

(a) Makeup work shall occur in the workweek in which the time is lost or in a week when the employee has not worked a full work schedule due to holiday, annual leave or sick leave.

(b) Time lost shall be made up within four (4) months of the occurrence of the absence. If it is not made up within four (4) months, annual leave shall be deducted to cover the absence, or leave without pay shall be charged if no annual leave is available.

(c) If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual leave or deducted from the final paycheck.

(5) If catastrophic, life-threatening weather conditions occur, as created by a hurricane, tornado, flood or blizzard, and it becomes necessary for authorities to order evacuation or shutdown of the place of employment, the following provisions shall apply:

(a) An employee who is required to evacuate or who would report to a location that has been shutdown shall not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety.

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to the provisions of Section 5 of this administrative regulation and the Fair Labor Standards Act as amended.

Section 11. Blood Donation Leave. (1) An employee who, during regular working hours, donates blood at a licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted under this section shall be used at the time of the donation unless circumstances as specified by the supervisor required the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave.

(4) An employee who is deferred from donating blood shall not:

(a) Be charged leave time for the time spent in the attempted donation; and

(b) Qualify for the remainder of the blood donation leave.

Section 12. Incorporation by Reference. (1) Overtime Compensation Form, September 1999, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Personnel Cabinet, 200 Fair Oaks Lane, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CAROL M. PALMORE, Secretary

PAUL E. PATTON, Governor

DANIEL F. EGBERS, General Counsel

APPROVED BY AGENCY: November 4, 1999

FILED WITH LRC: November 4, 1999 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Daniel F. Egbers

(1) Type and number of entities affected: The proposed amendment to 101 KAR 2:102E, Leave regulations for the classified service action will affect approximately 3,260 employees in the unclassified service 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: No direct impact anticipated. This administrative regulation is being modified to correct an error in Section 10 governing the use of leave in inclement weather situations.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None anticipated.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No significant change is anticipated.

2. Second and subsequent years: No significant change is anticipated.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: See (3)(a)(1), above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No change anticipated.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Recurring agency base budgets.

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

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

(b) Kentucky: None

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(7) Assessment of alternative methods; reasons why alternatives were rejected: The change to this administrative regulation is technical in nature and is offered to correct an error in the administrative regulation that became effective on August 25, 1999. The modification eliminates conflicting and contradictory language and is designed to eliminate the confusion that the original language would create in emergency situations.

(8) Assessment of expected benefits: Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky. No direct impact on public health or environmental welfare is anticipated.

(a) State whether a detrimental effect on environmental and public health would result if not implemented: The change in the current regulation is intended to eliminate confusion as to the obligations of state employees to report to work during periods of inclement weather.

(b) If detrimental effect would result, explain detrimental effect: If not implemented, we anticipate that employees would attempt to use roads that have been closed due to weather emergencies due to uncertainty as to whether they would lose pay or leave time.

(9) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: This administrative regulation does not conflict with, overlap or duplicate an existing statute, administrative regulation or government policy, to our knowledge.

(a) Necessity of proposed regulation if in conflict: No conflict is seen.

(b) If in conflict, was the effort made to harmonize the proposed administrative regulation with the conflicting provisions. No conflict is seen.

(10) Any additional information or comments: The emergency administrative regulation will be replaced by an ordinary administrative regulation. Notice of Intent to amend 101 KAR 2:102 is being filed simultaneously with this emergency regulation.

TIERING: Is tiering applied? Yes. Although this administrative regulation applies to all employees in the classified service of state government, it does not apply to the unclassified service.

STATEMENT OF EMERGENCY 101 KAR 3:015E

This emergency administrative regulation corrects ambiguous language contained in the current administrative regulation governing leave in the event of an inclement weather emergency (101 KAR 3:015, Section 10). The current administrative regulation is self-contradictory because as written, it states that employees have the option to decide whether to take off from work when governmental operations are suspended due to a weather emergency. This is clearly erroneous because if governmental operations are suspended, employees would be granted leave without having to use their own. The Personnel Cabinet believes that it is necessary to correct this error by an emergency administrative regulation in order to avoid confusion that may occur during a weather-related emergency. If employees believe that they might be subject to having to use their own leave or take leave without pay when governmental operations are suspended, the result would be that some of these employees would attempt to drive to work on unsafe roads in violation of orders to close the roads and create a hazard to their own safety as well as emergency crews. An emergency administrative regulation is necessary to prevent this situation from occurring.

PAUL E. PATTON, Governor
CAROL M. PALMORE, Secretary

PERSONNEL CABINET

101 KAR 3:015E. Leave administrative regulations for the unclassified service.

RELATES TO: KRS 18A.030, 18A.110, 18A.195, 61.394, 344.030, 29 USC 201 et. seq., 2601 et seq.

STATUTORY AUTHORITY: KRS 18A.030, 18A.110, 18A.155, 344.030, 29 USC 201 et seq., 2601 et seq.

EFFECTIVE: November 4, 1999

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(7)(g) requires the Secretary of Personnel, with the approval of the Governor, to promulgate administrative regulations which govern annual leave, sick leave, special leaves of absence, and for other conditions of leave. This administrative regulation establishes the leave requirements for unclassified employees.

Section 1. Annual Leave. (1) Accrual of annual leave.

(a) Each full-time employee shall accumulate annual leave at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180-239 months	1 3/4 days per month; 21 per year
240 months & over	2 leave days per month; 24 per year

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 hours or more per month to accrue annual leave.

(c) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(d) In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

(e) A former employee who has been rehired, except as provided in paragraph (f) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(f) An employee, who has retired from a position covered by a state retirement system, is receiving retirement benefits and returns to state service, shall not receive credit for months of service prior to retirement.

(g) A part-time or interim employee shall not be entitled to annual leave.

(2) Use and retention of annual leave.

(a) Annual leave shall be used in increments of hours or of one-quarter (1/4) hours.

(b) Except as provided in paragraph (c) of this subsection, an employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time earned that year, if the operating requirements of the agency permit.

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward under this administrative regulation.

(d) Absence due to sickness, injury, or disability in excess of the amount available for those purposes shall, at the request of the employee, be charged against annual leave.

(e) An employee shall use annual leave for an absence on a regularly scheduled workday.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain accumulated annual leave in the receiving agency.

(g) An employee who is eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than educational leave, during any part of the previous month.

(h) Annual leave may be carried from one (1) calendar year to the next as provided in this paragraph:

Months of Service	Maximum Amount
0-59 months	Thirty (30) workdays
60-119 months	Thirty-seven (37) workdays
120-179 months	Forty-five (45) workdays

180-239 months	Fifty-two (52) workdays
240 months and over	Sixty (60) workdays

(i) Leave in excess of the maximum amounts specified in paragraph (h) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement.

(j) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(d) of this section.

(3) Annual leave on separation.

(a) If an employee is separated by proper resignation or retirement, he shall be paid in a lump sum for accumulated annual leave. The accumulated annual leave for which he is paid shall not exceed the amounts established by subsection (2)(h) of this section. Following payment of annual leave at resignation, leave remaining after the payment of the maximum provided shall be removed from the balance.

(b) If an employee is laid off, he shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who reverts to the classified service, or resigns or is terminated one (1) day and is employed the next workday, shall retain his accumulated leave in the receiving agency.

(d) An employee who has been dismissed for cause related to misconduct or who has failed, without proper excuse, to give proper notice of resignation or retirement shall not be paid for accumulated annual leave.

(e) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(f) An employee may request in writing that his accumulated annual leave not be paid upon resignation, and that all or part of the amount of his accumulated annual leave that does not exceed the amount established by this section be waived, if:

1. He resigns, or is laid off from his position, because of an approved plan of privatization of the services he performed; and
2. The successor employer has agreed to credit him with an equal amount of annual leave.

Section 2. Sick Leave. (1) Accrual of sick leave.

(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee shall have worked or been on paid leave, other than educational leave, for 100 or more hours in a month to accrue sick leave.

(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(e) A full-time employee who completes 240 months of total service with the state shall be credited with another ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service. An employee with 240 or more months of service at the time of implementation of this section shall have the additional ten (10) days credited to the sick leave balance.

(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

(g) The total service shall be verified before the leave is credited to the employee's record.

(h) A former employee who has been rehired, except as provided in paragraph (i) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(i) A former employee, other than a former employee receiving benefits under a state retirement system, who is appointed to an unclassified position, shall be credited with the unused sick

leave balance upon separation.

(j) Sick leave may be accumulated with no maximum.

(2) Use and retention of sick leave with pay.

(a) An appointing authority shall grant or may require the use of accrued sick leave with pay if an employee:

1. Is unable to work due to medical, dental or optical examination or treatment;

2. Is disabled by illness or injury. The appointing authority may require the employee to provide a doctor's statement certifying the employee's inability to perform his duties for the days or hours sick leave is requested;

3. Is required to care for or transport a member of his immediate family in need of medical attention for a reasonable period of time. The appointing authority may require the employee to provide a doctor's statement certifying the employee's need to care for a family member;

4. Would jeopardize the health of himself or others at his work station because of a contagious disease or demonstration of behavior that might endanger himself or others;

5. Has lost by death a spouse, parent, grandparent, child, brother or sister, or the spouse of any of them and may be granted to include other relatives of close association. Leave under this subparagraph shall be limited to three (3) days; or

6. Requires leave for the birth, placement or adoption of a child.

(b) At the termination of sick leave with pay, the appointing authority shall return the employee to his former position.

(c) An employee eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than educational leave, during any part of the previous month.

(d) Sick leave shall be used in increments of hours or increments of one-quarter (1/4) hours.

(e) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated sick leave in the receiving agency.

(f) An employee shall be credited for accumulated sick leave if he is separated by proper resignation, layoff or retirement.

(g) The duration of an interim employee's appointment shall not be extended by the use or approval for sick leave with or without pay.

(3) Sick leave without pay.

(a) An appointing authority shall grant sick leave without pay to an employee for the duration of an employee's impairment by injury or illness, if:

1. The total continuous leave does not exceed one (1) year; and

2. The employee has used or been paid for all accumulated annual, sick and compensatory leave unless he has requested to retain up to ten (10) days of accumulated sick leave.

(b) For continuous leave without pay in excess of thirty (30) working days, excluding holidays, the appointing authority shall notify the employee in writing of the leave without pay status.

(c) The appointing authority may require periodic doctor's statements during the year attesting to the employee's continued inability to perform the essential functions of his duties with or without reasonable accommodation.

(d) An appointing authority may grant sick leave without pay to an employee, other than an interim employee, who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for a member of the immediate family for a period not to exceed thirty (30) working days.

(e) If an employee has given notice of his ability to resume his duties following sick leave without pay, the appointing authority shall return the employee to the original position or to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(f) If reasonable accommodation is requested, the employee shall:

1. Inform the employer; and

2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be considered to have resigned if he:

1. Has been on one (1) year continuous sick leave without pay;
2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of sick leave;
3. Is unable to return to his former position;
4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which he qualified and is capable of performing its essential functions with or without reasonable accommodation; and
5. Has not been placed by the appointing authority in a vacant position.

(h) Sick leave granted under this subsection shall not be renewable after the employee has been medically certified as able to return to work.

(i) An employee who has been resigned under paragraph (g) of this subsection shall retain reinstatement privileges that were accrued during his service in the classified service.

(4) Workers' compensation.

(a) If an absence is due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used to maintain regular full salary.

(b) If paid sick leave is used to maintain regular full salary, workers' compensation pay benefits shall be assigned to the state for the period of time the employee received paid sick leave.

(c) The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits are assigned.

(5) Application for sick leave and supporting documentation.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examinations, and for sick leave without pay.

(c) If he is too ill to work, an employee shall notify his immediate supervisor or other designated person. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination or treatment.

(f) An appointing authority shall grant sick leave if the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.

Section 3. Family and Medical Leave. (1) An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 20 USC 2601, et seq., and the federal regulations implementing the Act, 29 CFR Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family leave if the employee:

- (a) Completed twelve (12) months of service; and
- (b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar year basis.

(4) If both parents are employed by the state, each parent shall be entitled to twelve (12) weeks of unpaid family and medical leave for the birth, placement, or adoption of a child.

(5) While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.

(6) If the employee would qualify for family and medical leave, but has an annual, compensatory or sick leave balance, the agency shall not designate the leave as FMLA leave until:

- (a) The employee's leave balance has been exhausted; or
- (b) The employee requests to reserve ten (10) days of accumulated sick leave and be placed on unpaid FMLA leave.

Section 4. Court Leave. (1) An employee shall be entitled to court leave during his scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with a subpoena by a court, or administrative agency or body of the federal or state government or any political subdivision thereof; or

(b) Serve as a juror or a witness, unless the employee or a member of his family is a party to the proceeding.

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of his assigned duties.

Section 5. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.

(a) An appointing authority shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 USC Chapter 8.

(b) An employee who is directed to work, or who requests and is authorized to work, in excess of the prescribed hours of duty shall be granted compensatory leave and paid overtime subject to the provisions of the Fair Labor Standards Act, the Kentucky Revised Statutes and this administrative regulation.

(c) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be compensated for hours worked in excess of forty (40) per week as provided by subparagraphs 1 to 3 of this paragraph.

1. An employee who has not accumulated the maximum amount of compensatory leave shall have the option to accumulate compensatory leave at the rate of an hour and one-half (1 1/2) for each hour worked in excess of forty (40) per week in lieu of paid overtime.

2. The election to receive compensatory leave in lieu of paid overtime shall be in writing on the Overtime Compensation Form and shall remain in force for a minimum of six (6) months. The election shall be changed by the submission of a new form. The effective date of a change shall be the first day of the next work-week following receipt of the election.

3. An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times his regular hourly rate of pay for all hours worked in excess of forty (40) hours per week.

(d) An employee deemed to be "exempt" under the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours worked in excess of his regular work schedule.

(e) Compensatory leave shall be accumulated or taken off in one-quarter (1/4) hour increments.

(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be 240 hours.

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his compensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.

(a) An appointing authority may require an employee who has accrued at least 100 hours compensatory leave to use compensatory leave before annual leave and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.

(b) An employee who is not in a policy-making position may, after accumulating 151 hours of compensatory leave, request that he be paid for fifty (50) hours at his regular rate of pay. If the appointing authority or his designee approves the payment, an employee's leave balance shall be reduced accordingly.

(c) An employee who is not in a policy-making position shall be paid for fifty (50) hours at his regular hourly rate of pay, upon accumulating at the end of the pay period, 240 hours of compensatory leave. The employee's leave balance shall be reduced accordingly.

(d) If an employee's prescribed hours of duty are normally

less than forty (40) hours per week, he shall receive compensatory leave for the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; and

2. Do not exceed the maximum amount of compensatory time that is permitted.

(e) Only hours actually worked shall be used for computing paid overtime or time and one-half (1 1/2) compensatory time.

(f) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of his:

1. Regular hourly rate of pay; or

2. Average regular rate of pay for the final three (3) years of employment.

Section 6. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties, to serve under order on training duty without loss of his regular compensation for a period not to exceed the number of working days specified in KRS 61.394 for a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds the number of working days specified in KRS 61.394 for a federal fiscal year shall be charged to annual leave, compensatory leave or leave without pay.

(4) The appointing authority may require a copy of the orders requiring the attendance of the employee before granting military leave.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of the duty not to exceed six (6) years. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 7. Voting and Election Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request, four (4) hours, for the purpose of voting.

(2) An election officer shall receive additional leave if the total leave for election day does not exceed a regular workday.

(3) The absence shall not be charged against leave.

(4) An employee who is not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. An employee who is permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis for the hours worked on election day.

Section 8. Special Leave of Absence. (1) If approved by the secretary, an appointing authority may grant a leave of absence for continuing education or training.

(a) Leave may be granted for a period not to exceed twenty-four (24) months or the conclusion of the administration in which the employee is serving, whichever comes first.

(b) If granted, leave shall be granted either with pay (if the employee contractually agrees to a service commitment) or without pay.

(c) Leave shall be restricted to attendance at a college, university, vocational or business school for training in subjects that relates to the employee's work and will benefit the state.

(2) An appointing authority, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(3)(a) If approved by the secretary, an appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of an allegation of employee misconduct.

(b) Leave shall not exceed sixty (60) working days.

(c) The employee shall be notified in writing by the appointing

authority that he is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(d) If the investigation reveals no misconduct by the employee, records relating to the investigation shall be purged from agency and Personnel Cabinet files.

(e) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. This notification shall be made to the employee, whether he has remained in state service, or has voluntarily resigned after being placed on special leave for investigative purposes.

Section 9. Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for his absence to his supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

(b) Be treated as leave without pay for an employee covered by the provision of the Fair Labor Standards Act; and

(c) Constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be considered to have resigned his employment.

Section 10. Absences Due to Adverse Weather. (1) ~~If operations are suspended or temporarily closed due to localized adverse weather;~~ An employee, who is not designated for mandatory operations and chooses not to report to work or to leave early in the event of adverse weather conditions, shall have the time of his absence reported as:

(a) Charged to annual or compensatory leave;

(b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or

(c) Deferred in accordance with subsections (3) and (4) of this section.

(2) An employee who is who are on prearranged annual, compensatory or sick leave shall charge leave as originally requested.

(3) Where operational needs allow, except for an employee in mandatory operations, management shall make every reasonable effort to arrange schedules whereby an employee will be given an opportunity to make up time not worked rather than charging it to leave.

(4) An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.

(a) Makeup work shall occur in the workweek in which the time is lost or in a week when the employee has not worked a full work schedule due to holiday, annual leave or sick leave.

(b) Time lost shall be made up within four (4) months of the occurrence of the absence. If it is not made up within four (4) months, annual leave shall be deducted to cover the absence, or leave without pay shall be charged if no annual leave is available.

(c) If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual leave or deducted from the final paycheck.

(5) If catastrophic, life-threatening weather conditions occur, as created by a hurricane, tornado, flood or blizzard, and it becomes necessary for authorities to order evacuation or shutdown of the place of employment, the following provisions shall apply:

(a) An employee who is required to evacuate or who would report to a location that has been shut down shall not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety.

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to the provisions of Section 5 of this administrative regulation and the Fair Labor Standards Act as amended.

Section 11. Blood Donation Leave. (1) An employee who, during regular working hours, donates blood at a licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted under this section shall be used at the time of the donation unless circumstances as specified by the supervisor required the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave. An employee who is deferred from donating blood shall not:

(a) Be charged leave time for the time spent in the attempted donation; and

(b) Qualify for the remainder of the blood donation leave.

Section 12. Incorporation by Reference. (1) Overtime Compensation Form, September 1999, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Personnel Cabinet, 200 Fair Oaks Lane, 5th Floor, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CAROL M. PALMORE, Secretary

PAUL E. PATTON, Governor

DANIEL F. EGBERS, General Counsel

APPROVED BY AGENCY: November 4, 1999

FILED WITH LRC: November 4, 1999 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Daniel F. Egbers

(1) Type and number of entities affected: The proposed amendment to 101 KAR 3:015E, leave regulations for the classified service action will affect approximately 3,260 employees in the unclassified service 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: No direct impact anticipated. This administrative regulation is being modified to correct an error in Section 10 governing the use of leave in inclement weather situations.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None anticipated.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No significant change is anticipated.

2. Second and subsequent years: No significant change is anticipated.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: See (3)(a)(1), above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No change anticipated.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Recurring agency base budgets.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The amendment to this administrative regulation is technical in nature and is offered to correct an error in the administrative regulation that became effective on August 25, 1999. The modification eliminates conflicting and contradictory language and is designed to eliminate the confusion that the

original language would create in emergency situations.

(8) Assessment of expected benefits: Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky. No direct impact on public health or environmental welfare is anticipated.

(a) State whether a detrimental effect on environmental and public health would result if not implemented: The change in the current regulation is intended to eliminate confusion as to the obligations of state employees to report to work during periods of inclement weather.

(b) If detrimental effect would result, explain detrimental effect: If not implemented, we anticipate that employees would attempt to use roads that have been closed due to weather emergencies due to uncertainty as to whether they would lose pay or leave time.

(9) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: This administrative regulation does not conflict with, overlap or duplicate an existing statute, administrative regulation or government policy, to our knowledge.

(a) Necessity of proposed regulation if in conflict: No conflict is seen.

(b) If in conflict, was the effort made to harmonize the proposed administrative regulation with the conflicting provisions. No conflict is seen.

(10) Any additional information or comments: The emergency administrative regulation will be replaced by an ordinary administrative regulation.

(11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies to all employees in the unclassified service of state government, it does not apply to the classified service.

STATEMENT OF EMERGENCY 907 KAR 1: 044E

This emergency administrative regulation is being promulgated to allow Medicaid coverage of prevention of and treatment for substance abuse by pregnant women and women in the first sixty (60) days postpartum period. This action must be taken on an emergency basis to protect the health and safety of children whose mothers are abusing or are at risk of abusing substances during and after their pregnancy. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Medicaid recipients because substance abuse by mothers during their pregnancy can result in children's being born with birth defects, addictions, and low birth weights. Additionally, a mother who is abusing substances is less likely to provide the care needed by the newborn child. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor

JIMMY D. HELTON, Secretary

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Behavioral Health

907 KAR 1:044E. Mental health center services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 47 Appendix A Part IX 25m, 194A.050 [194.050], 42 CFR 440.130, 42 USC 1396a-d

EFFECTIVE: October 21, 1999

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, [Human Resources] has responsibility to administer the program of Medical Assistance. 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. This administrative regulation ~~establishes~~ sets forth the provisions relating to services provided by Mental Health Centers for which payment shall be made by the Medicaid Program to both the categorically needy and the medically needy.

Section 1. ~~[Definition of] Psychiatric Nurse Criteria.~~ (1) ~~Except as specified in subsection (2) of this section,~~ for the purpose of providing Medicaid Program reimbursable services, registered nurses employed by participating mental health centers shall be considered psychiatric or mental health nurses when they meet ~~[any of]~~ the following criteria:

(a) Master of Science in Nursing (MSN) with specialty in psychiatric/mental health nursing; additional experience is not required; or

(b) Graduate of a four (4) year nursing educational program, with a Bachelor of Science in Nursing (BSN) and with a minimum of one (1) year of experience in a mental health setting; or

(c) Graduate of a three (3) year nursing educational program (diploma graduate), and with a minimum of two (2) years of experience in a mental health setting; or

(d) Graduate of a two (2) year nursing educational program, with an Associate Degree in Nursing (ADN) and with a minimum of three (3) years of experience in a mental health setting; or

(e) ~~[Effective July 1, 1989,]~~ Any level of education with American Nursing Association (ANA) certification as a psychiatric and mental health nurse.

(2) ~~[Notwithstanding the preceding,]~~ Any registered nurse employed by a participating mental health center in Kentucky ~~[on] June 30, 1981, through June 30, 1989,~~ shall be considered a psychiatric nurse if their employment with ~~a [the]~~ center continues, for the purpose of providing Medicaid Program reimbursable services.

Section 2. ~~[Community Mental Health Manual. The Community Mental Health Manual specifies the conditions for participation, services covered, and limitations for the mental health center services component of the Medicaid Program. The Community Mental Health Manual dated July 1, 1993 is incorporated by reference in this administrative regulation and may be reviewed during regular working hours (8 a.m. to 4:30 p.m. Eastern Standard Time) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.~~

Section 3. ~~Covered Services. Except for substance abuse services which shall be covered in accordance with 907 KAR 3:110E, the following services provided by participating mental health centers shall be considered covered when rendered within Kentucky Medicaid Program guidelines as shown in the Community Mental Health Manual, incorporated into this administrative regulation by reference:~~

- (1) Inpatient services;
- (2) Outpatient services;
- (3) Therapeutic rehabilitation services;
- (4) Emergency services; ~~[and]~~
- (5) Personal care home services; ~~and~~
- (6) Substance abuse services.

Section 3. ~~Incorporation by Reference. (1) The "Community Mental Health Manual", Department for Medicaid Services, 10/99 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. [4. The provisions of this administrative regulation shall be applicable for services provided on or after July 1, 1993.]~~

DENNIS BOYD, Commissioner
JOHN H. WALKER, Attorney
JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: October 14, 1999
FILED WITH LRC: October 21, 1999 AT 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Karen Doyle

(1) Type and number of entities affected: Mental health centers will be affected. There are currently 14 regional programs for mental health in Kentucky which could provide substance abuse treatment services and receive reimbursement from Medicaid.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: A public hearing for the opportunity to provide comments will be held upon the publication of the Notice of Intent.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: A public hearing for the opportunity to provide comments will be held upon the publication of the Notice of Intent.

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

1. First year following implementation: Routine compliance, reporting and paperwork will be required for services provided by the mental health centers.

2. Second and subsequent years: Same as # 1.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No new administrative costs. \$500,000 in state general funds were allocated for benefit expenditures by the 1998 General Assembly, with \$1,197,793 federal share. Actual expenditures during the first year may be less than the total allocated.

2. Continuing costs or savings: The same amount was allocated in the second year. It is anticipated that all funds will be expended during the second and continuing years. It is anticipated that savings will occur to total Medicaid expenditures resulting from lower cost of care for children of mothers who receive treatment. The amount of saving will be in direct relationship to the children born without defects and low weights. This amount is indeterminable.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No new reporting requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds. *Federal matching funds of 70.55% equaling \$1,197,793 and state matching funds of 29.45% equaling \$500,000 will be expended. State revenues will come from funds allocated to the Cabinet for Health Services in the Budget Bill passed during the 1998 Session of the General Assembly.

(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: A public hearing for the opportunity to provide comments will be held upon the publication of the Notice of Intent.

(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 is being implemented to protect the health and safety of children whose mothers are abusing or are at risk of abusing substances during and after their pregnancy.

(b) State whether a detrimental effect on environment and public health would result if not implemented: See (8)(a).

(c) If detrimental effect would result, explain detrimental ef-

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fect: See (8)(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:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et. seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et. seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Will not affect local government.

3. State the aspect or service of local government to which this administrative regulation relates. None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY

907 KAR 3:110E

This emergency administrative regulation is being promulgated to allow Medicaid coverage of prevention of and treatment for substance abuse by pregnant women and women in the first sixty (60) days postpartum period. This action must be taken on an emergency basis to protect the health and safety of children whose mothers are abusing or are at risk of abusing substances during and after their pregnancy. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Medicaid recipients because substance abuse by mothers during their pregnancy can result in children being born with birth defects, addictions, and

low birth weights. Additionally, a mother who is abusing substances is less likely to provide the care needed by the newborn child. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor

JIMMY D. HELTON, Secretary

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Behavioral Health Programs

907 KAR 3:110E. Community mental health center substance abuse services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.030(5), 42 CFR 440.130, 440.210, 440.250, 447.325, 42 USC 1396a-d

EFFECTIVE: October 20, 1999

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520 authorizes the cabinet by administrative regulation to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the eligibility criteria, schedule of benefits, payment methodology, provider qualifications and criteria for the provision of substance abuse services.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Health Services.

(2) "Individual" means a pregnant woman or a postpartum woman up to the end of the month of sixty (60) days following the date of delivery who has applied for or is receiving substance abuse services through Medicaid.

(3) "Prevention protocol review panel" means a panel of substance abuse prevention experts, composed of a representative appointed by the cabinet secretary and representatives from the Division of Substance Abuse, who review and approve therapeutic risk reduction protocols.

(4) "Qualified preventionist" means a staff member of a provider agency who provides substance abuse prevention services and meets the qualifications in accordance with Section 7(1) of this administrative regulation.

(5) "Qualified substance abuse treatment professional" means a staff member of a provider agency who conducts a clinical assessment, develops a treatment plan, leads a therapy session, or provides a case-management service and meets the requirements in Section 7(2) of this administrative regulation.

(6) "Substance abuse" means alcohol and other drug abuse as defined in KRS 222.005(12).

(7) "Substance-related disorder" means the formal diagnosis of substance abuse or substance dependency, excluding nicotine dependence, under the classification of mental disorders found in the current edition of the Diagnostic and Statistical Manual of Mental Disorders.

(8) "Therapeutic risk reduction protocol" means an intensive skill building protocol, including pretests and posttests to measure its effectiveness, using research-based strategies which have been demonstrated to produce desired attitudinal and behavioral outcomes that halt progression toward substance dependency and reduce risk for other alcohol and drug-related problems in specific targeted populations.

(9) "Triage" means a telephone or face-to-face interview with an applicant for services or a referral source, to determine the nature of the presenting problem and whether an individual is appropriate for referral to either a substance abuse prevention service or a substance abuse treatment assessment.

Section 2. Eligibility Criteria. A person shall be eligible to receive the substance abuse services covered under this admin-

istrative regulation if the individual:

(1) Is a pregnant woman or a postpartum woman up to the end of the month of sixty (60) days following the date of delivery; and

(2) Meets the service placement criteria in Section 6 of this administrative regulation except if enrolled in a Medicaid-managed behavioral healthcare organization in accordance with 907 KAR 1:710.

Section 3. Provider Participation Requirements. In order to provide substance abuse services pursuant to Section 4 of this administrative regulation, a provider:

(1) Shall be a community mental health-mental retardation center:

(a) Established in accordance with KRS 210.380; and

(b) Which provides services either:

1. Directly in accordance with the following licensure administrative regulations:

a. 902 KAR 20:091 for substance abuse outpatient and intensive outpatient services;

b. 908 KAR 1:380 for substance abuse prevention services; and

c. 908 KAR 1:010 - 1:080, 908 KAR 1:100, 908 KAR 1:150 - 1:220 and 908 KAR 1:230(2) for substance abuse intensive outpatient services provided in a residential program; or

2. Indirectly through a subcontractor who shall adhere to the following contractual requirements:

a. For a substance abuse treatment service, a subcontractor shall be either:

(i) Licensed in accordance with 908 KAR 1:010 - 1:240 for substance abuse outpatient, intensive outpatient, and intensive outpatient services provided in a residential program; or

(ii) Licensed in accordance with 902 KAR 20:160 or KRS Chapter 216B and comply with the applicable standards of 908 KAR 1:080, 908 KAR 1:100, 908 KAR 1:120, 908 KAR 1:130, 908 KAR 1:220, 908 KAR 1:230(2) and 908 KAR 1:240;

b. For a substance abuse prevention service, a subcontractor shall be either:

(i) Licensed in accordance with 908 KAR 1:380; or

(ii) A local health department under the authority of KRS 211.180 and 211.190.

(2) Shall comply with service access standards established in Section 5 of this administrative regulation.

Section 4. Substance Abuse Services. The following services shall be covered through Medicaid if provided by staff who meet the requirements in Section 7 of this administrative regulation and if an individual meets the placement criteria in accordance with Section 6 of this administrative regulation.

(1) Substance abuse assessment. A substance abuse assessment shall be completed by a qualified substance abuse treatment professional and shall include:

(a) An assessment interview with an individual that includes information on the:

1. Current level of substance intoxication or withdrawal;

2. Current pattern of substance use;

3. Utilization of prenatal care and pediatric care for newborns; and

4. Psychosocial history including the:

a. Presenting problem;

b. Current living arrangements;

c. Identification of household members and significant others in the individual's life who use alcohol and drugs;

d. Marital and family history;

e. Family history of alcohol and drug abuse;

f. History of involvement with child and adult protective services;

g. Current custody status of an individual's children;

h. Legal, employment, military, educational and vocational history;

i. Peer group relationships;

j. Religious background and practices;

k. History of emotional, sexual and physical abuse including

current needs for safety;

l. Ethnic and cultural background;

m. Leisure and recreational activities; and

n. Individual strengths and limitations;

(b) Completion of a physical health status questionnaire;

(c) Mental status screening;

(d) An integrative written summary of assessment findings which shall be completed by the assessor including documentation of:

1. A diagnostic impression; and

2. If an individual:

a. Has a primary substance-related disorder requiring treatment services;

b. Is in need of substance abuse prevention services; and

c. Is in need of mental health, mental retardation, or developmental disability services;

(e) Documentation of the following referrals:

1. A referral for prenatal care if a pregnant woman is not regularly engaged in prenatal care;

2. A referral to a primary care physician or coordination with an individual's primary care physician for a screening of health care problems for a postpartum woman who is referred for substance abuse treatment;

3. A referral for pediatric care if an infant is not currently receiving this care; or

4. A referral to meet immediate needs for safety, food, clothing, shelter or medical care;

(f) An initial plan of care which shall be completed by an assessor that includes the following:

1. The presenting need or problem;

2. A service needed by an individual in accordance with the assessment findings and the service placement criteria established in Section 6 of this administrative regulation;

3. A substance abuse related diagnosis if an individual is identified as needing an outpatient or intensive outpatient service in accordance with subsections (5) and (6) of this section; and

4. The name of the provider agency to whom an individual is being referred for ongoing services;

(g) If a substance abuse service identified in an initial plan of care is not to be delivered by a provider agency conducting an assessment, the completed assessment and initial plan of care shall be forwarded to a new provider agency within five (5) working days.

(2) Universal prevention service.

(a) A universal prevention service shall be designed to reduce the risk that an individual will initiate the use of alcohol, tobacco and other drugs during pregnancy and the postpartum period, thus protecting the child from subsequent risk for harm.

(b) A universal prevention service shall utilize a protocol approved by the prevention protocol review panel.

(c) A universal prevention protocol shall:

1. Identify specific risks associated with alcohol, tobacco and other drug use during pregnancy and lactation, including risks to a fetus, such as low birth weight and fetal alcohol syndrome;

2. Address biological, psychological, and social factors that may increase risk for use during pregnancy and lactation; and

3. Identify signs of postpartum depression and address the risk for substance abuse following pregnancy.

(d) A substance abuse universal prevention service shall be a face-to-face contact between an individual and a qualified preventionist who meets the requirements in Section 7(1) of this administrative regulation.

(e) The effectiveness of the delivery of a universal prevention service for an individual shall be measured through the use of pretest and posttest surveys, and shall be constructed to measure the following outcomes:

1. Continued or increased perceptions of potential harm to the fetus as a result of using alcohol, tobacco or other drugs during pregnancy;

2. Increased intentions to not use alcohol, tobacco and other drugs during pregnancy and lactation; and

3. Increased ability to recognize signs of postpartum depression and risk for substance abuse following pregnancy.

(f) Service limitation. A substance abuse universal prevention service shall be provided one (1) time per pregnancy and postpartum event, not to exceed a total of two (2) hours.

(3) Selective prevention service.

(a) A selective prevention service shall be designed to reduce the risk for initiation of alcohol, tobacco and other drug use during pregnancy, initiation of high-risk use following pregnancy, and subsequent risk for harm to a child or mother.

(b) A selective prevention service shall utilize a therapeutic risk reduction protocol approved by the Prevention Protocol Review Panel.

(c) A therapeutic risk reduction protocol for a selective prevention service shall:

1. Identify specific risks associated with alcohol and drug use during pregnancy, including risks to a fetus, such as low birth weight and fetal alcohol syndrome;

2. Increase the perception of personal risk for harm due to high-risk alcohol and drug use throughout life;

3. Change perceptions of normative alcohol and drug use behaviors;

4. Identify the existence of biological, psychological, and social risk factors that may increase risk for use during pregnancy and throughout life;

5. Identify the levels of alcohol and drug use that increase risk for problems during pregnancy and throughout life; and

6. Address health and social consequences of high-risk drinking or drug choices.

(d) A therapeutic risk reduction protocol for a selective prevention service may also include:

1. Developing skills for making and maintaining behavioral changes in alcohol, tobacco and drug use and in developing social and psychological supports for these changes throughout life; or

2. Addressing parental influences on alcohol and drug choices of children, family management issues, and the establishment of successful expectations and consequences.

(e) A selective prevention service shall consist of a face-to-face contact between an individual and a qualified preventionist who meets the requirements in Section 7(1) of this administrative regulation.

(f) The effectiveness of the delivery of a selective prevention service for an individual shall be measured through the use of pretest and posttest surveys, and shall be constructed to measure the following outcomes:

1. Abstinence from alcohol, tobacco and other drugs during pregnancy and lactation;

2. Increased intentions to not use during pregnancy and lactation;

3. Continued or increased perceptions of potential harm to a fetus when alcohol, tobacco or other drugs are used during pregnancy and lactation;

4. Increased perceptions of personal vulnerability to alcohol or drug dependency or other problems throughout life; and

5. Attitude changes which support an individual in making low risk choices related to tobacco, alcohol and other drug use during and following pregnancy; or

6. Increased skills necessary to make and maintain low risk alcohol and other drug choices throughout life.

(g) Limitation. A selective prevention service shall be provided one (1) time per pregnancy and postpartum event, not to exceed a total of fifteen (15) hours.

(4) Indicated prevention service.

(a) An indicated prevention service shall be designed to reduce the risk that certain individuals may experience alcohol or other drug related health problems, including substance dependency, or experience alcohol and other drug related impairments.

(b) An indicated prevention service shall utilize a therapeutic risk reduction protocol approved by the Prevention Protocol Review Panel.

(c) A therapeutic risk reduction protocol for an indicated prevention service shall:

1. Address the health and social consequences of high-risk drinking or drug choices, including consequences to a fetus in the

case of any alcohol or drug use during pregnancy;

2. Increase the perception of personal risk for harm due to high-risk alcohol and drug use;

3. Change perceptions of normative alcohol and drug use behaviors;

4. Identify existence of biological, psychological, and social risk factors; and

5. Identify levels of alcohol and drug use that increase risk for problems.

(d) A therapeutic risk reduction protocol for an indicated prevention service may also include:

1. Developing skills for making and maintaining behavioral changes, including changes in alcohol and drug use, and in developing social and psychological supports for these changes throughout life; or

2. Addressing parental influences on the alcohol and drug choices of children, family management issues, and the establishment of successful expectations and consequences.

(e) An indicated prevention service shall consist of a face to face contact between an individual and a qualified preventionist who meets the requirements in Section 7(1) of this administrative regulation.

(f) The effectiveness of the delivery of the indicated prevention service for an individual shall be measured through the use of pre-test and post-test surveys, and shall be constructed to measure the following outcomes:

1. Decreased alcohol and other drug use;

2. Decreased intentions to use;

3. Attitude changes which support an individual in making low risk choices related to alcohol and other drug use; and

4. A greater readiness for and response to treatment for an individual with a substance abuse related diagnosis who is receiving this service as an adjunct to a substance abuse treatment plan; or

5. Increased skills necessary to make and maintain low risk alcohol and other drug use choices during pregnancy and throughout life.

(g) Limitation. An indicated prevention service shall be provided one (1) time per pregnancy and postpartum event, not to exceed a total of twenty-five (25) hours.

(5) Outpatient services.

(a) An outpatient service shall be an ambulatory care service that:

1. Is a face-to-face therapeutic interaction between an individual and a qualified substance abuse treatment professional; and

2. Is for the purpose of reducing or eliminating a substance abuse problem and shall include the following services:

- a. Treatment planning;

- b. Referrals for other needed health and social services;

- c. Information on substance abuse and its effects on health and fetal development;

- d. Orientation to substance abuse related self-help groups; and

- e. Participation in one (1) or more of the following modalities of outpatient treatment:

- (i) Individual therapy;

- (ii) Group therapy;

- (iii) Family therapy. This modality shall be provided to an individual and one (1) or more persons with whom an individual has a close association;

- (iv) Psychiatric evaluation provided by a psychiatrist;

- (v) Psychological testing provided by a licensed psychologist or certified psychologist with autonomous functioning;

- (vi) Medication management provided by a physician or an advanced registered nurse practitioner; and

- (vii) Collateral care. This modality shall provide consultation or counseling to a person who is in a position of custodial control or supervision of an individual under age twenty-one (21), in accordance with an individual's treatment plan.

(b) Service limitations.

1. Group therapy.

- a. There shall be no more than twelve (12) persons in a group

therapy session.

b. Group therapy shall not include physical exercise, recreational activities or attendance at substance abuse and other self-help groups.

2. Collateral care shall be limited to individuals under age twenty-one (21).

3. Psychiatric evaluations or psychological testing that do not result in an individual receiving substance abuse treatment shall not be reimbursable through this benefit.

4. No more than eight (8) hours of outpatient services shall be reimbursed during a one (1) week period.

(6) Intensive outpatient services.

(a) An intensive outpatient service shall be for the purpose of reducing or eliminating an individual's substance abuse problem.

(b) An intensive outpatient service may be provided as a non-residential ambulatory care service or as a component of a substance abuse residential treatment program.

(c) The following components shall be provided in an intensive outpatient service as a face-to-face therapeutic interaction between an individual and a qualified substance abuse treatment professional:

1. Treatment planning;

2. A structured program of information on substance abuse and its effects on health, fetal development and family relationships. This component shall be provided either to an individual or an individual and one (1) or more persons with whom an individual has a close association; and

3. Individual, group and family therapy.

(d) The following components may be provided in an intensive outpatient service as a face-to-face activity between an individual and a qualified substance abuse treatment professional or a member of the therapeutic team, supervised by a qualified substance abuse professional:

1. Independent living skills training;

2. Parenting skill development;

3. Orientation to substance abuse and other self-help programs;

4. Staff support to client directed activities; and

5. Transporting an individual to allowable activities listed in this paragraph and in paragraph (c) of this subsection.

(e) Service limitations.

1. Group therapy.

a. There shall be no more than twelve (12) persons in a group therapy session.

b. Group therapy shall not include physical exercise, recreational activities or attendance at substance abuse or other self-help groups.

2. Reimbursement for an intensive outpatient service provided in a nonresidential setting shall be limited to no more than seven (7) hours per day not to exceed twenty (20) hours per week.

3. Reimbursement for an intensive outpatient service provided in a residential setting shall be limited to no more than eight (8) hours per day not to exceed forty-five (45) hours per week.

4. Room and board costs shall not be covered under this benefit.

(7) Case-management services.

(a) Case management shall be an ambulatory care service that:

1. Is a face-to-face or telephone contact between or on behalf of an individual and a qualified substance abuse professional; and

2. Is for the purpose of reducing or eliminating an individual's substance abuse problem by assisting an individual in gaining access to needed medical, social, educational and other support services.

(b) Case-management services shall include:

1. An assessment of an individual's case-management needs;

2. Development of a service plan that identifies an individual's case-management projected outcomes; and

3. Activities that support the implementation of an individual's service plan.

(c) Case-management services shall not be connected with a

specific type of substance abuse treatment but shall follow an individual across the array of substance abuse treatment services identified in an individual's treatment plan.

(d) Service limitations. The following activities shall not be reimbursed by Medicaid:

1. An outreach or case-finding activity to secure a potential individual for services;

2. Administrative activities associated with Medicaid eligibility determinations;

3. Transportation services unless an eligible case-management service is being provided by a case manager at the same time as an individual is being transported; and

4. The actual provision of a service other than a case-management service.

(8) Community support services.

(a) A community support service shall be an ambulatory care service that shall be provided if the service is identified as a need in an individual's case-management service plan.

(b) A community support service shall be a face-to-face or telephone contact between an individual and a qualified community support provider, who meets the requirements in Section 7(6) of this administrative regulation.

(c) A community support service shall include:

1. Assisting an individual in remaining engaged with substance abuse treatment or community self-help groups;

2. Assisting an individual in resolving a crisis in an individual's natural environment; and

3. Coaching an individual in her natural environment to:

a. Access services arranged by a case manager; and

b. Apply substance abuse treatment gains, parent training and independent living skills to an individual's personal living situation.

(d) A community support provider shall coordinate the provision of community support services with an individual's primary provider of case-management services.

(e) Service limitation. Transportation services solely for the purpose of transporting an individual without another community support service being provided at the same time shall not be reimbursed by Medicaid.

(9) Service limitation for substance abuse services. Reimbursement for a substance abuse service shall not be payable for an individual who is a resident in a Medicaid-reimbursed inpatient facility.

Section 5. Access to Substance Abuse Services. (1) Triage. A provider agency shall operate a triage component which meets the following requirements:

(a) The agency maintains telephone access to services twenty-four (24) hours a day, seven (7) days a week through a toll free telephone number that shall be made available to a Medicaid-eligible recipient;

(b) Triage shall be provided by a staff member who meets the requirements in Section 7(3) of this administrative regulation or is a certified alcohol and drug counselor in accordance with KRS 309.080 - 309.089;

(c) Triage procedures shall include a determination of an individual's:

1. Need for a referral to a substance abuse prevention service or treatment assessment service established in Section 4(1), (2), (3) and (4) of this administrative regulation;

2. Need for access to services on either an emergency, urgent or routine basis in accordance with subsections (2), (3), (4), (5) and (6) of this section; and

3. Current Medicaid status; and

(d) A staff member providing triage shall refer an individual to the service identified in paragraph (c)1 of this subsection.

(2) Emergency care. Emergency care shall include immediate care for a substance-related condition that may result in serious jeopardy to the life or health of an individual or a fetus, harm to another person by an individual, or inability of an individual to seek food or shelter. A provider agency shall provide access to a substance abuse service on an emergency basis within three (3) hours of receiving a request for a service for an individual through

a:

- (a) Telephone crisis call; or
- (b) Direct in person request at a service site.

(3) Urgent care. A provider agency shall provide access to a substance abuse service on an urgent basis within a twenty-four (24) hour period of a request for a service for an individual. An urgent condition shall include a clinical condition that does not pose an immediate risk of harm to self or another person but requires a rapid clinical response in order to prevent onset of an emergency condition.

(4) Routine care. A provider agency shall provide access to a substance abuse service on a routine basis within a forty-eight (48) hour period of a request for a service for an individual. A routine condition shall pose no immediate risk of harm to self or another person but requires a clinical response.

(5) Selective and indicated prevention services. A provider agency shall provide access to a substance abuse selective or indicated prevention service within a seven (7) day period of a request for a service for an individual.

(6) Universal prevention service. A provider agency shall provide access to a substance abuse universal preventive service within a thirty (30) day period of a request for a service for an individual.

Section 6. Service Placement Criteria. The following criteria shall be utilized to determine the most appropriate service to meet an individual's needs.

(1) Universal prevention substance abuse service.

(a) Admission criteria. Admission criteria to a universal prevention service shall require that an individual:

- 1. Has no identified biological, psychological or social factors which would increase risk for initiating use during pregnancy;
- 2. Does not have a history of personal use of alcohol or another drug that has contributed to a lifestyle, a legal problem or another symptom indicating the need for a substance abuse treatment assessment;
- 3. Has not used alcohol or other drugs during the last thirty (30) days;
- 4. Does not have a substance-related disorder;
- 5. Does not have a medical or psychiatric condition that requires immediate medical care in order to benefit from this service;
- 6. Is not at high risk of harming herself or another person; and
- 7. May benefit from participation in a universal prevention service.

(b) Discharge criteria. One (1) of the following criteria shall be sufficient to require discharge of an individual who:

- 1. Has completed the substance abuse universal prevention service;
- 2. Has been identified as having a substance abuse or other type of problem that is severe enough to require more intensive services;
- 3. Has revoked consent to participate or has withdrawn from the service and does not meet criteria for involuntary hospitalization pursuant to KRS 202A.030; or
- 4. Has demonstrated the inability to benefit from this service.

(2) Selective prevention substance abuse service.

(a) Admission criteria. Admission criteria to a selective prevention service shall require that an individual:

- 1. Does not have a history of personal use of substances that has contributed to a lifestyle, a legal problem or another symptom indicating the need for a substance abuse treatment assessment;
- 2. Is a member of a target population whose biological, psychological or social factors place them at high risk for:

- a. Initiating alcohol or other drug use during pregnancy and lactation; or
- b. Developing alcohol and other drug-related problems over a lifetime;

- 3. Has not used alcohol or other drugs during the last thirty (30) days;

- 4. Does not have a substance-related disorder;
- 5. Does not have a medical or psychiatric condition that requires immediate medical care in order to benefit from this service;

ice;

- 6. Is not at high risk of harming herself or another person; and
- 7. May benefit from participation in a selective prevention service.

(b) Discharge criteria. One (1) of the following criteria shall be sufficient to require discharge of an individual who:

- 1. Has completed the substance abuse selective prevention service;
- 2. Has been identified as having a substance abuse or other type of problem that is severe enough to require more intensive services;

- 3. Has revoked consent to participate or has withdrawn from the service and does not meet criteria for involuntary hospitalization pursuant to KRS 202A.030; or

- 4. Has demonstrated an inability to benefit from the selective prevention service.

(3) Indicated prevention substance abuse service.

(a) Admission criteria. Admission criteria to an indicated prevention service shall require that an individual:

- 1. Exhibit problematic behaviors associated with her use of alcohol and other drugs; or
- 2. Exhibit many of the risk factors that increase her chances of developing a substance abuse problem;

- 3. Has not reached the point where a diagnosis of a substance-related disorder may be made;

- 4. Does not have a medical or psychiatric condition that requires immediate medical care in order to benefit from this service;

- 5. Is not at high risk of harming herself or another person; and
- 6. May benefit from participation in an indicated prevention service.

(b) Discharge criteria. One (1) of the following criteria shall be sufficient to require discharge of an individual who:

- 1. Has completed the substance abuse indicated prevention service;
- 2. Has been identified as having a substance abuse or other type of problem that is severe enough to require a more intensive service;

- 3. Has revoked consent to participate or has withdrawn from the service and does not meet criteria for involuntary hospitalization pursuant to KRS 202A.030; or

- 4. Has demonstrated an inability to benefit from an indicated prevention service.

(4) Outpatient substance abuse services.

(a) Admission criteria. Admission criteria to an outpatient service shall require that an individual:

- 1. Has a primary substance abuse problem that meets criteria for a substance-related disorder established in Section 1(7) of this administrative regulation;

- 2. Is not experiencing alcohol or drug intoxication or withdrawal symptoms that require detoxification in either a nonmedical twenty-four (24) hour facility or inpatient medical facility;

- 3. Is not at high risk of harming herself or another person and her level of risk may be managed with outpatient services;

- 4. Does not have a medical or psychiatric condition that requires immediate medical care prior to outpatient services;

- 5. May benefit from outpatient services; and
- 6. Does not require a residential or nonresidential intensive outpatient service; or

- 7. Does require a residential or nonresidential intensive outpatient service; and

- 8. Requires outpatient services for the purpose of:

- a. Increasing acceptance of the need for a more intensive substance abuse treatment service; or
- b. Maintaining treatment until the required intensive treatment service is available.

(b) Continuing stay criteria. To remain in an outpatient service, a qualified substance abuse treatment professional shall review an individual's progress every ninety (90) days and determine that an individual:

- 1. Continues to meet the criteria for admission established in paragraph (a) of this subsection; and
- 2. Is making progress in reducing or eliminating substance

abuse or dependency but has not met the treatment goals for this service, and may benefit from continued services.

(c) Discharge criteria. One (1) of the following criteria shall be sufficient to require discharge of an individual who:

1. Has met the treatment goals;
2. Requires more intensive treatment; or
3. Has revoked consent to participate or has withdrawn from the service and does not meet criteria for involuntary hospitalization pursuant to KRS 202A.030.

(5) Intensive outpatient substance abuse service.

(a) An intensive outpatient service provided in a nonresidential setting.

1. Admission criteria. Admission criteria to an intensive outpatient service shall require that an individual:

- a. Has a primary substance abuse problem that meets criteria for a substance-related disorder established in Section 1(7) of this administrative regulation;
- b. Has a substance abuse problem requiring structured treatment several days a week;
- c. Does not have a substance abuse problem severe enough that progress in reducing or eliminating the abuse or dependency requires more intensive treatment;
- d. Is not experiencing alcohol or drug intoxication or withdrawal symptoms that require detoxification in either a nonmedical twenty-four (24) hour facility or inpatient medical facility;
- e. Does not have a medical or psychiatric condition that requires immediate medical care prior to intensive outpatient services;
- f. Is not at high risk of harming herself or another person requiring inpatient care and her level of risk may be managed within this service; and
- g. May benefit from an intensive outpatient service provided in a non-residential setting.

2. Continuing stay criteria. To remain in a nonresidential intensive outpatient service, a qualified substance abuse treatment professional shall review an individual's progress every thirty (30) days, to determine that an individual:

- a. Continues to meet criteria for admission established in subparagraph 1 of this paragraph; and
- b. Is making progress in reducing or eliminating substance abuse or dependency but has not met the treatment goals for this service, and may benefit from continued services.

3. Discharge criteria. One (1) of the following criteria shall be sufficient to require discharge of an individual who:

- a. Has met treatment goals for an intensive outpatient service;
- b. No longer meets admission criteria established in subparagraph 1 of this paragraph; or
- c. Has revoked consent to participate or has withdrawn from the service and does not meet criteria for involuntary hospitalization pursuant to KRS 202A.030.

(b) Intensive outpatient substance abuse service provided in a residential setting.

1. Admission criteria. Admission criteria to an intensive outpatient service in a residential setting shall require that an individual:

- a. Has a primary substance abuse problem that meets criteria for a substance-related disorder established in Section 1(7) of this administrative regulation;
- b. Has a substance abuse problem that requires intensive daily or near-daily structured treatment to reduce or eliminate substance abuse or dependency;
- c. Is not experiencing alcohol or drug intoxication or withdrawal symptoms that require detoxification in a nonmedical twenty-four (24) hour facility or inpatient medical facility;
- d. Does not have a medical or psychiatric condition that requires immediate medical care prior to intensive outpatient services;
- e. Is not at high risk of harming herself or another person requiring inpatient care, and her level of risk may be managed within this service; and
- f. May benefit from an intensive outpatient service provided in a residential setting.

2. Continuing stay criteria. To remain in an intensive outpatient service in a residential setting, a qualified substance abuse treatment professional shall review an individual's progress in treatment every two (2) weeks and determine that the individual:

- a. Continues to meet criteria for admission established in subparagraph 1 of this paragraph; and
- b. Is making progress in reducing or eliminating substance abuse or dependency but has not met the treatment goals for this service and may benefit from continued services.

3. Discharge criteria. One (1) of the following criteria shall be sufficient to require discharge of an individual who:

- a. Has met treatment goals;
- b. No longer meets admission criteria established in subparagraph 1 of this paragraph; or
- c. Has revoked consent to participate or has withdrawn from the service and does not meet criteria for involuntary hospitalization pursuant to KRS 202A.030.

(6) Case-management substance abuse service.

(a) Admission criteria. Admission criteria to a case-management service shall require that an individual:

1. Has a primary substance abuse problem that meets criteria for a substance-related disorder established in Section 1(7) of this administrative regulation;
2. Has been admitted to an outpatient or intensive outpatient service, or has been discharged from a twenty-four (24) hour facility;
3. Needs assistance in reducing barriers to staying in substance abuse treatment or in accessing other resources that are needed to maximize her functioning in the community; and
4. May benefit from a case-management service.

(b) Continuing stay criteria. To remain in a case-management service, a qualified substance abuse treatment professional shall review an individual's progress every thirty (30) days, and determine that an individual:

1. Continues to meet criteria for admission established in paragraph (a) of this subsection; and
2. Is making progress in reducing or eliminating substance abuse or dependency, but has not met the goals of the case-management service plan and may benefit from continued case-management services.

(c) Discharge criteria. One (1) of the following criteria shall be sufficient to require discharge of an individual who:

1. Has met the service plan goals for case management;
2. No longer meets admission criteria established in paragraph (a) of this subsection; or
3. Has revoked consent to participate or has withdrawn from the service and does not meet criteria for involuntary hospitalization pursuant to KRS 202A.030.

(7) Community support substance abuse services.

(a) Admission criterion. The admission criterion to a community support service shall be that an individual have documentation in her case-management service plan of the need for intensive contact with the treatment community in an individual's natural environment in order to reduce or eliminate substance abuse or substance dependency.

(b) Continuing stay criteria. To remain in a community support service, a qualified substance abuse treatment professional shall review an individual's progress every thirty (30) days, to determine that the individual:

1. Continues to meet criteria for admission established in paragraph (a) of this subsection; and
2. Is making progress in reducing or eliminating substance abuse or dependency, but has not met the community support service goals in the case-management plan and may benefit from continued community support services.

(c) Discharge criteria. One (1) of the following shall be sufficient to require discharge of an individual who:

1. Has met the case-management service plan goals for community support services;
2. No longer meets the admission criteria established in paragraph (a) of this subsection; or
3. Has revoked consent to participate or has withdrawn from the service and does not meet criteria for involuntary hospitalization.

tion pursuant to KRS 202A.030.

Section 7. Staff Qualifications. Staff who are eligible to provide the substance abuse prevention and treatment services established in Section 4 of this administrative regulation shall meet the following qualifications:

(1) A qualified preventionist shall be a staff member of a provider agency who:

(a) Provides universal, selective or indicated substance abuse prevention services;

(b) Meets the qualifications for the delivery of a therapeutic risk reduction protocol approved by the prevention protocol review panel; and

(c) Meets one (1) of the following requirements:

1. A prevention professional certified pursuant to the Kentucky Certification Board of Prevention Professionals;

2. An alcohol and drug counselor certified by the Kentucky Board of Certification for Alcohol and Drug Counselors in accordance with KRS 309.080 to 309.089, and who meets the training and documentation requirements in subsection (4)(a) and (c) of this section; or

3. A certified or licensed professional identified in subsection (3) of this section, who meets the training and documentation requirements in subsection (4)(b) and (c) of this section;

(2) A qualified substance abuse treatment professional shall be a staff member in a provider agency who conducts a clinical assessment, develops a treatment plan, leads a therapy session, or provides a case-management service. In order to provide these services the qualified substance abuse treatment professional shall meet one of the following requirements:

(a) An alcohol and drug counselor certified by the Kentucky Board of Certification for Alcohol and Drug Counselors in accordance with KRS 309.080 to 309.089;

(b) A certified or licensed professional identified in subsection (3) of this section who meets the training and documentation requirements in subsection (5)(a) and (c) of this section; or

(c) An individual who has a bachelors degree or greater in any field, from an accredited college or university, who meets the training, documentation and supervision requirements in subsection (5)(b) and (c) of this section;

(3) A staff member, who is licensed or certified as one (1) of the following:

(a) A Kentucky physician licensed in accordance with KRS 311.530 to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;

(b) A psychiatrist licensed in accordance with KRS 311.530 to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification with the American Board of Psychiatry and Neurology;

(c) A psychologist licensed to practice psychology by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.050;

(d) A certified psychologist with autonomous functioning certified to function without supervision, in an area specified by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.056;

(e) A certified psychologist certified by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.056;

(f) A psychological associate certified by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.064;

(g) A clinical social worker licensed for the independent practice of clinical social work by the Kentucky Board of Examiners of Social Work in accordance with KRS 335.100;

(h) A social worker certified by the Kentucky Board of Examiners of Social Work in accordance with KRS 335.080;

(i) A registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314, under the supervision of a practitioner who meets the qualifications in subsection (2)(a) of this section or paragraphs (a), (b), (c), (d), (g), (j), (k), (l), or (m) of this subsection, and who has one (1) of the following combinations of education and work experience:

1. A registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a masters degree in psychiatric nursing from an accredited college or university;

2. A bachelor of science in nursing from a four (4) year program from an accredited college or university and one (1) year clinical work experience in the substance abuse or mental health field;

3. A diploma graduate in nursing and two (2) years clinical work experience in the substance abuse or mental health field; or

4. An associate degree in nursing from a two (2) year program from an accredited college or university and three (3) years clinical work experience in the substance abuse or mental health field;

(j) An advanced registered nurse practitioner licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314.042;

(k) A marriage and family therapist licensed by the Kentucky Board of Licensure of Marriage and Family Therapists in accordance with the provisions of KRS Chapter 335.300 to 335.399;

(l) A professional counselor certified by the Kentucky Board of Certification for Professional Counselors in accordance with the provisions of KRS Chapter 335.500 to 335.599; or

(m) A professional art therapist certified by the Kentucky Board of Certification of Professional Art Therapists in accordance with the provisions of KRS Chapter 309.130 to 309.1399;

(4) Prevention staff training and documentation requirements.

(a) A certified alcohol and drug counselor shall have twenty-four (24) hours of prevention training within the four (4) years prior to the date of assuming the responsibility for delivering a universal, selective or indicated prevention service. The twenty-four (24) hours of training shall be obtained in the following topic areas for the required number of training hours:

1. Twelve (12) hours in prevention strategies and procedures; and

2. Twelve (12) hours specific to working with the prevention target populations being served.

(b) A certified or licensed professional listed in subsection (3) of this section shall complete an additional forty-five (45) hours of training in alcohol and other drug abuse within the four (4) years prior to the date of assuming responsibility for delivering a universal, selective or indicated prevention service. The forty-five (45) hours of training shall be obtained in the following topic areas for the required number of training hours:

1. Twelve (12) hours in the recognition and understanding of substance abuse or dependency and related problems;

2. Twelve (12) hours in prevention strategies and procedures;

3. Twelve (12) hours specific to working with the prevention target population being served; and

4. Nine (9) hours in one (1) or more of the training topics identified in subparagraphs 1, 2 and 3 of this paragraph.

(c) The hours of training required in this subsection shall be documented in a staff member's training file that shall include the:

1. Date of the training;

2. Length of the training event in clock hours;

3. Learning objectives; and

4. Name of the training provider;

(5) Treatment staff training, documentation and supervision requirements.

(a) A certified or licensed professional identified in subsection (3) of this section shall complete eighty (80) hours of training in alcohol and other drug abuse counseling, within the four (4) years prior to the date of assuming responsibility for conducting clinical assessments, developing treatment plans, leading counseling sessions or providing case-management services, or within two (2) years after assuming these responsibilities or the effective date of this administrative regulation, whichever is later.

(b) A staff member with a bachelors degree or greater in any field, from an accredited college or university, shall receive training and supervision according to the following:

1. Prior to being eligible to deliver a Medicaid substance abuse treatment assessment, case-management, outpatient or intensive outpatient service, he shall complete forty (40) hours of

training on the following topics:

- a. Dynamics and treatment of substance abuse;
- b. Alcohol and drug abuse recovery issues unique to pregnant women and women with dependent children; and
- c. Recovery issues unique to females who are HIV positive, intravenous drug users, adolescents, and members of racial, cultural or ethnic groups;

2. Supervision from a clinical services supervisor who meets the qualifications in subsection (2)(a) or (b) of this section and provides supervision according to the following:

a. At least four (4) hours of face-to-face supervision shall be provided monthly and include at least two (2) of the following methodologies each month:

- (i) Didactic presentations;
- (ii) Case consultation;
- (iii) Monitoring a staff member's work with an individual through audio or audiovisual taping;
- (iv) A supervisor's direct observation of a staff member's work with an individual; or
- (v) Meets with an individual that the staff member is working with to determine if she is receiving the services she needs;

b. Supervision may be provided either one-on-one or in a group setting with other staff members being supervised;

c. A clinical services supervisor shall develop and update annually, a written plan of supervision for each staff member which shall:

- (i) Identify knowledge and skill areas needing development;
- (ii) Identify supervision activities to increase clinical competence in areas of need; and

(iii) Include a dated signature of the clinical services supervisor and clinician agreeing to the plan of supervision; and

d. A clinical services supervisor shall maintain for a staff member he supervises, a record of each supervisory session which includes the date, length of the session and content of the supervision; and

3. In order to continue being eligible to deliver a Medicaid substance abuse treatment assessment, case-management, outpatient, or intensive outpatient service, a staff member with at least a bachelors degree, who meets the requirements of subparagraphs 1 and 2 of this paragraph, shall achieve licensure or certification as established in subsection (2)(a) or (b) of this section, within three (3) years from the date a staff member begins to deliver Medicaid substance abuse treatment services.

(c) Training received under the requirements of this subsection shall be documented in a staff member's training file and shall include the:

- 1. Date of the training;
- 2. Learning objectives;
- 3. Length of the training in clock hours; and
- 4. Name of the training provider.

(6) Community support staff qualifications and training.

(a) A qualified community support staff member shall be a person working in a participating provider agency who provides community support services in accordance with Section 4(8) of this administrative regulation.

(b) A qualified community support staff member shall meet the following minimum requirements:

- 1. A high school diploma or general equivalent diploma (GED);
- 2. Two (2) years of supervised experience in a substance abuse treatment setting and knowledge of substance abuse related self-help groups;
- 3. Twenty (20) hours of training on:
 - a. Dynamics and treatment of substance abuse;
 - b. Information on substance abuse recovery issues unique to pregnant women and women with dependent children;
 - c. Recovery issues unique to females who are HIV positive, intravenous drug users, adolescents, and members of racial, cultural or ethnic groups;
 - d. Strategies to defuse resistance;
 - e. Professional boundary issues with an individual that address enabling behaviors; and
 - f. Protecting a qualified community support staff member, who

may be a recovering substance abuser, from losing his own sobriety;

4. For a staff member who does not meet the requirement in subparagraph 2 of this paragraph, an additional forty (40) hours of training on the topics listed in subparagraph 3 of this paragraph shall be required;

5. Training shall be documented in a staff member's training file and shall include the:

- a. Date of the training;
- b. Learning objectives;
- c. Length of the training in clock hours; and
- d. Name of the training provider; and

6. He shall receive supervision from a case manager who meets the qualifications in subsection (2)(a) or (b) of this section, and provides supervision according to the following:

a. A minimum of six (6) hours of face-to-face supervision shall be provided monthly and shall include:

- (i) Didactic presentations;
- (ii) Case consultation; and

(iii) A supervisor's direct observation of a community support staff member's work with an individual, or a meeting between a supervisor and an individual with whom a staff member is working, to determine if the individual is receiving the services she needs from a community support staff person;

b. He may provide supervision one-on-one or in a group setting with other staff members being supervised;

c. He shall develop a written plan of supervision, updated annually, which:

- (i) Identifies knowledge and skill areas needing development;
- (ii) Identifies supervision activities to increase clinical competence in areas of need; and

(iii) Includes a dated signature of the supervisor and the community support staff person agreeing to the plan of supervision; and

d. A supervisor shall maintain for a community support staff person he supervises, a record of each supervisory session that includes the date, length of the session and content of the supervision.

Section 8. Records. Services delivered in accordance with Section 4 of this administrative regulation shall be documented in a service record maintained for each individual and meet the following standards:

(1) All entries in an individual's service record shall be:

- (a) Kept current;
- (b) Dated;
- (c) Entitled according to the service received;
- (d) Starting and ending time; and
- (e) Signed by the staff member rendering the service, including his title.

(2) At admission to a substance abuse prevention or treatment service, the following intake information shall be completed and documented in an individual's service record within one (1) working day of her visit:

- (a) An individual's name, address and telephone number;
- (b) Emergency contact person;
- (c) Pregnancy status;
- (d) Referral source;
- (e) Verification of Medicaid status and medical assistance identification number (MAID);
- (f) Social Security number;
- (g) Age, sex, and race; and
- (h) Presenting need.

(3) Substance abuse prevention services.

(a) A diagnosis shall be documented.

(b) For an individual receiving a selective or indicated prevention service, an individual's specific risk factors for developing alcohol and drug related problems shall be identified.

(c) An individual's learning objectives and behavioral outcomes shall be identified and address the following:

- 1. The risks associated with using alcohol, tobacco and other drugs during pregnancy and lactation; and
- 2. For an individual receiving a selective or indicated preven-

tion service, specific risks for developing alcohol and drug problems throughout life.

(d) The name of the substance abuse prevention therapeutic risk reduction protocol selected for use with an individual shall be identified.

(e) An individual's progress towards meeting her learning objectives shall be documented in her record in accordance with the following:

1. Documentation shall occur within one (1) working day following the delivery of each session;

2. Describe the session's activities, an individual's participation, reaction and progress during the session; and

3. If the prevention service is provided in a group setting, a summary of the session's activities may be copied and placed in each individual's record. An individualized note describing an individual's participation, reaction and progress during the group session shall also be placed in an individual's record. A progress note shall not include the name of any other group member.

(f) Referrals made to other service providers shall be documented.

(g) A discharge summary shall:

1. Be completed following either an individual's withdrawal from or completion of a substance abuse prevention protocol;

2. Be completed within ten (10) days following discharge; and

3. Include a discussion of an individual's progress towards meeting the expected outcomes of the protocol and any recommendations and referrals for other needed services.

(h) An individual's completed pretest and posttest surveys associated with the prevention protocol shall be included in an individual's record.

(3) Substance abuse treatment services. For an individual receiving a substance abuse outpatient, intensive outpatient, case-management or community support service, the following information shall be documented in an individual's service record by the staff member providing the service:

(a) Substance abuse assessment information in accordance with Section 4(1) of this administrative regulation;

(b) A treatment plan;

(c) A case-management service plan, if an individual is receiving case-management services;

(d) Review and revisions of the treatment and case-management service plan;

(e) An individual's progress towards meeting the objectives of a treatment plan or case-management service plan, documented within one (1) working day and recorded according to the following:

1. Outpatient, case-management and community support services.

- a. A substance abuse treatment professional shall prepare a progress note to include an observation of an individual's behavior and response to the service, and an individual's progress toward meeting the goals and objectives of her treatment plan or case-management service plan.

- b. If group therapy is provided, an individual's progress note may include a summary of the session's activities that is copied and placed in each group member's record. An individualized note describing each individual's participation, reaction and progress during the group session shall also be placed in an individual's record. A progress note shall not include the name of another group member.

2. Intensive outpatient service.

- a. Documentation of an individual counseling session shall meet the progress note documentation requirements in subparagraph 1a of this paragraph.

- b. For other treatment activities in an intensive outpatient service, a summary note of an individual's progress may be recorded weekly and shall include:

- (i) The eligible treatment activities an individual participated in during the week;

- (ii) Observations of an individual's behavior in response to these services; and

- (iii) An individual's progress in meeting their treatment goals and objectives;

(f) An aftercare plan that shall include identification of an individual's service needs at discharge, and activities and referrals supporting recovery from substance abuse; and

(g) A discharge summary that shall be completed within ten (10) days of discharge, on an individual seen in excess of three (3) visits, and shall include the:

1. Date of admission and discharge;

2. Presenting problem;

3. Diagnosis;

4. Summary of an individual's treatment and response to treatment; and

5. Referrals made to other service providers.

(4) Confidentiality of an individual's service record. Information in an individual's service record shall be kept confidential in accordance with 908 KAR 1:320.

(5) Right to inspect records for audit and evaluation purposes.

(a) Information contained in an individual's record shall be disclosed only to authorized Cabinet for Health Service representatives, or authorized representatives of the federal government.

(b) Records and other information regarding payments claimed shall be maintained in an organized file and furnished to cabinet or federal government.

(c) Personnel upon request for inspection and copying. Requested information shall substantiate:

1. Staff notes detailing the type of service provided and billed;

2. The name of the professional providing the service; and

3. Other requested information necessary to determine on an individual and service basis that the services are reimbursable by Medicaid.

(c) Failure of the provider agency to provide the requested documentation to Cabinet for Health Services staff shall result in denial of payment for the billed services.

Section 9. Reimbursement. (1) Rate setting for the fiscal years beginning July 1, 1999 and July 1, 2000 shall be as follows:

(a) Final prospectively determined rates for direct service cost centers shall be established on the basis of actual reasonable allowable cost as derived from a provider's audited annual cost report for the prior year prepared in accordance with 908 KAR 2:060, Section 3, and in accordance with the following:

1. The services are as follows:

- a. An assessment service, provided in accordance with Section 4(1) of this administrative regulation; and

- b. Outpatient services, provided in accordance with Section 4(5) of this administrative regulation.

2. Rates shall be determined in accordance with the following:

- a. If an audited cost report is not available, the most recent unaudited annual cost report shall be the basis for the final rate.

- b. If an unaudited cost report is used to establish rates, these rates shall be adjusted upon audit or desk review of the cost report used in setting the rate.

- c. Allowable costs shall be trended to the beginning of the rate year and indexed to the end of the rate year.

- d. A base payment rate for each service shall be the lower of the per unit rate derived from a provider's cost report or the maximum base payment rate for that service as established by the Medicaid Program.

- e. A maximum base payment rate shall be determined for each service and shall be set at 130 percent of the median cost per unit of service of participating providers.

- f. An incentive payment equal to fifteen (15) percent of the amount that a maximum base payment rate exceeds a provider's base payment rate, excluding the incentive payment, shall be paid for facilities with base payment rates under the maximum.

(b) Final rates for services not specified in paragraph (a) of this subsection shall be determined in accordance with the following:

1. The services are as follows:

- a. Universal prevention provided in accordance with Section 4(2) of this administrative regulation;

- b. Selective prevention provided in accordance with Section 4(3) of this administrative regulation;

- c. Indicated prevention provided in accordance with Section 4(4) of this administrative regulation;
- d. Intensive outpatient nonresidential provided in accordance with Section 4(6) of this administrative regulation;
- e. Intensive outpatient residential provided in accordance with Section 4(6) of this administrative regulation;
- f. Case management provided in accordance with Section 4(7) of this administrative regulation; and
- g. Community support services provided in accordance with Section 4(8) of this administrative regulation.

2. Rates shall be determined in accordance with the following:

- a. An interim rate for each provider shall be established through a budgeted cost report submitted by each provider prior to payment;
- b. A separate accounting cost center shall be established by each provider for each direct service identified in subparagraph 1 of this paragraph to record costs incurred;
- c. A final rate for each direct service cost center for each year shall be established based on the provider's actual cost report prepared in accordance with 908 KAR 2:060, Section 3, for the years ending June 30, 2000, and June 30, 2001; and
- d. A payment based on an interim rate established in accordance with paragraph (b) of this subsection shall be adjusted retroactively to final rates established in accordance with clause c of this subparagraph.

(2) Rate setting for periods beginning after June 30, 2001 shall be as follows:

(a) A final prospectively determined rate for each direct service cost center, covered in this administrative regulation, shall be established on the basis of actual reasonable allowable cost as derived from the provider's audited annual cost report prepared in accordance with 908 KAR 2:060, Section 3, for the prior year.

1. If an audited cost report is not available, the most recent unaudited annual cost report shall be the basis for the final rate.

2. If an unaudited cost report is used to establish rates, these rates shall be adjusted upon audit or desk review of the cost report used in setting the rate.

(b) Allowable costs shall be trended to the beginning of the rate year and indexed to the end of the rate year.

1. A base payment rate for each service area shall be the lower of the per unit rate derived from a provider's cost report or the maximum base payment rate for that service as established by the Medicaid Program.

2. A maximum base payment rate shall be determined for each service and shall be set at 130 percent of the median cost per unit of service of all participating providers.

3. An incentive payment equal to fifteen (15) percent of the amount that the maximum base payment rate exceeds a provider's base payment rate, excluding the incentive payment, shall be paid for facilities with base payment rates under the maximum.

(3) Implementation of the payment system.

(a) Reimbursement for services shall be based on the following units of service:

- 1. Universal prevention service shall be a one-quarter (1/4) hour unit;
- 2. Selective prevention service shall be a one-quarter (1/4) hour unit;
- 3. Indicated prevention service shall be a one-quarter (1/4) hour unit;
- 4. Outpatient service shall be a one-quarter (1/4) hour unit for the following modalities:
 - a. Individual therapy;
 - b. Group therapy;
 - c. Family therapy;
 - d. Psychiatric evaluation;
 - e. Psychological testing;
 - f. Medication management; and
 - g. Collateral care;
- 5. An assessment service shall be a one-quarter (1/4) hour outpatient unit;
- 6. Intensive outpatient nonresidential services shall be a one-quarter (1/4) hour unit;
- 7. Intensive outpatient residential services shall be a one (1)

hour unit;

8. Case-management services shall be a one-quarter (1/4) hour unit; and

9. Community support shall be a one-quarter (1/4) hour unit;

(b) Overpayments discovered as a result of audits shall be settled through recoupments or withholding.

(c) A provider shall complete an annual cost report on forms provided by the cabinet not later than ninety (90) days from the end of the provider's accounting year and shall maintain an acceptable accounting system to account for the cost of total services provided, charges for total services rendered, and charges for covered services provided to Medicaid-eligible individuals.

(d) Each provider shall make available to the cabinet at the end of each fiscal reporting period, and at intervals as the cabinet may require, all patient and fiscal records of a provider, subject to reasonable prior notice by the cabinet.

(e) Payments due a provider shall be made at reasonable intervals but not less often than monthly.

(4) Nonallowable costs.

(a) The cabinet shall not make reimbursement under the provisions of this administrative regulation for any service not specified as covered in Section 4 of this administrative regulation.

(b) Reimbursement shall not be made for any portion of a provider's costs found to be unreasonable or nonallowable in accordance 908 KAR 2:060, Section 3.

(c) Room and board costs shall not be included as an allowable cost for any service defined in Section 4 of this administrative regulation.

Section 10. Reimbursement of Out-of-State Providers. Reimbursement to a participating out-of-state mental health center provider shall be the lower of charges, or a provider's rate as set by the Medicaid Program in the other state, or the upper limit for that type of service in effect for Kentucky providers.

Section 11. Appeal Rights. (1) An appeal of a negative action regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action regarding the Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

Section 12. Incorporation by Reference. (1) The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, DSM IV™, Copyright ©1994, American Psychiatric Association; published by the American Psychiatric Association, Washington, D.C., is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DENNIS BOYD, Commissioner
JOHN H. WALKER, Attorney
JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: October 14, 1999

FILED WITH LRC: October 20, 1999 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Karen Doyle (564-4321)

(1) Type and number of entities affected: Mental health centers will be affected. There are currently 14 regional programs for mental health in Kentucky that could provide substance abuse treatment services and receive reimbursement from Medicaid.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS 13A requirement.

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

1. First year following implementation: Routine compliance, reporting and paperwork will be required for services provided by the mental health centers.

2. Second and subsequent years: Same as # 1.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No new administrative costs. \$500,000 in state general funds were allocated for benefit expenditures by the 1998 General Assembly, with \$1,197,793 federal share. Actual expenditures during the first year may be less than the total allocated.

2. Continuing costs or savings: The same amount was allocated in the second year. It is anticipated that all funds will be expended during the second and continuing years. It is anticipated that savings will occur to total Medicaid expenditures resulting from lower cost of care for children of mothers who receive treatment. The amount of saving will be in direct relationship to the children born without defects and low birth weights. This amount is indeterminable.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No new reporting requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds. *Federal matching funds of 70.55% equaling \$1,197,793 and state matching funds of 29.45% equaling \$500,000 will be expended. State revenues will come from funds allocated to the Cabinet for Health Services in the Budget Bill passed during the 1998 Session of the General Assembly.

(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 comment 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 is being implemented to protect the health and safety of children whose mothers are abusing or are at risk of abusing substances during and after their pregnancy.

(b) State whether a detrimental effect on environment and public health would result if not implemented: See (8)(a).

(c) If detrimental effect would result, explain detrimental effect: See (8)(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:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et. seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et. seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Will not affect local government.

3. State the aspect or service of local government to which this administrative regulation relates. None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY

907 KAR 4:030E

This emergency administrative regulation is being promulgated to establish KCHIP in accordance with SB 128 of the 1998 Regular Session of the General Assembly and the Balanced Budget Act of 1997. This action must be taken on an emergency basis to ensure access to comprehensive health benefits to children who are currently uninsured and not receiving adequate coverage. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of uninsured children. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor
JIMMY D. HELTON, Secretary

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Children's Health Programs

907 KAR 4:030E. Kentucky Children's Health Insurance Program Phase III Title XXI of the Social Security Act.

RELATES TO: KRS Chapter 45A, 205.510 through 205.645, 42 USC 1397aa

STATUTORY AUTHORITY: KRS 194A.030, 205.6481-205.6497, 42 USC 1397aa

EFFECTIVE: October 29, 1999

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has re-

sponsibility to administer the Kentucky Children's Health Insurance Program. KRS 205.6485 authorizes the cabinet, by administrative regulations, to establish the Kentucky Children's Health Insurance Program (KCHIP) to provide health care coverage and other coordinated health care services to children of the Commonwealth who are uninsured and otherwise not eligible for health insurance coverage. This administrative regulation establishes the KCHIP eligibility criteria, quality assurance and utilization review, covered services, the approval process, grievance and appeal rights and the requirements for delivery of health services for providers who wish to participate with the Commonwealth to provide health care coverage for KCHIP members through the provision of a separate health insurance program under Title XXI.

Section 1. Definitions. (1) "Cabinet" means the Kentucky Cabinet for Health Services or its designee.

(2) "Child" means an individual under age nineteen (19).

(3) "Creditable coverage" is defined in KRS 304.17A-005(6)(a)1-3 and 5-10.

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

(5) "Excepted benefits" is defined in KRS 304.17A-005.

(6) "Health insurance" is defined in KRS 304.5-040.

(7) "KCHIP" means the Kentucky Children's Health Insurance Program in accordance with 42 USC 1397aa through jj.

(8) "Presumptive eligibility" means eligibility which is predetermined by a qualified entity based on the family's declaration that its income is equal to or less than the KCHIP income eligibility guidelines.

(9) "Presumptive eligibility period" means the period of time:

(a) Not to exceed sixty (60) days, that begins on the date that a qualified entity makes a determination that a child is certified for presumptive eligibility; and

(b) Ending on the last day of the month following the month in which presumptive eligibility was determined if the child is determined ineligible or if no application is made.

(10) "Qualified entity" means an entity that is eligible for a payment pursuant to 907 KAR Chapters 1 and 3, and 42 USC 1397aa through jj and is determined by the department to be capable of making KCHIP eligibility determinations.

Section 2. Eligibility Criteria. (1) A child shall be eligible for KCHIP if the child:

(a) Is a resident of Kentucky;

(b) Is not a transient traveling through and not residing in the state;

(c) Is an alien legally admitted to this country for permanent residence on or before August 22, 1996;

(d) Is an alien admitted after August 22, 1996, who is a refugee, asylee, parolee, or a dependent of an active or retired member of the armed forces;

(e) Is not an alien who is admitted to the United States for a temporary stay, such as a student, tourist, business person or a person on a temporary work permit;

(f) Is not an inmate of a public institution or a patient in an institution for mental disorders;

(g) Is an alien admitted on or after August 22, 1996 as a lawful permanent resident and who is in continuous residence for five (5) years;

(h) Is not eligible for Medicaid pursuant to 907 KAR 1:011;

(i) Is a targeted low-income child as defined in 42 USC 1397jj(b); and

1. Has family income which does not exceed 200 percent of the federal poverty guidelines, updated annually in the Federal Register by the United States Department of Health and Human Services under authority of 42 USC 9902(2);

2. Does not have creditable coverage and may be covered by excepted benefits;

3. Did not have creditable coverage within six (6) months prior to applying for KCHIP, unless the coverage was terminated for other than voluntary reasons or the coverage was Medicaid;

4. Provides to the department the information required in

Section 4(4) of this administrative regulation;

5. Meets the continuing eligibility requirements established in 907 KAR 1:605, Section 3; and

6. Meets the relative responsibility requirements of 907 KAR 1:660.

(2) A qualified entity may determine a child to be presumptively eligible for KCHIP benefits for a period not to exceed sixty (60) days.

(3) Eligibility for KCHIP shall be determined by the department. Upon receipt of the eligibility information defined in subsection (1) of this section, the department shall determine if a child is eligible for benefits pursuant to 42 USC 1396 or 1397bb.

Section 3. Covered Services. (1) Health services shall be considered as medically necessary if services are:

(a) Reasonable and necessary to diagnose and provide preventive, palliative, curative, or restorative treatment for physical or mental conditions;

(b) In accordance with professionally recognized standards of health care generally accepted at the time services are provided; and

(c) In accordance with 42 CFR 440.230.

(2) Covered services shall exclude:

(a) EPSDT special services as defined in 907 KAR 1:034, Section 7;

(b) Human service transportation delivery as defined in 603 KAR 7:080; and

(c) Locally authorized medical transportation as defined in 907 KAR 1:060, Section 4.

(3) The amount and duration of benefits covered by KCHIP shall be as established in 907 KAR Chapters 1 and 3 excluding the services identified in subsection (2) of this section.

(4) A medical service shall be covered through KCHIP if the individual is determined eligible for KCHIP benefits in accordance with Section 2 of this administrative regulation.

(5) Preventive and remedial public health services shall be provided to KCHIP members in accordance with 907 KAR 1:360.

(6) KCHIP shall be the payor of last resort.

Section 4. KCHIP Approval Process. (1) The department shall provide instructions to a qualified entity on how to assist parents, guardians, or others when submitting information necessary to apply for KCHIP.

(2) The qualified entity shall notify the department of a determination that a child is presumptively eligible within five (5) working days after the date on which the determination is made.

(3) The qualified entity shall inform a parent or custodian of a child if:

(a) A family's income meets KCHIP criteria established in Section 2 of this administrative regulation; and

(b) Information as described in subsection (4) of this section is required and should be submitted to the department.

(4) The following information shall be required from a child or responsible party for KCHIP enrollment:

(a) A child's demographics, which shall include name, address, sex, date of birth, race, and Social Security number;

(b) Monthly gross earned income, if any, of a parent and a child for whom information is being submitted, an employer type and address, if any, and frequency of income;

(c) The name and address of a health insurance provider who currently provides creditable coverage; or who provided creditable coverage during the six (6) months prior to the date the information in subsection (4) of this section is submitted to the department;

(d) The creditable coverage policy number, policy holder's name, Social Security number and individuals covered by the plan;

(e) Unearned income, if any, received weekly, biweekly, bi-monthly, quarterly, or annually;

(f) The name and age of a child or disabled adult for whom care is purchased in order for a parent or responsible person to work; and

(g) The signature, date, and telephone number of the person

submitting the information for a child.

Section 5. Covered Service During Presumptive Eligibility. A Medicaid provider shall be eligible for payments pursuant to 907 KAR Chapters 1 and 3, excluding the services identified in Section 3(2) of this administrative regulation, if a covered service is furnished to a KCHIP presumptively eligible child.

Section 6. Provider Participation Requirements. A provider's enrollment, disclosure, and documentation for participation in KCHIP shall meet the requirements of 907 KAR 1:671, 907 KAR 1:672, and 907 KAR 1:320.

Section 7. Complaint, Grievance and Appeal Rights. (1) If dissatisfied with an action taken by the cabinet, the child, his parent or guardian shall be entitled to a complaint, grievance, or appeal with the cabinet, to be conducted in accordance with 907 KAR 1:560 or 907 KAR 1:563.

(2) If a service is provided by a managed-care organization, a dispute resolution between a provider and a child, his parent or guardian shall be in accordance with KRS 211.461 through 211.466 and 907 KAR 1:563.

(3) A KCHIP-eligible child or a responsible party shall be informed, in writing, of his rights to and procedures for due process by the cabinet:

- (a) At the time information to obtain KCHIP approval is submitted;
- (b) If there is a change in eligibility status;
- (c) As required by federal and state laws.

Section 8. Quality Assurance and Utilization Review. The department shall evaluate, on a continuing basis, access, continuity of care, health outcomes, and services arranged or provided as established in 907 KAR 1:705 and 907 KAR 1:710.

DENNIS BOYD, Commissioner
JOHN H. WALKER, Attorney
JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: October 29, 1999
FILED WITH LRC: October 29, 1999 at 1 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Neville Wise or Karen Doyle

(1) Type and number of entities affected: Uninsured children through age 18 between 151 and 200% federal poverty level; health insurers; health care providers.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

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

1. First year following implementation: encounter data will be submitted to the department to support monitoring and accountability processes by the contracting entities. These requirements are similar to requirements currently being submitted by these entities and are no more onerous than current Medicaid reporting requirements, nor filing necessary paperwork for commercial plans. Every state agency will be required to do outcome reporting to support the department's goals, develop baseline health status data for the department and develop strategies for improving the health status of the uninsured population.

2. Second and subsequent years: Same impact for second and subsequent years as additional geographic regions are af-

ected in the second and third years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

- 1. First year: \$63,000,000 (cost)
- 2. Continuing costs or savings: \$63,000,000 (cost)
- 3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Federal financial and service reporting as required by the Health Care Financing Administration (HCFA).

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds. *Federal matching funds of 79% equaling \$50,000,000 and state matching funds of 21% equaling \$13,000,000. State revenues will come from funds appropriated in the 1998 - 2000 Budget.

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

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

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: provides health insurance benefits to uninsured children through age 18 between 151 - 200% of the federal poverty level.

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

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare or uninsured children by preventing access to affordable and comprehensive health care coverage.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to the Balanced Budget Act of 1997 the Commonwealth of Kentucky has exercised the option to establish the Kentucky Children's Health Insurance Program for children who are currently uninsured and have family incomes between 151 and 200% of the Federal Poverty Level. Having elected to offer KCHIP coverage, the state must comply with federal requirements contained in the Balanced Budget ACT of 1997.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

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

tive regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. No

3. State the aspect or service of local government to which this administrative regulation relates. None

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

FINANCE AND ADMINISTRATION CABINET
Office of the Controller
(As Amended at ARRS, November 9, 1999)

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) "Agency" means a budget unit with an elected or appointed agency head.

(2) "Agency head" means the elected or appointed head of a budget unit.

(3) "Approval" means approval granted in either written or electronic format.

(4) "Cabinet" means the Finance and Administration Cabinet.

(5) ~~[(2)]~~ "Division" means the Division of Statewide Accounting Services, Office of the Controller, ~~[Accounts of the] Finance and Administration Cabinet.~~

(6) ~~[(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 and included in the cabinet's policies and procedures manual incorporated by reference in 200 KAR 5:021.

(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 traveling 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 and does not include contractors who shall be entitled to reimbursement for travel and related expenses only as provided in their contracts with the Commonwealth. [The cabinet's policies and procedures manual contains a list of "high rate areas".]

(8) ~~[(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.

(9) "Residence" means address of the employee designated in the official records of the Personnel Cabinet.

(10) ~~[(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.]~~

(11) ~~[(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 Treas-

ury 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 which establishes whether reimbursement is being requested based on Section 7 or 8 of this administrative regulation [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 the ~~[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:

(a) Obtained authorization from:

1.a. ~~[(a)]~~ The agency head; ~~and~~

b. ~~[(b)]~~ The secretary; and

c. ~~[(c)]~~ The governor; or

2. ~~[(d)]~~ Their designated representatives; ~~and~~ ~~[-]~~

(b) ~~Requested~~ ~~[(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 ~~shall be~~ ~~[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.~~

(e) ~~[(g)]~~ Payment shall be made to the hotel, motel, or other establishment.

(f) ~~[(h)]~~ Contracted group meeting rooms and lodging and meal charges ~~shall be~~ ~~[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) ~~[(i)]~~ 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 (IT) 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 ho-

tel, 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; **and**

2. During the mealtime hours established by **paragraph [paragraphs] (d) or [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; **and**

2. During the mealtime hours established by **paragraph [paragraphs] (d) or [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. **An employee shall [Employees must]** be in travel status during the entire time. **For example, [i.e.,]** to be eligible for breakfast reimbursement, **an employee shall [you must]** leave on or before 6:30 a.m. and return at or after 9 a.m. [:-] This requirement **shall apply [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) **A state officer or employee [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 **shall be [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 **or [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 software shall have [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 [~~or~~]

2. Processed electronically through [ADVANTAGE] travel software. [~~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 software 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. Incorporation by Reference. (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); and

(i) Secretary's Order S97-451, November 1, 1996. ["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, copied, or obtained [~~or copied~~] at the Division of Statewide Accounting Services, Office of the Controller [~~Accounts~~], Finance and Administration Cabinet, Capitol Annex Building, Frankfort, Kentucky 40601, Monday through Friday, 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.

KENTUCKY BOARD OF PHARMACY (As Amended at ARRS, November 9, 1999)

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: KRS 315.050(2) and 315.191(1)(c) require the board to promulgate administrative regulations [the Kentucky Board of Pharmacy is directed by KRS 315.191(4)] to prescribe the time, place, method,

manner, scope, and subjects of examinations. ~~[examination of applicants for license to practice pharmacy in the Commonwealth:] This administrative regulation establishes the examination requirements for obtaining a license to practice pharmacy in Kentucky. [will establish continued fair and impartial examinations:]~~

Section 1. A [No] license to practice pharmacy, other than one issued by reciprocity, shall not 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:

(1) Be adequate to test the knowledge, education and competency of applicants; and

(2) ~~[shall]~~ Consist of three (3) tests:

(a) The National Association of Boards of Pharmacy Licensure Examination; and

(b) ~~[North American Pharmacist Licensure Examination;]~~ An operative ~~or~~ ~~[/]~~ practical examination; and

(c) Jurisprudence.

Section 4. A [No] person shall not 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 an operative or [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 4 [3] of this administrative regulation, he may upon proper application retake ~~the~~ ~~[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 shall [must] sit for the [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 a [such] manner that the results shall be entirely fair and impartial, the applicant being known only by numbers so that an [no] examiner or member of the board shall not be able to [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.

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(As Amended at ARRS, November 9, 1999)

201 KAR 2:095. Dispensing responsibilities.

RELATES TO: KRS 315.010(19), (25), 315.020, 315.050 ~~[Chapter 315]~~

STATUTORY AUTHORITY: KRS 315.020(4), 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) requires the board to promulgate administrative regulations necessary to regulate and control the practice of pharmacists. ~~[The Kentucky Board of Pharmacy is authorized by KRS 315.191(1) to adopt rules and administrative regulations necessary to regulate the practice of pharmacists. Pharmacists are responsible for the compounding and dispensing of drugs and prescriptions pursuant to a legal prescription. There is a need for this administrative regulation stating the pharmacists' and the pharmacist-interns' responsibilities.] This administrative regulation establishes the professional responsibilities of a pharmacist and a pharmacist intern under supervision. [is to further assure protection to the public by defining professional responsibilities.]~~

Section 1. Pursuant to KRS 315.020(4), a pharmacist intern shall perform professional acts within the practice of pharmacy under the immediate supervision and direction of a registered pharmacist. ~~[Dispensing responsibilities is defined as the practice of selecting, compounding, mixing, measuring, or otherwise preparing the drug or drugs needed to fill or refill the prescription order, and counseling.]~~

Section 2. ~~The practice of pharmacy shall [a pharmacist must] be performed only by a registered pharmacist or pharmacist intern acting under the immediate, physical and visual, supervision and direction of a registered pharmacist. A pharmacist providing immediate, physical and visual supervision for a pharmacist intern must be directly connected, not separated by time or distance, and continuous to all aspects of the interaction between the pharmacist intern and the other person or persons. When the interaction is through a telephonic medium, the pharmacist must be physically present on telephonic medium and able to hear all parties to the transaction. When the interaction is through an electronic medium, the pharmacist must be able to view or review the transaction as transmitted. A properly supervised pharmacist intern may [These practices are, but not limited to]:~~

(1) ~~Receive [Receipt of] an original oral prescription order.~~

(2) ~~Verify [Verification of] prescribed dosage; and~~

(3) ~~Counsel patients.]~~

Section 2. ~~[3:] A pharmacist intern who has successfully completed his first professional year coursework of a Bachelor's of Science in Pharmacy or Doctor of Pharmacy degree program at an accredited school or college of pharmacy may, at the discretion of the supervising pharmacist [his preceptor], engage in delegated acts of professional practice pursuant to supervision as defined by KRS 315.010(25). [Kentucky's present Pharmacy Law mentions "immediate supervision" without definition. Therefore, in the practice of pharmacy "immediate supervision" is defined as under the physical and visual supervision of a registered pharmacist.]~~

Section 3. A pharmacist shall be responsible for all the actions of the pharmacist intern.

~~[Section 4. A pharmacist who directs a pharmacist intern to perform a delegated act of professional practice shall be responsible for the pharmacist intern and the performance of the act.]~~

Section 5. Violation of any provision of this administrative regulation constitutes unethical or unprofessional conduct in accordance with KRS 315.121(1)(f).]

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.

KENTUCKY LOTTERY CORPORATION
(As Amended at ARRS, November 9, 1999)

202 KAR 3:020. Procurement procedures.

RELATES TO: KRS 154A.060(2)(a), 154A.120
STATUTORY AUTHORITY: KRS 154A.050(1)(d)9,
154A.120(1)

NECESSITY, FUNCTION, AND CONFORMITY: [Pursuant to] KRS 154A.120(1) authorizes [;] the Kentucky Lottery Corporation [is authorized] to promulgate administrative regulations establishing its procurement procedures. [~~KRS 154A.120(1) provides that the administrative regulations shall be designed to provide for the purchase of supplies, equipment, services and construction items in such a manner as to provide the greatest long-term benefit to the Commonwealth, the greatest integrity for the corporation, and the best services and products for the public.~~] This administrative regulation establishes the procurement procedures of the Kentucky Lottery Corporation in a manner consistent with KRS Chapter 154A [~~154A.120(1)~~] and will apply in lieu of the Kentucky Model Procurement Code, unless otherwise specifically indicated.

Section 1. Procurement Procedures. The procurement procedures of the Kentucky Lottery Corporation are established in the "Kentucky Lottery Corporation Procurement Procedures".

Section 2. Incorporation by Reference. (1) "Kentucky Lottery corporation Procurement Procedures, 4/23/99 [April 23, 1999 edition] [January 26, 1996]" is incorporated by reference.

(2) This material may be inspected, copied, or obtained from the General Counsel [Director of Purchasing] at the offices of the Kentucky Lottery Corporation, 1011 West Main Street, Louisville, Kentucky 40202-2623 [Two Paragon Centre, Suite 400, 6040 Dutchmans Lane, Louisville, Kentucky 40205-3271], Monday through Friday, 8 a.m. to 5 p.m.

ARTHUR L. GLEASON, JR., President & CEO
CAMILLE BATHURST, General Counsel, Corporate Secretary
APPROVED BY AGENCY: May 13, 1999
FILED WITH LRC: May 14, 1999 at 11 a.m.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET**
Department for Environmental Protection
Division of Water
(As Amended at ARRS, November 9, 1999)

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 establish procedures [will operate] to protect the surface waters of the Commonwealth, and thus protect water resources. **401 KAR Chapter 5** [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 LC₅₀, 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 exposure, 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 LC₅₀, 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 = (N₁ x 1.0) + (N₂ x 1.4) + (N₃ x 0.4) + (N₄ x 0.1) + (N₅ x 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 sample 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~~ [of] 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 wastestreams 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 wastestream.

(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 at [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 man-made 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 measurement 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" is defined at KRS 224.01-010(12). ~~[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 nondomestic 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, swallet, 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 "KI-MOP" 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 appropriate, 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 pro-

cess 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 considered 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, non-contact 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 re-mining 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, non-contact 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 requirement.

(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 by-products 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.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET**
Department for Environmental Protection
Division of Water
(As Amended at ARRS, November 9, 1999)

**401 KAR 5:026. Designation of uses of surface [Classifi-
cation-of] waters.**

RELATES TO: KRS 146.200 to 146.360, 146.410 to 146.535, 146.550 to 146.570, 146.600 to 146.619, 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 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465 [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 establish procedures [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] in [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 established in [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 opportunity 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 following 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 $7Q_{10}$ 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:

- (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 surface 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)]
OSR W	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.

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[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	
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	

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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	Knot/Perry	WAH, PCR, SCR	
Fishpond	Entire Reservoir	Letcher	WAH, CAH, PCR, SCR	
Herrington	Entire Reservoir	Garrard/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	

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[Beech Fork Salt River	Source to Salt River	Har- din/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				
Taylorville	Entire Reservoir	Spencer	WAH, PCR, SCR	
GREEN RIVER BASIN				
Barren River	Source to River Mile 118.5 (Headwa- ters 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 (Headwa- ters 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 Na- tional Park Boundary	Edmonson/ Barren	CAH, PCR, SCR, OSRW	
Echo River	Basin Outside Mammoth Cave Na- tional Park Boundary	Edmonson	CAH, PCR, SCR, OSRW	
Pike Spring	Basin Outside Mammoth Cave Na- tional Park Boundary	Edmonson	CAH, PCR, SCR, OSRW	
Mile 205.7 Spring	Basin Outside Mammoth Cave Na- tional Park Boundary	Hart	CAH, PCR, SCR, OSRW	
McCoy Spring	Basin Outside Mammoth Cave Na- tional Park Boundary	Hart	CAH, PCR, SCR, OSRW	
Suds Spring	Basin Outside Mammoth Cave Na- tional Park Boundary	Hart/Barren	CAH, PCR, SCR, OSRW	
Double Sink Spring	Basin Outside Mammoth Cave Na- tional Park Boundary	Edmonson/ Barren	CAH, PCR, SCR, OSRW	
Ganter Spring	Basin Outside Mammoth Cave Na- tional Park Boundary	Edmonson	CAH, PCR, SCR, OSRW	
Running Spring	Basin Outside Mammoth Cave Na- tional Park Boundary	Edmonson	CAH, PCR, SCR, OSRW	
Mud River	Source to Green River	Butler/ Muhlenberg	WAH, PCR, SCR	
Nolin River	Source to River Mile 64.3 (Headwaters of Nolin Lake)	Hart/Grayso n	WAH, PCR, SCR	

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Nolin River	River Mile 7.6 (Nolin Lake Dam) to Green River	Edmonson	WAH [GAH], 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 [GAH], 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] [GAH], 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] [GAH], 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] [GAH], PCR, SCR	
Sulphur Spring Creek	Source to Red River	Simpson	CAH [WAH] [GAH], 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, ORW]	
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	
Tradewater River	Source to Ohio River	Crittenden/Union	WAH, PCR, SCR	
OHIO RIVER BASIN (Main Stem and Minor Tributaries)				
Doe Run Creek	Source to [K] 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][I]	Union [McCracken]	WAH, PCR, SCR, DWS	
Ohio River	River Mile 848.0 to River Mile 850.0	Union	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 850.0 to River Mile 859.0	Union	WAH, PCR, SCR	

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Ohio River	River Mile 859.0 to River Mile 861.0	Union	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 861.0 to River Mile 865.0	Union	WAH, PCR, SCR	
Ohio River	River Mile 865.0 to River Mile 867.0	Union	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 867.0 to River Mile 940.7	McCracken	WAH, PCR, SCR	
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	
Ohio River	River Mile 948.2 to River Mile 949.5	Ballard	WAH, PCR, SCR, DWS, OSRW	
Ohio River	River Mile 949.5 to River Mile 966.3	Ballard	WAH, PCR, SCR, DWS	
Ohio River	River Mile 966.3 to River Mile 969.5	Ballard	WAH, PCR, SCR, DWS, OSRW	
Ohio River	River Mile 969.5 to Mississippi River	Ballard	WAH, PCR, SCR, DWS	
Ohio River	River Mile 922.0 to River Mile 923.5 (Channel East of Towhead Island)	Livingston	WAH, PCR, SCR, OSRW	
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)				
Bayou de Chien	Source to River Mile 13.0	Hickman	WAH, PCR, SCR, OSRW	
Cane Creek of Bayou de Chien	Basin	Graves	WAH, PCR, SCR, OSRW	
Jackson Creek	Basin	Graves	WAH, PCR, SCR, OSRW	
Sand Creek	Basin	Graves	WAH, PCR, SCR, OSRW	
South Fork of Bayou de Chien	Basin	Graves	WAH, PCR, SCR, OSRW	
Mississippi River	Confluence with Ohio River to River Mile 947.0 [Kentucky/Tennessee State Line]	Carlisle [Fulton]	WAH, PCR, SCR	
Mississippi River	River Mile 947.0 to River Mile 945.0	Carlisle	WAH, PCR, SCR, OSRW	
Mississippi River	River Mile 945.0 to Kentucky/Tennessee State Line	Fulton	WAH, PCR, SCR	
Murphy's Pond	Entire Pond and Preserve Area	Hickman	WAH, PCR, SCR, OSRW	
UPPER CUMBERLAND RIVER BASIN				
Adams Branch	Basin	Whitley	WAH, PCR, SCR, OSRW	
Archers Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Bad Branch	Basin	Letcher	CAH, PCR, SCR, OSRW	
Bark Camp Creek	Basin	Whitley	CAH, PCR, SCR	
Beaver Creek	Basin	McCreary	CAH, PCR, SCR, OSRW	
Beaver Creek	Source to Lake Cumberland	Wayne	WAH, PCR, SCR	
Beck's Creek	Basin	Whitley	WAH, PCR, SCR[OSRW]	
Bens Fork of Little Clear Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Big Branch	Basin Above River Mile 0.8	McCreary	WAH, PCR, SCR, OSRW	

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Big Lick Branch	Basin	Pulaski	WAH, PCR, SCR, OSRW	
Big South Fork of Cumberland River	River Mile 55.2 to River Mile 45.0	McCreary	WAH, PCR, SCR, OSRW	
Blacksnake Branch	Basin	Bell	WAH, PCR, SCR, OSRW	
Breeden's Creek	Basin	Harlan	WAH [GAH], PCR, SCR, OSRW	
Brices Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Brownies Creek	Basin to River Mile 10.0 [8-7]	Harlan	WAH, PCR, SCR, OSRW	
Buck Creek	River Mile 53.3 to River Mile 10.5	Pulaski	WAH, PCR, SCR, OSRW	
Buck Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Bucks Branch	Basin	Whitley	WAH, PCR, SCR, OSRW	
Buffalo Creek	Basin to Kentucky/Tennessee State Line (River Mile 3.2)	Whitley	WAH, PCR, SCR, OSRW	
Bunches Creek	Basin	Whitley	CAH [WAH] [GAH], PCR, SCR, OSRW	
Campbell Branch	Basin	Whitley	WAH, PCR, SCR, OSRW	
Cane Creek	Basin	Laurel	WAH, PCR, SCR	
Caney Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Cannon Creek	Basin above Cannon Creek Lake	Bell	WAH, PCR, SCR, OSRW	
Clover Bottom Creek	River Mile 1.4 to Horselick Creek	Jackson	CAH, PCR, SCR	
Cogur Fork	Basin	McCreary	CAH [WAH] [GAH], PCR, SCR	
Coles Branch	Basin	Knox	WAH, PCR, SCR, OSRW	
Colliers Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Criscillis Branch	Basin	Whitley	WAH, PCR, SCR, OSRW	
Cumberland River	River Mile 694.2 to River Mile 574.6	Whitley	WAH, PCR, SCR, DWS	
Cumberland River	River Mile 574.6 to River Mile 558.5 (Headwaters of Lake Cumberland)	McCreary/Whitley	WAH, PCR, SCR, OSRW	
Cumberland River	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)}	Monroe [Cumberland]	CAH, PCR, SCR, DWS	
[Cumberland River	River Mile 426.5 to Kentucky/ Tennessee State Line (River mile 401.05)	Monroe	WAH, PCR, SCR, DWS]	
Davis Branch	Basin	Bell	WAH, PCR, SCR, OSRW	
Difficulty Creek	Basin	McCreary	WAH [GAH], PCR, SCR	
Dog Slaughter Creek	Basin	Whitley	CAH, PCR, SCR, OSRW	
Eagle Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Four Mile Creek	Basin above River Mile 2.5	Bell	WAH, PCR, SCR, OSRW	
Four Mile Run	Basin above River Mile 1.0	Bell	WAH, PCR, SCR, OSRW	
Fugitt Creek	Basin	Harlan	CAH, PCR, SCR	
Hale Fork	Basin	Knox	WAH, PCR, SCR, OSRW	
Hawk Creek	Basin	Laurel	CAH, PCR, SCR	
Hinkle Branch	Basin	Knox	WAH, PCR, SCR, OSRW	
Honeycutt Branch	Basin	Knox	WAH, PCR, SCR, OSRW	
Horse Lick Creek	River Mile 12.3 to Middle Fork of Rockcastle River [Mile 0-0]	Jackson/ Rockcastle	WAH, PCR, SCR, OSRW	
Hunting Shirt Branch	Basin	Knox	WAH, PCR, SCR, OSRW	

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Indian Creek	Source to Barren Fork	McCreary	CAH [WAH] [GAH], PCR, SCR	
Jennys Branch	Basin	McCreary	WAH, PCR, SCR, OSRW	
Kelly Branch	Basin	Harlan	WAH [GAH], PCR, SCR	
Kennedy Creek	River Mile 1.0 to Little South Fork of Cumberland River [Mile 0.0]	Wayne	WAH, PCR, SCR, OSRW	
Kilburn Fork of Indian Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Laurel Creek of Marsh Creek	River Mile 9.0 to River Mile 3.4	McCreary	CAH [WAH] [GAH], PCR, SCR, OSRW	
Laurel Fork	Source to Middle Fork of Rockcastle Riv	Jackson	WAH, PCR, SCR, OSRW	
Laurel Fork of Clear Fork	Basin above River Mile 16.0	Bell	WAH, PCR, SCR, OSRW	
Laurel Fork of Clear Fork	River Mile 16.0 to River Mile 4.25 (Kentucky/Tennessee State Line)	Whitley	WAH, PCR, SCR, OSRW	
Laurel Fork of Indian Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Laurel River	Laurel River Lake Dam (River Mile 2.1) River Mile 0.9	Laurel	CAH, PCR, SCR	
Lick Fork	Basin	Bell	WAH, PCR, SCR, OSRW	
Little Clear Creek	Basin from Confluence with Fuson Branch	Bell	WAH, PCR, SCR; ORW]	
Little Popular Creek	Basin above and including East Ridge Branch	Knox	WAH, PCR, SCR, OSRW	
Little South Fork of Cumberland River	River Mile 35.6 to River Mile 4.1	Wayne	WAH, PCR, SCR, OSRW	
Little Yellow Creek	River Mile 3.2 (Fern Lake Dam) to Yellow Creek [River Mile 0.0]	Bell	WAH, PCR, SCR; ORW]	
Long Branch	Basin	Bell	WAH, PCR, SCR, OSRW	
Looney Creek	Basin above River Mile 5.3	Harlan	CAH, PCR, SCR	
Marsh Creek	Basin above River Mile 24.0	McCreary	WAH, PCR, SCR, OSRW	
Marsh Creek	River Mile 24.0 to Confluence with Cumberland River	McCreary	WAH, PCR, SCR, OSRW	
Martins Fork	Basin above River Mile 31.3	Harlan	CAH, PCR, SCR	
Martin's Fork	River Mile 31.3 to [Basin above] River Mile 27.4	Harlan	CAH, PCR, SCR, OSRW	
Meadow Fork	Basin	Letcher	WAH, PCR, SCR, OSRW	
Middle Fork of Rockcastle River	River Mile 61.1 to River Mile 53.3	Jackson	WAH, PCR, SCR, OSRW	
Mill Branch	Basin	Knox	WAH, PCR, SCR, OSRW	
Mill Creek of Straight Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Mill Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Moore's Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Mud Creek	Basin above River Mile 6.5	Whitley	WAH, PCR, SCR, OSRW	
Mud Lick	Basin	Knox	WAH, PCR, SCR, OSRW	
Ned Branch	Basin	Laurel	WAH, PCR, SCR, OSRW	
Patterson Creek	Basin above River Mile 7.4	Whitley	WAH, PCR, SCR, OSRW	
Poor Fork of Cumberland River	Basin above River Mile 742.5 [7]	Letcher	CAH, PCR, SCR, OSRW	
Poor Fork of Cumberland River	[Basin from] River Mile 742.5 [7] to Jefferson National Forest Boundary (River Mile 720.55)	Harlan [Letcher]	WAH [GAH], PCR, SCR[ORW]	
Poor Fork of Cumberland River	River Mile 720.55 to Clover Fork of Cumberland River	Harlan	WAH, PCR, SCR, DWS	
Razor Fork	Basin	Harlan	WAH [GAH], PCR, SCR	
Richland Creek	Basin above River Mile 15.7	Knox	WAH, PCR, SCR, OSRW	
Roaring Fork	Basin	Knox	WAH, PCR, SCR, OSRW	

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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	
Ryans Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
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	
Sinking Creek	Source to Rockcastle River	Laurel	WAH, PCR, SCR, OSRW	
Sims Fork	Basin	Bell	WAH, PCR, SCR, OSRW	
Smith Creek	Basin	Letcher	WAH, PCR, SCR, OSRW	
South Fork of Rockcastle River	River Mile 2.1 to Rockcastle River	Rockcastle	WAH, PCR, SCR, OSRW	
Stevenson Branch	Basin	Bell	WAH, PCR, SCR, OSRW	
Straight Creek	Basin [above River Mile 11.3]	Harlan	WAH, PCR, SCR, OSRW	
Sugar Run	Source to Cumberland Gap National Historical Park Boundary	Bell	WAH [CAH], PCR, SCR	
Trace Branch	Basin	Knox	WAH, PCR, SCR, OSRW	
Trammel Fork	Basin	McCreary	WAH, PCR, SCR, OSRW	
Troublesome Creek	Basin	McCreary	WAH [CAH], PCR, SCR	
Turkey Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Watts Creek	Basin above Camp Blanton Lake	Harlan	WAH, PCR, SCR, OSRW	
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] [CAH], 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, DWS	
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.

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(As Amended at ARRS, November 9, 1999)

401 KAR 5:029. General provisions.

RELATES TO: KRS 146.200 to 146.360, 146.410 to 146.535, 146.550 to 146.570, 146.600 to 146.619, 146.990, [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 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465 [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 **establish procedures [; will operate]** to protect the surface waters of the Commonwealth, and thus protect water resources. **This administrative regulation establishes:** [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 LC_{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 (LC_{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) "Gold-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) " LC_{50} " 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) "LG" 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(3) [(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(2) [(4)]. [The implementation of this section shall conform to 40 GFR 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 permit 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:

- (1) [They] Meet commonly accepted quality assurance and quality control principles;
- (2) Are within the accuracy required for determining conformity or nonconformity with water quality standards; and
- (3) 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 [publicly-owned] lake or 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) certifying 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 cabi-

net [director] makes a final permit decision. The cabinet shall [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 Pollutional 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 shall [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 Pollutional 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.

(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 established [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 (e)].

(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

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**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(As Amended at ARRS, November 9, 1999)**

401 KAR 5:030. Antidegradation [Nondegradation] policy implementation methodology.

RELATES TO: KRS 146.200 to 146.360, 146.410 to 146.535, 146.550 to 146.570, 146.600 to 146.619, 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 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, [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 to [lists among the purposes of KRS Chapter 224]: safeguard [safeguarding] from pollution the uncontaminated waters of the Commonwealth, prevent [preventing] the creation of any new pollution in the waters of the Commonwealth, and abate [abating] any existing pollution. This administrative regulation and 401 KAR 5:002, 5:026, 5:029, and 5:031 establish procedures [will operate] to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation establishes [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) Categorization. Surface waters shall be placed into one (1) of three (3) categories:

(a) Outstanding national resource waters:

1. Surface water that meets, at a minimum, the require-

ments for an outstanding state resource water classification found in 401 KAR 5:031 Section 7; and

2. Surface water that demonstrates to be of national ecological or recreational significance.

(b) Exceptional waters:

1. Surface water designated as a Kentucky Wild River, unless it is categorized as an outstanding national resource water;

2. Outstanding state resource water that does not support a federally threatened or endangered aquatic species;

3. Surface water that fully supports all applicable designated uses and contains:

a. A fish community that is rated "excellent" by the use of the Index of Biotic Integrity included in "Methods for Assessing Biological Integrity of Surface Waters", incorporated by reference in Section 4 of this administrative regulation; or

b. A macroinvertebrate community that is rated "excellent" by the Macroinvertebrate Bioassessment Index included 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

4. Water in the cabinet's reference reach network.

(c) Use-protected waters. Use-protected water is water not listed in Section 3 of this administrative regulation as outstanding national resource water or exceptional water. [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 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.]

(2) [(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.

(3) [(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:

a. No greater than ten (10) mg/l five (5) day carbonaceous biochemical oxygen demand;

b. No greater than two (2) mg/l ammonia-nitrogen;

c. No greater than 0.010 mg/l total residual chlorine;

d. No greater than ten (10) mg/l total suspended solids;

e. No greater than one (1) mg/l total phosphorus;

f. A minimum seven (7) mg/l dissolved oxygen;

g. A chronic whole effluent toxicity limit unless an acute whole effluent toxicity limit is more stringent;

h. A geometric mean value for fecal coliform bacteria not to exceed 200 colonies per 100 milliliters during a period of thirty (30) consecutive days or 400 colonies per 100 milliliters during a period of seven (7) consecutive days; and

i. The discharge shall not cause the average instream dissolved oxygen concentration to be less than six and zero-tenths (6.0) mg/l. [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 that are not domestic waste or stormwater 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 subsection (4) [(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 effluent limitations [limits] required by paragraph (a) [(b)] of this subsection [these limitations], the KPDES permit shall be issued with the effluent [these] limitations without further antidegradation [nondegradation] review as described in subsection (4) [(6)] of this section for use-protected waters. If a KPDES permit applicant cannot meet the [these] 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 exceptional [these] waters unless assigned before the effective date of this administrative regulation.

(4) [(6)] Procedure for implementing the antidegradation [nondegradation] policy in use-protected waters for point source discharges. All surface waters not listed in Section 3 of this administrative regulation [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 quality necessary to protect the [these] uses shall be assured in use-protected water [these surface waters].

(b) The process to allow a discharge to a use-protected water [discharges to these surface waters] and to assure the water's [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.]

(5) The antidegradation [(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. **Procedure [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 requirements of this section 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 water qualifies [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 shall include:

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 including [; 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 shall include the following ~~[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 including ~~[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; and

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. ~~[(1)]~~ 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

[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 Kentucky River	Upper Twin Creek to North Fork of Kentucky River	Lee
Middle Fork of Kentucky 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 Kentucky 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

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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 (Kentucky-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 (Kentucky-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	Breckinridge
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 Cumberland 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

*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.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(As Amended at ARRS, November 9, 1999)**

401 KAR 5:031. Surface water standards.

RELATES TO: KRS 146.200 to 146.360, 146.410 to 146.535, 146.550 to 146.570, 146.600 to 146.619, 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 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465 [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 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, 5:029, and 5:030 **establish procedures [will operate]** to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation **establishes [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 to 029. On May 31, 1990 the Interim Joint Committee on Agriculture and Natural Resources determined that this adminis-

trative 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. [(1)] 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:

(1) The scope of the problem;

(2) The geography of the affected area; and

(3) 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:

(a) Settle to form objectionable deposits;

(b) Float as debris, scum, oil, or other matter to form a nuisance;

(c) Produce objectionable color, odor, taste, or turbidity;

(d) Injure, are chronically or acutely toxic to or produce adverse physiological or behavioral responses in humans, animals, fish and other aquatic life;

(e) Produce undesirable aquatic life or result in the dominance of nuisance species;

(f) 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)];

(g) Cause the following changes in radionuclides:

1. The gross total alpha particle activity, [(including radium-226 but excluding radon and uranium, {}] to exceed fifteen (15) pCi/l;

2. 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)];

3. The concentration of total gross beta particle activity to exceed fifty (50) pCi/l;

4. The concentration of tritium to exceed 20,000 pCi/l;

5. 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. The criteria [They] are established to protect [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)
Metals ¹	
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]
[1-2-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	
[Metals ¹	
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
Bromoform	360
Carbon tetrachloride	4.4 [6.94]
Chlordane	0.0022 [-00048]
Chlorodibromomethane	34
Dichlorobromomethane	46
Hexachlorobenzene	0.00077 [-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

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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	0.013 [0.034]
[HCH]	
beta BHC [HCH]	0.046 [0.0547]
gamma BHC or [HCH-γ]lindane[γ]	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	0.0314]
(PAHs)	
Tetrachloroethylene	8.85
Toxaphene	0.00075 [0.00073]
Trichloroethylene	81 [80-7]
Vinyl Chloride	525

¹Total 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:

(a) Protect surface waters for the indicated use; and
(b) **Protect** [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) **Stream** [Governing] flows for water quality-based permits. The following stream flows **shall** [are to] be utilized when deriving KPDES permit limitations **to protect** [for the protection of] surface waters for the listed uses and purposes:

(a) Aquatic life protection **shall be** 7Q₁₀;

(b) Water-based recreation protection **shall be** 7Q₁₀;

(c) Domestic water supply protection **shall be determined at points of withdrawal as:**

1. The harmonic mean for cancer-linked substances; **and**

2. 7Q₁₀ for noncancer-linked substances[~~—determined at points of withdrawal~~];

(d) Human health protection from fish consumption only **shall be:**

1. The harmonic mean for cancer-linked substances; **and**

2. 7Q₁₀ for noncancer-linked substances; **and**

(e) Protection of aesthetics and for changes in radionuclides **shall be** 7Q₁₀.

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 CaCO₃ shall not be reduced by more than twenty-five (25) percent. If [Where] natural alkalinity is below twenty (20) mg/l CaCO₃, **there shall not be a** [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 [(-)] 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 middepth 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 non-cumulative or nonpersistent with a [(t)]half-life of less than ninety-six (96) hours, [t] shall not exceed:

a. ~~[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

b. ~~[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 bio-accumulative or persistent, including pesticides, when not specified elsewhere in this section, shall not exceed:

a. ~~[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

b. ~~[exceed]~~ A chronic toxicity unit of 1.00 utilizing the IC_{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 Criteria ¹		
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)	$e^{(1.128 (\ln \text{Hard}) - 3.687) / (628)}$	$e^{(0.7852 (\ln \text{Hard}) - 2.715) / (3-490)}$
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)	$e^{(0.9422 (\ln \text{Hard}) - 1.700) / (464)}$	$e^{(0.8545 (\ln \text{Hard}) - 1.702) / (466)}$
Iron	4.0 mg/l	1.0 mg/l ³
Lead (µg/l)	$e^{(1.273 (\ln \text{Hard}) - 1.460) / (628)}$	$e^{(1.273 (\ln \text{Hard}) - 4.705) / (628)}$
Mercury	1.7 [2.4] µg/l	0.91 [0.012] µg/l
Nickel (µg/l)	$e^{(0.8460 (\ln \text{Hard}) + 2.255) / (9-9612)}$	$e^{(0.8460 (\ln \text{Hard}) + 0.0584) / (1-1646)}$
Selenium	20 µg/l	5 µg/l
Silver (µg/l)	$e^{(1.72 (\ln \text{Hard}) - 6.52) / (628)}$	
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)	$e^{(1.005(pH) - 4.869) / (890)}$	$e^{(1.005(pH) - 5.134) / (290)}$
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.]

³The 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 CaCO₃.

(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, [(t)whether self-sustaining or reproducing, (t)] 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 [1] 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 (Lindane)]	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 [0-00071]
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.] **The following criteria shall apply to waters designated as** [Criteria for] primary contact recreation use [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; and

4. Waters that support federally recognized endangered or threatened 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. **The surface water is** [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 fulfill 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; or

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]

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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 [<u>1.0</u>]
Chloride	250
Fluoride	2.0 [<u>1.0</u>]
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 ^{(.7652(In Hard)-2.715 (3.490))}	e ^{(1.128(In Hard)-3.687 (888))}
Chromium (hexavalent)	11	16
Copper	e ^{(.8545(In Hard)-1.702 (466))}	e ^{(.9422(In Hard)-1.700 (464))}
Cyanide (free)	5.2	22
Lead	e ^{(1.273(In Hard)-4.705)}	e ^{(1.273(In Hard)-1.460)}
Mercury	0.91 [<u>0.12</u>]	1.7 [<u>2.4</u>]
Zinc	e ^{(.8473(In Hard)+.884 (7614))}	e ^{(.8473(In 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.

JUSTICE CABINET
Department of State Police
(As Amended at ARRS, November 9, 1999)

502 KAR 31:020. Sex Offender Registration System.

RELATES TO: KRS 17.500 to 17.540, 42 USC 1407 [17.510; 17.520, 17.530]

STATUTORY AUTHORITY: KRS 15A.160, 17.080, 17.500(3), 17.510, **42 USC 1407**

NECESSITY, FUNCTION, AND CONFORMITY: [KRS 15A.160 and 17.080 provide that the Secretary of the Justice Cabinet may promulgate such administrative regulations as are necessary to properly administer the cabinet.] KRS 17.510 and [federal law] 42 USC 1407 require [the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act; requires] the Justice Cabinet to develop and implement a Sex Offender Registration System. This administrative regulation establishes the definitions, defines the processes, and establishes the forms necessary for the administration of the Sex Offender Registration System.

Section 1. Definitions. (1) "Authorizing witness" means an official identified in KRS 17.510(3), (4), and (5).

(2) "Cabinet" **is defined at KRS 17.500(1).** [~~means the Justice Cabinet.~~]

(3) "Department" means the Department of State Police.

(4) "**LINK**" means the Law Enforcement Information Network of Kentucky.

(5) "**NCIC**" National Crime Information Computer.

(6) "**SORS**" means the Sex Offender Registration System.

(7) "**Sex offender**" means a person meeting one (1) of the criteria of KRS 17.510(2), (6), or (7).

(8) "Sex offender information" means the specific information set forth in KRS 17.500(3) and shall include:

(a) The date of release from custody;

(b) Maximum date of sentence or supervision, whichever is longer;

(c) Date of registry expiration;

(d) Name of person completing the form, if registrant is assisted;

(e) Office phone number of the releasing entity;

(f) Signature of the registrant;

(g) Signature of the authorizing witness; [and]

(h) The date the form is signed;

(i) Fingerprints; and

(j) Photograph.

[(5) "**SORS**" means the Sex Offender Registration System.]

Section 2. Sex Offender Duty to Register Notification Form.

(1) A **sex offender** [person as described in KRS 17.510] shall provide **sex offender information** [the information required by KRS 17.500(3), 17.510 and this administrative regulation] on the Sex Offender Duty to Register Notification Form #JC-4.

(2) Completion of Sex Offender Duty to Register Notification Form #JC-4.

(a) **The Division of Probation and Parole** shall complete the Notification Form #JC-4 for the sentencing court.

(b) A **sex offender** [person defined in KRS 17.510] shall, in the presence of the sentencing judge, sign the Notification Form #JC-4 in the "defendant's signature" block, in ink.

(c) A copy of the completed form shall be provided to the offender.

Section 3. SORS Registration Forms. [A person described in KRS 17.510 shall provide the information required by KRS 17.500(3), 17.510 and this administrative regulation on one (1) of the following sex offender registry entry forms:]

(1) Three (3) Sex Offender Registry Entry Forms have been established:

(a) Sex Offender Registry Entry Form **#P:225** is to be completed by all persons required to register pursuant to KRS 17.510(2) [or (3)].

(b) Sex Offender Registry Entry Form **#P:227** is to be completed by all persons required to register pursuant to KRS 17.510(6).

(c) Sex Offender Registry Entry Form **#P:228** is to be completed by all persons required to register pursuant to KRS 17.510(7).

(2) Completion of Sex Offender Registry Entry Registration Form.

(a) The Entry Form shall be completed either in the presence of or by the authorizing witness.

(b) [~~In the presence of the authorizing witness.~~] The offender shall read the Entry Form **in the presence of the authorizing witness.**

(c) The offender shall sign the Entry Form, in the "signature of offender" block of the form in ink.

(d) The authorizing witness shall sign the Entry Form in the "authorizing witness" block of the Entry Form.

(e) The authorizing witness shall mail one (1) copy of the completed Entry Form to the department on the day the form is completed.

(3) An Entry Form shall not be considered complete if:

(a) It does not contain the **sex offender** information required by KRS 17.500(3) and this administrative regulation; [or]

(b) It contains erroneous or false information; [or]

(c) An item on the Entry Form cannot be read or understood; or

(d) The offender or authorizing witness fails to sign the appropriate block.

(4) If the department determines that an Entry Form is incomplete [pursuant to the provisions of this administrative regulation], the department shall notify the submitting authorizing witness, without entry into the SORS, of:

(a) The reason the Entry Form was determined to be incomplete; and

(b) The action required to complete the Entry Form prior to inclusion **in [to]** the SORS.

(5) **When the deficiencies of an incomplete entry form are corrected** [Upon notification of the corrected deficiencies as described above], the department shall enter the record into the SORS, LINK and NCIC.

Section 4. Sex Offender Registry Modification Form. A **sex offender shall complete a** [person as described in KRS 17.510 shall provide any change in the information required by KRS 17.500(3), KRS 17.510 and this administrative regulation on the]

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Sex Offender Registry Modification Form #P:226 if there is a change in an item of the sex offender information previously supplied.

(1) Completion of Sex Offender Registry Modification Form.

(a) The Modification Form shall be completed either in the presence of or by the authorizing witness.

(b) ~~[In the presence of the authorizing witness.]~~ The offender shall read the Modification Form in the presence of the authorizing witness.

(c) The offender shall sign the Modification Form in the "signature of offender" block of the form, in ink.

(d) The authorizing witness shall sign the Modification Form in the "authorizing witness" block of the Modification Form.

(e) The authorizing witness shall mail one (1) copy of the completed Modification Form to the department on the day the form is completed.

(2) A Modification Form shall not be considered complete if:

(a) It does not contain the information required; ~~[by KRS 17.500(3) and this administrative regulation; or]~~

(b) It contains erroneous or false information; ~~[or]~~

(c) An item on the form cannot be read or understood; or

(d) The offender or authorizing witness fails to sign in the appropriate block.

(3) If the department determines that a Modification Form is incomplete ~~[pursuant to the provisions of this administrative regulation]~~, the department shall notify the submitting authorizing witness of:

(a) The reason the Modification Form was determined to be incomplete; and

(b) The action required to properly complete the Modification Form before that information shall ~~[may]~~ be included in the SORS.

(4) When the deficiencies of an incomplete Modification Form are corrected ~~[Upon notification of the corrected deficiencies, as described above]~~, the department shall enter the corrected information into that offender's SORS ~~[record]~~, LINK, and NCIC records.

Section 5. Sex Offender Registry Information Verification Form. A sex offender ~~[person sentenced as described in KRS 17.510]~~ shall verify the accuracy of the information contained in the SORS on the Sex Offender Registry Information Verification Form #SOR 1.

(1) Annually, the department shall mail, no later than fourteen (14) days prior to the anniversary date of each "low" and "moderate" risk registrant, a Verification Form #SOR 1 to the last known address of the registrant.

(2) Quarterly, the department shall mail a Verification Form #SOR 1 to the last known address of each "high risk" registrant.

(3) Completion of Sex Offender Registry Information Verification Form #SOR 1. A sex offender ~~[person defined in KRS 17.510]~~ shall:

(a) Complete each item in the Verification Form #SOR 1;

(b) ~~[, and]~~ Sign the Verification Form #SOR 1 in the "registrant signature" block, in ink; and

(c) ~~[(b) Shall]~~ Mail the completed Verification Form #SOR 1 to the department on the day the form is completed.

(4) ~~[(3)]~~ A Verification Form #SOR 1 shall not be considered complete if:

(a) It does not contain the information required; ~~[by KRS 17.500(3) and this administrative regulation; or]~~

(b) It contains erroneous or false information; ~~[or]~~

(c) An item on the form cannot be read or understood; or

(d) The registrant fails to sign in the appropriate block.

(5) ~~[(4)]~~ If the department determines that a Verification Form #SOR 1 is incomplete ~~[pursuant to the provisions of this administrative regulation]~~, the department shall return the form to the submitting registrant, notifying the submitting registrant of:

(a) The reason the Verification Form #SOR 1 was returned; and

(b) The action required by the registrant to properly complete the Verification Form #SOR 1 prior to validation thereof.

Section 6. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) ~~[The]~~ Sex Offender Duty to Register Form #JC-4;

(b) ~~[The]~~ Sex Offender Registry Entry Form ~~[Forms]~~ #P:225;

(c) Sex Offender Register Entry Form #P:227;

(d) Sex Offender Register Entry Form [and] #P:228;

(e) [(e) The] Sex Offender Registry Modification Form #P:226; and

(f) [(d) The] Sex Offender Registry Information Verification Form #SOR 1.

(2) This material may be inspected, copied, or obtained at the Department of State Police, Data Processing Section, 1250 Louisville Road, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT F. STEPHENS, Secretary

PAMELA J. MURPHY, Deputy Secretary

BARBARA W. JONES, General Counsel

APPROVED BY AGENCY: July 14, 1999

FILED WITH LRC: July 15, 1999 at 9 a.m.

EDUCATION, ARTS, AND HUMANITIES CABINET

Education Professional Standards Board

(As Amended at ARRS, November 9, 1999)

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. For 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) A district shall submit a written letter of 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. The application letter shall [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 paraprofessionals 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 program the preceding year may file a written letter of application requesting 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 letter 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.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department for Libraries and Archives
Division of Field Services
(As Amended at ARRS, November 9, 1999)

725 KAR 2:060. Certification of public librarians.

RELATES TO: KRS 171.250, 171.260, 171.270 ~~[171.230-171.300]~~

STATUTORY AUTHORITY: KRS ~~[Chapter—13A,]~~ 171.250, 171.260, 171.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.260 requires certification of public librarians and other full-time employees. KRS 171.250 requires the board to establish the requirements for certification. This administrative regulation establishes the requirements for certification of public librarians. ~~[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) "ALA" means the American Library Association.

(2) "Board" means the Kentucky State Board for the Certification of Librarians.

(3) ~~[(2)] [(4)]~~ "Continuing education units" or "CEU" [(CEU)] means educational ~~[education]~~ offerings that provide credit through a certified program.

(4) ~~[(3)]~~ "Full-time" ~~[employment]~~ means working more than 100 hours per month.

(5) ~~[(4)] [(3)]~~ "Library information services" means duties performed by library employees that ~~[which]~~ require special skills and knowledge to be performed properly.

(6) ~~[(5)] [(2)]~~ "Library work experience" means employment in a library that ~~[which]~~ includes administration, collection development, technical services, ~~[or]~~ public services, or support for public service areas, and excludes secretarial, custodial, ground-keeping, security, food service, driver, and messenger duties.

Section 2. Required Certification by Public Library Position.

(1) A library director ~~[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) A library director ~~[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) An assistant director ~~[Assistant directors]~~ ~~[librarians, bookmobile librarian, branch head, or department head]~~ ~~[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 ~~or obtained:~~

(a) ~~1. Sixty (60) hours of college training, including at least twelve (12) hours of library science; [(library science hours may be included in the sixty (60) hours of college training);] and~~

~~2. Two (2) years of full-time library work experience; [or]~~

~~(b) 1. A high school diploma or GED;~~

~~2. At least [:] fifteen (15) hours of library science; and~~

~~3. 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) ~~A~~ professional, paraprofessional ~~or [and]~~ library experience ~~certificate [certificates]~~ shall be renewed according to 725 KAR 2:070.

(8) ~~[a] 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 four (4) times:]~~

Section 4. Sources of Education for Initial Certification. (1) The board shall accept academic credit from college credit courses offered by an institution [institutions] of higher education, which is [are] accredited by its [their] respective regional association [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; or

(d) Community and technical colleges that [which] offer library or information science courses [that are nontransferable to a four (4)-year college] and these courses shall be approved for para-

professional 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 or [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 the Approved Guidelines for Library Institutes ~~[and shall be accepted for paraprofessional and library experience certificates]~~. The program may ~~[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 may [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 by submitting a completed Application for Certificate of Librarianship.

Section 6. A fee of five (5) dollars shall be charged for each certificate [all certificates] issued.

Section 7. A professional, paraprofessional ~~or [and]~~ library experience certificate [certificates] shall be issued to an applicant who meets [voluntary applicants who meet] the requirements and submit the required fee.

Section 8. Incorporation by Reference. (1) The following material is [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 (e) of this administrative regulation.]~~

(b) Approved Guidelines for Library Institutes, [The guidelines for a "Library Institute", dated] January 29, 1992; and ~~[-referred to in Section 4(3)(a) of this administrative regulation.]~~

(c) ~~[(e)] [The "Application for Certificate of Librarianship [Public Library Certification]", dated] January 29, 1992[-referred to in Section 5 of this administrative regulation].~~

(2) This material [The materials incorporated by reference in subsection (1) of this section] may be inspected, copied or obtained at [from] the Kentucky Department for Libraries and Archives, 300 Coffee Tree Road [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.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department for Libraries and Archives
Division of Field Services
(As Amended at ARRS, November 9, 1999)

725 KAR 2:070. Certification renewal of public librarians.

RELATES TO: KRS 171.250, 171.260, 171.270 [171.230-171.320]

STATUTORY AUTHORITY: KRS [Chapter 13A,] 171.250, 171.260, 171.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.250(2) authorizes the board to establish the requirements for certificate renewals for public librarians. This administrative regulation establishes the requirements for certificate renewals for public librarians. [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) "Continuing education unit" or "CEU" means educational offerings that provide credit through a certified program.

[(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, that [which] is planned, coordinated, administered and evaluated in terms of learning objectives.

(6) [(3)] "Library information services" mean duties performed by library employees that [which] require special skills and knowledge to be performed properly.

(7) [(2)] "Library work experience" means employment in a library that [which] includes administration, collection development, technical services, [or] public services, or support for public service areas, and excludes secretarial, custodial, ground-keeping, security, food service, driver, and messenger duties.

(8) "Professional library association" means an organization of librarians and persons interested in libraries.

Section 2. Required Certification Renewal by Public Library Position. (1) A library director [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) A library director [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) An assistant director [Assistant directors] [librarians], bookmobile librarian, branch head, or department head [librarians, branch heads, or department heads] 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.

(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. [(1)] The following certi-

ates 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) [-

(2) A] Library experience certificate [may be renewed for a period of three (3) years].

Section 4. Sources of Learning Activities that [which] Provide Certification Renewal Points. (1) The board shall accept job-related coursework or continuing education offerings from an institution [institutions] of higher education as follows:

(a) Classes, institutes, seminars, workshops, conferences, lecture series, or internships; or

(b) Courses taken for academic credit [or audited].

(2) The board shall accept activities in a professional library association [associations] as follows:

(a) Participation in seminars, workshops, conferences or [and] lecture series; or

(b) The holding of an association office, with a statement specifying the learning activity and derived educational benefit.

(3) The board shall accept participation in seminars, workshops, conferences, or [and] lecture series sponsored by the Kentucky Department for Libraries and Archives.

(4) The board shall accept participation in workshops, lecture series or [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.

(6) The board shall require documentation [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. (1) One (1) certification renewal point shall be equal to:

(a) Ten (10) contact hours; or

(b) One (1) continuing education unit.

(2) The conversion calculations for a type of activity to the number of certification renewal points shall be determined in accordance with the Certification Renewal Points Conversion Chart.

Section 6. Application for public librarian certification renewal shall be made to the board by submitting a completed Renewal Application for Certificate of Librarianship.

Section 7. [-] A fee of five (5) dollars shall be charged for each [all] certificate renewal [renewals] issued.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Certification Renewal Points Conversion Chart, January 29, 1992; and

(b) Renewal Application for Certificate of Librarianship.

(2) This material may be inspected, copied, or obtained at the Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40602-0537, Monday

VOLUME 26, NUMBER 6 – DECEMBER 1, 1999

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 PROTECTION AND REGULATION CABINET Department of Financial Institutions (As Amended at ARRS, November 9, 1999)

808 KAR 1:140. Bank annual assessment fee.

RELATES TO: KRS 287.480 [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.
(1) A state bank shall pay an annual assessment according to the schedule established 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.

(2) The assets subject to the annual assessment shall not include assets held by the bank or branch in a fiduciary capacity.

(3) The annual assessment shall be paid by April 1, unless the department and bank agree in writing to a later date due to extraordinary circumstances.

Section 2. Assessment Fee Schedule.

ASSESSMENT FEE SCHEDULE

If the amount of total assets is:		Assessment <u>shall</u> [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
\$ 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, 19999
FILED WITH LRC: September 15, 1999 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET Department of Financial Institutions (As Amended at ARRS, November 9, 1999)

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, as determined by the National Association of Securities Dealers, on one (1) of the following examinations:

(1) The Uniform Investment Advisor Law Examination (Series 65 examination); or

(2)(a) The General Securities Representative Examination (Series 7 examination); and

(b) 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 is registered as an investment adviser or investment adviser representative in Kentucky on the effective date of this administrative regulation, except that the commissioner shall require the examinations identified in Section 1 of this administrative regulation for an individual found to have violated a state or federal securities law; [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 the [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; or

(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.

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

(As Amended at ARRS, October 12, 1999 and
As Amended at IJC on Health and Welfare, October 20, 1999)

902 KAR 17:041. State Health Plan for facilities and services.

RELATES TO: KRS 216B.010 to 216B.130

STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(19), 216B.040(2)(a)2a [- 216B.015, 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 its programs under the Cabinet for Health Services.] KRS 216B.015(19) requires the Cabinet for Health Services to oversee development and annual updating of the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The 1999 Update to the 1998-2000 State Health Plan shall be used to:

(1) Review a certificate of need application pursuant to KRS 216B.040; and

(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(20)(a) and 216B.061(1)(d). [Incorporation by Reference. (1) The 1998-2000 Kentucky State Health Plan, as amended July 15, 1999 [January 15, 1998], is hereby incorporated by reference.]

Section 2. Updating of Inventories and Need Analysis. (1) The cabinet shall update the inventory of licensed [and/or] certificate of need approved health services and health facilities and [as well as] the need analysis established [contained] in the State Health Plan on a periodic basis to reflect any changes in inventory or need projections for health services and health facilities. [- and]

The most current update shall be used in making certificate of need decisions.

(2) Notice of an update [such updates] shall be published in the cabinet's certificate of need newsletter.

Section 3. Incorporation by Reference. (1) The 1999 Update to the 1998-2000 State Health Plan, as amended October 20 [12], 1999, is incorporated by reference.

(2) This material [(3) Such updates] may be inspected, copied, or obtained at the Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Monday through Friday.]

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: July 14, 1999

FILED WITH LRC: July 15, 1999 at noon

**CABINET FOR HEALTH SERVICES
Office of Inspector General
Division of Licensing and Regulation
(As Amended at ARRS, November 9, 1999)**

902 KAR 20:240. Comprehensive physical rehabilitation hospital services.

RELATES TO: KRS 211.842 to 211.850, 216B.010, 216B.015, 216B.030, 216B.105, 216B.990, 217.015 to 217.045, 311.560(3), (4), 314.011(8), 314.042(8), 320.210(2), 320.240(13), (14), (15), 333.030 [to 216B.131, 216B.990(1), (2)]

STATUTORY AUTHORITY: KRS [216B.010] 216B.042(1) [216B.040(2), 216B.105]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042(1) [216B.040] and 216B.105(1) and (2) require [mandate] [that] the Cabinet for Health Services to [Human Resources] regulate health facilities and health services. This administrative regulation establishes [provides] [the] minimum licensure requirements for inpatient comprehensive physical rehabilitation services, including [the provision of] rehabilitation services in hospital-based rehabilitation units [hospitals which have a rehabilitation unit].

Section 1. Definitions. (1) "Accredited record technician" means a person [who has graduated from a program for medical record technicians accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; and who is] certified as an Accredited Record Technician by the American Medical Record Association.

(2) "Certified radiation operator [operation]" means a person [who has been] certified pursuant to KRS 211.870 and 902 KAR 105:010 to 902 KAR 105:070, as an operator of [or] sources of radiation.

(3) "Full-time equivalent" (FTE) means:

(a) One (1) employee working thirty-seven and five-tenths (37.5) hours per week; or

(b) [a combination of the hours worked by] More than one (1) part-time employee whose combined working hours total [to totaling] thirty-seven and five-tenths (37.5) hours per week.

(4) "Governing authority" means the individual, agency, partnership, or corporation that directs and establishes policy concerning the management and operation of a comprehensive physical rehabilitation program[- in which the ultimate responsibility and authority for the conduct of the institution is vested].

(5) "Institution" means a [the] freestanding specialty hospital or a general hospital based unit providing [utilized for the delivery of] inpatient comprehensive physical rehabilitation services.

(6) "Medical staff" means an organized body of physicians, and dentists when applicable, appointed [to the institution staff] by the governing authority. [All] Members of the medical staff shall be licensed to practice medicine or dentistry in Kentucky.

~~except for [with the exception of] graduate physicians [who are] in the first year of facility training. ["Governing authority" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested:~~

~~(2) "Medical staff" means an organized body of physicians, and dentists when applicable, appointed to the institution staff by the governing authority. All members of the medical staff shall be licensed to practice medicine or dentistry in Kentucky, with the exception of graduate physicians who are in the first year of facility training.~~

~~(3) "Registered records administrator" means a person who is certified as a Registered Records Administrator by the American Medical Record Association.~~

~~(4) "Accredited record technician" means a person who has graduated from a program for medical record technicians accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; and who is certified as an Accredited Record Technician by the American Medical Record Association.~~

~~(5) "Qualified dietician" or "nutritionist" 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 master's degree in nutrition and is a member of ADA or is eligible for registration by ADA; or~~

~~(c) A person who has bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.~~

~~(6) "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 of radiation.~~

~~(7) "Protective device [devices]" means a device [devices] [that is] [are] designed to protect a person from falling, including a [to include] side rail [rails], safety vest, or safety belt.~~

~~(8) "Qualified dietician" or "nutritionist" means:~~

~~(a) A person who:~~

~~1. Has a bachelor of science degree in foods and nutrition, food service management, institutional management, or related services;~~

~~2. [and] Has successfully completed a dietetic internship or coordinated undergraduate program; [accredited by the American Dietetic Association (ADA)] and~~

~~3. Is a member of, [the ADA] or is registered as a dietician by, the American Dietetic Association [ADA]; or~~

~~(b) A person who:~~

~~1. Has a master's degree in nutrition; and~~

~~2. Is a member of, [ADA] or is eligible for registration by, the American Dietetic Association [ADA]; or~~

~~(c) A person who has:~~

~~1. A bachelor of science degree in home economics; and~~

~~2. Three (3) years of work experience under the supervision of [with] a registered dietician.~~

~~(9) "Registered records administrator" means a person [who is] certified as a registered records administrator by the American Medical Record Association.~~

~~(10) "Restraint" means a [any] pharmaceutical agent or physical or mechanical device used to restrict [the movement of] a patient or the movement of a portion of a patient's body. ["Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.~~

~~(9) "Full-time equivalent" (FTE) for this administrative regulation only means one (1) employee working thirty-seven and five-tenths (37.5) hours per week or a combination of the hours worked by more than one (1) part-time employee totaling thirty-seven and five-tenths (37.5) hours per week.~~

~~(10) "Institution" means the freestanding specialty hospital or a general hospital-based unit utilized for the delivery of inpatient comprehensive physical rehabilitation services.]~~

Section 2. [Scope of Operation and Services. Comprehensive physical rehabilitation programs are provided in permanent institutions with inpatient beds. These programs include medical, nursing, therapeutic, restorative, psychosocial, vocational and educational services which enable an individual with an injury or disability, either acquired or congenital, to function at his [their] maximum potential. Comprehensive physical rehabilitation programs offer a wide range of therapeutic services provided by registered, certified, licensed or degreed professionals utilizing a multidisciplinary, goal-oriented, team approach with treatment plans designed specifically for the individual patient's needs.

Section 3.] Administration and Operation. (1) Governing authority.

(a) The licensee shall be responsible for compliance with federal, state, and local law pertaining to comprehensive physical rehabilitation programs. [The institution shall have a governing authority that has overall responsibility for the management and operation of the institution and for compliance with federal, state, and local laws and regulations pertaining to its operation.]

(b) The governing authority shall appoint an administrator whose qualifications, responsibilities, authority and accountability are defined in writing and approved by the governing authority, and shall designate a mechanism for the periodic performance review of the administrator.

(2) Administrator. The administrator shall:

(a) Be responsible for daily management of the institution;

(b) Provide liaison between the governing authority and the medical staff;

(c) Attend meetings of the governing authority;

(d) Report to the governing authority concerning the conduct of the institution;

(e) Hold departmental and interdepartmental meetings, on a regular basis;

(f) Attend or be represented at departmental and interdepartmental meetings; and

(g) Present to the departments a report of pertinent activities of the institution.

[The administrator shall be responsible for the daily management of the institution and provide liaison between the governing authority and the medical staff.

(b) The administrator shall keep the governing authority fully informed concerning the conduct of the institution through periodic reports and by attendance at meetings of the governing authority.

(c) The administrator shall hold interdepartmental and departmental meetings (where appropriate), shall attend or be represented at such meetings on a regular basis, and shall report to such departments, as well as to the governing authority the pertinent activities of the institution.]

(3) Administrative records and reports.

(a) Administrative reports shall be established, maintained and utilized as necessary to guide the operation, measure productivity and reflect the programs of the institution. An administrative report [Such reports] shall include:

1. Minutes of the governing authority and staff meetings;

2. Financial records and reports;

3. Incident investigation reports; and

4. Other pertinent reports made in the regular course of business.

(b) The institution shall maintain a patient admission and discharge register.

(c) Licensure inspection reports and plans of correction shall be made available to the general public upon request.

(4) Policies. The institution shall have written documents [policies and procedures] governing [all aspects of] the operation of the institution and the services provided, including:

(a) A [written] mission statement of the comprehensive physical rehabilitation service [shall be made available to the general public upon request];

(b) A ~~written~~ program narrative which describes in detail the rehabilitation ~~problems and~~ conditions for which the institution provides services, the delivery of these services, and the goals and treatment;

(c) A ~~written~~ description of the organizational structure of the facility, including lines of authority, responsibility, and communication ~~and departmental organization~~;

(d) An admission policy to assure patient admission in accordance with medical staff protocol; ~~Admission policies which assure that patients shall be admitted to the institution in accordance with policies of the medical staff;~~

(e) A list of constraints imposed on admissions by limitation of service ~~limitations of services~~, physical facilities, staff coverage, or other relevant factors;

(f) The financial requirement ~~Financial requirements~~ for a patient to be admitted ~~patients on admission~~;

(g) The requirement ~~Requirements~~ for a informed consent by patient, parent, guardian or legal representative for diagnostic or ~~and~~ treatment procedure ~~procedures~~;

(h) A procedure ~~Procedures~~ for:

1. Recording an accident ~~accidents~~ involving a patient, visitor, or staff member;

2. Recording an incident ~~and incidents~~ of drug reaction ~~reactions~~ or ~~medication error~~ error; and

3. ~~errors, etc.~~ and for Reporting in writing through the appropriate committees;

(i) A policy for the use of restraints and a mechanism for monitoring and controlling their use;

(j) A policy for patient discharge and termination of services; and

(k) A policy describing the use of volunteers in program activities.

(5) Patient identification. The institution shall identify ~~have a system for identifying~~ each patient, from time of admission to discharge with ~~the~~ an identification bracelet imprinted with name of patient, date of admission, and name of case manager~~}}~~.

(6) Discharge planning.

(a) The discharge decision and plan shall be established with the participation of the patient ~~person served~~, if possible, or a significant other person. Discharge planning shall begin early in the treatment phase. Each professional practitioner ~~all professions~~ involved with the patient ~~person~~ shall participate in formulating the discharge plan, including professionals from agencies outside the institution who have been or will be involved in the patient's care, if possible.

(b) A discharge authorization and summary shall be prepared for each patient ~~person~~ who has been discharged or transferred from the institution to a supportive service. The summary shall contain:

1. The reason for referral;

2. The diagnosis;

3. The rehabilitation problem;

4. The services provided;

5. The results of services;

6. and Any referral action recommended; and

7. ~~it shall note~~ Procedures and activities for patient and family, ~~to be utilized by the person served and the family~~ to assist the patient ~~individual~~ to maintain or improve postdischarge functioning and to increase ~~increased~~ independence.

(c) The ~~individual~~ family, appropriate staff members ~~of the institution~~, the referring source, and ~~other~~ community agencies proposed to work ~~that will be working~~ with the patient, shall receive advance notice of ~~concerning~~ the discharge decision and plan. The content of a ~~requirements for~~ notice of discharge will vary depending upon the complexity of a patient's ~~the individual's~~ presenting problems, the discharge plan, and the kinds and extent of resources required to implement the plan.

(7) Patient follow-up.

(a) The institution shall establish a procedure ~~and follow procedures~~ for patient ~~person~~ follow-up ~~of persons served~~. Follow-up shall be conducted when the patient is:

1. person served is Discharged from the institution;

2. Transferred ~~from the program~~ to a supportive service; or

3. is Placed in an inactive status.

(b) A follow-up report ~~reports~~ shall be prepared to ~~which~~ detail a patient's ~~the individual's~~ current status as it relates to program goals and objectives.

(8) Transfer procedures and agreements.

(a) The institution shall have written patient transfer procedures and agreements with other health care facilities which provide a level of inpatient care not provided by the institution. Any institution which does not have a transfer agreement in effect but has documented a good faith effort to enter into such an agreement shall be considered in compliance with this requirement. The transfer procedures and agreements shall specify the responsibilities each facility assumes in the transfer of patients and shall establish responsibility for notifying the other facility promptly of the impending transfer of a patient and for arranging appropriate and safe transportation.

(b) If the patient is transferred to another health care facility a transfer form shall accompany the patient. The transfer form shall include at least: the attending physician's instructions for continuing care, a current summary of the patient's medical record, information as to special supplies or equipment needed for patient care and pertinent social information on the patient and family. When such transfer occurs, a copy of the patient's signed discharge summary shall be forwarded to the other health care facility within fifteen (15) days of the patient's discharge.

(9) Medical staff.

(a) The ~~institution shall have a~~ medical staff shall be ~~organized by bylaws approved by the governing authority, which is~~ responsible to the governing authority ~~of the facility~~ for the quality of medical care and ~~provided to the patients and for~~ the ethical and professional practice of each member ~~its members~~.

(b) The medical staff shall develop ~~and adopt~~ policies or bylaws, subject to the approval of the governing authority, which shall:

1. State the necessary qualifications for medical staff membership; ~~For purposes of this document, medical staff shall mean physicians and dentists, when applicable.~~

2. Define and describe the responsibilities and duties of each category of medical staff ~~the following: active, associate, courtesy, consulting, or honorary~~, delineate the clinical privileges of staff members, and establish a procedure for granting and withdrawing staff privileges, including review of ~~to include~~ credentials; ~~review.~~

3. Provide a mechanism for appeal of a decision ~~decisions~~ regarding staff membership or ~~and~~ privileges;

4. Provide a method for the selection of officers of the medical staff;

5. Establish requirements regarding the frequency of, and attendance at, general staff and department or ~~if~~ service meetings of the medical staff; and

6. Provide for the appointment of standing and special committees, including ~~and include~~ requirements for composition and organization, frequency of and attendance at meetings, and the minutes and reports which shall be part of the permanent records of the institution. These committees may include: executive committee, credentials committee, medical records committee, infections control committee, pharmacy and therapeutics committee, utilization review committee, and quality assurance committee.

(10) Director of rehabilitation. The ~~institution shall have a~~ director of rehabilitation shall:

1. Be a physician;

2. Have completed a one (1) year facility internship followed by two (2) years of training or experience in medical management of inpatients requiring rehabilitation services; and

3. Provide services:

a. On a full-time basis for a freestanding specialty hospital; or

b. At least twenty (20) hours a week for a general hospital based unit. ~~who provides services on a full-time basis for a freestanding specialty hospital or at least twenty (20) hours per week~~

for a general hospital-based unit, is a physician, and has had, after completing a one (1) year facility internship, at least two (2) years of training or experience in the medical management of inpatients requiring rehabilitation services.]

(11) Quality assurance and review.

(a) The quality and appropriateness of major clinical functions shall be monitored and evaluated. [There shall be a planned and systematic process for monitoring and evaluating the quality and appropriateness of patient care and for resolving identified problems.]

(b) The following means shall be used for monitoring and evaluation:

1. Objective criteria that reflect current knowledge and clinical experience shall be established and applied.

2. Information about identified aspects of rehabilitation care shall be collected on a routine basis.

3. The information shall be assessed on a periodic basis.

4. Problems in patient care and opportunities to improve care shall be identified. [The quality and appropriateness of patient care shall be monitored and evaluated in all major clinical functions of the comprehensive physical rehabilitation program. Such monitoring and evaluating shall be accomplished through the following means:

1. Routine collection of information about important aspects of rehabilitation care; and

2. Periodic assessments of the collective information in order to identify important problems in patient care and opportunities to improve care. Objective criteria shall be established and applied that reflect current knowledge and clinical experience concerning the services offered by the institution.]

(c) The effectiveness of action taken to improve patient care shall be evaluated. [When important problems in patient care or opportunities to improve care are identified:

1. Action shall be taken; and

2. The effectiveness of the action shall be evaluated.]

(d) Findings and conclusions regarding the following shall be documented for reporting to the administrator and appropriate committees:

1. Monitoring and evaluation;

2. Problem-solving activity;

3. Activity for the improvement of patient care; and

4. The impact of actions taken. [The findings from and conclusions of monitoring, evaluating, and problem-solving activities and the actions taken to resolve problems and improve patient care, and information about the impact of the actions taken, shall be documented and shall be reported to the administrator and appropriate committees.]

(e) [When an outside source(s) provides rehabilitation services] The quality and appropriateness of patient rehabilitation services [care] provided by an outside source shall be monitored and evaluated, and identified problems resolved.

(12) Personnel.

(a) The institution shall employ [a sufficient number of] qualified personnel sufficient to provide effective patient care and [all other] related services. Written personnel policies and procedures shall be available to all personnel.

(b) There shall be a written job description for each position. Each job description [Job descriptions] shall be reviewed and revised as necessary. If [Where] a job description includes an activity [activities] which is [are] subject to professional licensure, the employee shall have the appropriate current license.

(c) There shall be an employee health program with [for mutual protection of employees and patients including] provisions for preemployment and periodic health examination.

(d) Each staff member shall be tested for tuberculosis, as follows: [The institution shall comply with the following tuberculosis testing requirements:]

1. The skin test status of each staff member [all] [staff members] shall be documented in the employee's personnel record.

a. A new staff member shall undergo a skin test [shall be initiated on [all] new staff members] before or during the first week of employment.

b. [and] The results shall be documented in the employee's

personnel record within the first month of employment.

c. A skin test shall not be [No skin testing is] required at the time of initial employment if the employee:

(i) Documents a prior skin test of ten (10) or more millimeters of induration; or

(ii) If the employee is currently receiving or has completed six (6) months of prophylactic therapy or a course of multiple-drug chemotherapy for tuberculosis.

d. A two (2) step skin test [testing] is required for new employees over age forty-five (45) whose initial test shows less than ten (10) millimeters of induration, unless they can document that they have had a tuberculosis skin test within one (1) year prior to their current employment. An employee who has [All] [Staff who have] never had a skin test of ten (10) or more millimeters induration shall [must] be skin tested annually, on or before the anniversary of the [their] last skin test.

2. An employee whose initial or annual skin test results in [All] [Staff who are found to have a skin test of] ten (10) or more millimeters induration [on initial employment testing or annual testing] shall [must] receive a chest x-ray, unless:

a. A chest x-ray within the previous two (2) months showed no evidence of tuberculosis; or

b. The individual can document the previous completion of a course of prophylactic treatment with isoniazid. An employee [Employees] whose initial skin test shows ten (10) or more millimeters of induration shall be advised of the symptoms of the disease and instructed to report to his [their] employer and seek medical attention promptly [if symptoms persist].

3. a. The [institution] director of rehabilitation shall be responsible for ensuring that [all] skin tests and chest x-rays are done in accordance with subparagraphs 1 and 2 of this paragraph.

b. [All] Skin testing dates and results and [all] chest x-ray reports shall be recorded as a permanent part of the personnel record.

4. The administrator shall report to the local health department, immediately upon discovery, the name of an employee whose:

a. Skin test results are ten (10) millimeters or more induration at the time of employment;

b. Skin test results change from less than ten (10) millimeters induration to more than ten (10) millimeters; or

c. Chest x-rays are suspicious for tuberculosis. [The following shall be reported by the institution administrator to the local health department having jurisdiction immediately upon becoming known:

a. The name [names] of staff who converts [convert] from a skin test of less than ten (10) to a skin test of ten (10) or more millimeters of induration;

b. The name [names] of staff who has [have] a skin test of ten (10) millimeters or more induration at the time of employment; and

c. [all] Chest x-rays suspicious for tuberculosis.]

5. Prophylaxis of a person [persons] with recent infection but no disease. A [Any] resident or staff member whose skin test status changes on annual testing from less than ten (10) to ten (10) or more millimeters of induration shall be considered to be recently infected with Mycobacterium tuberculosis. A [Such] recently infected person [persons] who has no sign or symptom [have no signs or symptoms] of tuberculosis disease on chest x-ray or medical history should be given preventive therapy with isoniazid for six (6) months unless medically contraindicated by a licensed physician. Medications shall be administered to patients only upon the written order of a physician or other practitioner acting within his statutory scope of practice. If an infected person [such individual] is unable to take isoniazid therapy, the person [individual] shall be advised of the clinical symptoms of the disease, and shall have an interval medical history and a chest x-ray taken and evaluated for tuberculosis disease every six (6) months during the two (2) years following conversion, for a total of five (5) chest x-rays.

6. A staff member who documents [Any staff who can document] completion of preventive treatment with isoniazid shall

be exempt from further screening requirements.

(d) A current personnel record [records] shall be maintained for each employee to [which shall] include the following:

1. Name, address, and Social Security number;
2. Health records;
3. Evidence of current registration, certification or licensure [of personnel];

4. Records of training and experience;
5. Records of performance evaluation;

6. Evidence of completion of [that employees have] an orientation to the facility's written policies initiated within the first month of employment; and

7. Evidence of regular in-service training which corresponds with job duties and includes a list of training and dates completed.

(13) Physical and sanitary environment.

(a) The condition of the physical plant and overall institution environment shall be maintained 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 in each of the following areas: plant maintenance, laundry operations [(if applicable)], and housekeeping.

(c) The institution's buildings, equipment and surroundings shall be kept in a condition of good repair, neat, clean, free from [all] accumulations of dirt and rubbish, and free from foul, stale or musty odors.

(d) The institution shall be kept free from insects and rodents and their [with] harborages and entrances [for these eliminated].

(e) Garbage and trash shall be stored in areas separate from those used for preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

(f) Hazardous cleaning solutions, compounds, and substances shall be labeled, stored in closed containers and kept separate from other cleaning materials.

(g) The institution shall have available at all times a quantity of linen essential for the proper care and comfort of patients.

1. Linens shall be handled, stored and processed so as to control the spread of infection.

2. Clean linen and clothing shall be stored in clean, dry, dust-free areas.

3. Soiled linen and clothing shall be placed in suitable bags or closed containers and stored in separate areas.

(h) 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. A needle or syringe [Needles and syringes] shall not be cut, dismantled, or destroyed after use, but shall be placed intact directly into a rigid container. A rigid container [The rigid containers] of sharp wastes shall be incinerated on site or off site, and disposed of in a sanitary land fill [approved pursuant to 401 KAR 47:020].

(14) Patient case records.

(a) The institution shall have a case records service with administrative responsibility for case records. A case record shall be maintained, in accordance with accepted professional principles, for each [every] patient admitted to the facility or receiving outpatient services.

(b) The case records service shall be directed by a registered record administrator, either on a full-time, part-time, or consultative basis, or by an accredited record technician on a full-time basis, and shall have available a sufficient number of regularly assigned employees so that case record services may be provided as needed.

(c) [All] Case records shall be retained for a minimum of five (5) years from date of discharge, or in the case of a minor three (3) years after the patient reaches the age of majority under state law, whichever is longer.

(d) Provision shall be made for written designation of specific location(s) for storage of case records in the event the facility ceases to operate [because of disaster, or] for any [other] reason. It shall be the responsibility of the institution to safeguard both the record and its content against loss, defacement, and

tampering.

(e) A system of identification and filing to insure the prompt location of a patient's case record shall be maintained.

1. There shall be a system for coordinating the inpatient and [/] outpatient case record of any patient who has received both inpatient and outpatient services.

2. [All] Clinical information pertaining to a patient's stay shall be centralized in the patient's case record.

(f) Patient records [of patients] are the property of the institution and shall not be removed [taken] from the institution except by court order. This does not preclude routing a patient record [the routing of patient [the patients] records], or a portion thereof, including x-ray film, to a physician [physicians] for consultation.

1. Only authorized personnel shall be permitted access to patient [the patients] records.

2. Patient information shall be released only on authorization of the patient, the patient's guardian or the executor of the patient's estate.

(g) Case record review.

1. The institution shall review and evaluate its case records and related policies and procedures regularly and [;] representatives of its service units shall participate to evaluate their adequacy and to propose improvements in the recordkeeping system.

2. A case record committee, which is representative of the major professional services and responsible to the administrator, shall be established. The committee shall:

a. Review, at least quarterly, an appropriate sample of the case records to measure their adequacy and fulfillment of recordkeeping requirements; and

b. Review, at least annually, the policies and procedures concerning case records and reports, and make recommendations for consideration [which should be considered] by the chief executive.

(h) A statement [Statements] of professional judgment and a report [reports] of services to an individual shall be signed by the person qualified by professional competency and official position. The case record shall confirm, in writing, that services recommended and planned actually have been received by the individual patient at the time stated. Such assurances may be in the form of the signature of the staff person rendering the service.

(i) Individual case records shall be maintained on a current basis; clinical information shall be recorded as soon as practicable, but within forty-eight (48) hours of the event, and discharge summaries recorded within two (2) weeks following discharge. A completed case record [records] shall include:

1. [Case identification data including] Name, address and next of kin;

2. The name and address of the personal representative, conservator, guardian, [and/]or representative payee, if one has been appointed for the person served;

3. Pertinent history, diagnosis of disability, rehabilitation problem, goals, and prognosis;

4. Reports from referring sources;

5. Reports of service referrals;

6. Reports from outside consultation, and from laboratory, radiology, orthotic and prosthetic services[; etc.];

7. Designation of the program manager for the patient, except when there is [individual:] a written policy identifying who is responsible for the plan management of specified [given] groups [would remove the necessity for this information in the case record];

8. Evidence of the patient's [individual's] participation in devising [the decision-making process of] his or her own plan;

9. Evaluation reports from each service;

10. Reports of staff conferences;

11. The patient's [individual's] total treatment plan;

12. Treatment plans from each service;

13. Signed and dated service and progress reports from each service;

14. Correspondence pertinent to the person being served;

15. [When information [and/]or photographs have been released or used, there shall be] A signed and dated authorization

from the patient, his [person-served or the] parent or guardian as appropriate, if information or photographs have been released or used; [to release the information or use the photograph;]

16. Discharge report; and
17. Follow-up reports.

Section 3. [4.] Provision of Services. (1) General requirements.

(a) A [No] medication or treatment shall not be given without a written order signed by a physician, [or] dentist[, when applicable], or other ordering practitioner acting within his statutory scope of practice. A telephone order for medication [Telephone orders for medications] shall be given only to a licensed [registered] nurse or a pharmacist and shall be signed by the ordering practitioner [medical staff member] within twenty-four (24) hours from the time the order is given.

(b) Medications shall be administered by a physician, registered nurse, [or] dentist, or [except in the case of] a licensed practical nurse under the supervision of a registered nurse.

(c) A [No form of patient] restraint or protective device, other than bed rails[;] and wheelchair safety belts shall not be used, except in an emergency until the attending medical staff member can be contacted, or upon written or telephone orders of the attending medical staff member. If [When such] restraint is necessary, it shall be the least restrictive [form of] protective device [shall be used] which affords the patient the greatest possible degree of mobility and protection. [In no case shall] A locking restraint shall not be used under any circumstances.

(d) Patient physical. A physician shall conduct a physical examination, and a determination that the patient can benefit from a rehabilitation program through the use of therapies provided by the institution shall be made within twenty-four (24) hours after admission.

(e) Psychosocial history. Each patient [All patients] shall have a history and assessment interview within seventy-two (72) hours after admission. The following resultant data shall be entered on the patient record: [for rehabilitation entered into the patient record which includes:]

1. A determination of current emotional state;
2. Vocational history;
3. Familial relationships;
4. Educational background;
5. Social support system; and
6. A determination that the patient can benefit from a rehabilitation program through the use of therapies provided by the institution.

(f) Basic cardiopulmonary resuscitation shall be available within the institution twenty-four (24) hours a day, seven (7) days a week.

(2) Staffing requirements.

(a) The program shall have [adequate] personnel adequate to meet 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.

(b) The staffing ratio of therapists and pathologists to patients shall be equal to or greater than one (1) full-time equivalent for every three (3) patients. Only licensed or certified therapists or speech and language pathologists in the areas of physical therapy, occupational therapy, speech and language pathology, or psychology shall be utilized in the computation of this ratio. Certified or licensed assistants shall not be utilized in the computation of this ratio. The staffing for the whole facility shall be utilized in the computation of this ratio rather than on a [department-by] department basis.

(c) There shall [not] be no more than one (1) aide or assistant for each licensed or certified therapist or speech and language pathologist on staff.

(3) Medical staff services.

(a) Medical care provided in the institution shall be under the direction of the medical director or a medical staff member in accordance with staff privileges granted by the governing authority.

(b) Physician services shall be available twenty-four (24) hours a day on at least an on-call basis.

(c) There shall be sufficient medical staff coverage for services provided in the institution in keeping with the size of the institution, the scope of services provided and the types of patients admitted to the facility.

(d) An individual rehabilitation program plan shall be developed for each patient under the supervision of a physician. The attending physician shall attend and actively participate in conferences concerning those served.

(e) The attending physician shall complete the discharge summary and sign the records within fifteen (15) days of discharge.

(f) The physician responsible for the patient's rehabilitation program shall have specialized training or experience in rehabilitation.

(g) There shall be direct individual contact by a physician on any day in which there is an active interdisciplinary treatment program.

(4) Nursing services.

(a) Nursing services shall be directed toward [These services provide] prevention of complications of disability, restoration of optimal functioning, and adaptation to an altered lifestyle [through the use of the nursing process (assessment, planning, intervention, and evaluation)].

1. The institution shall have a nursing department organized to provide basic nursing services and [as well as] rehabilitation nursing services. A registered nurse with training and experience in rehabilitative nursing shall serve as director of the nursing department.

2. [There shall be] A registered nurse shall be on duty at all times.

a. Nursing staff for each [There shall be registered nurse supervision of nursing staff personnel for each] nursing unit shall be supervised by a registered nurse, in order to insure immediate availability of a registered nurse with rehabilitation experience [for all patients] on a twenty-four (24) hour basis.

b. [There shall be] Other nursing personnel shall be present in sufficient numbers to provide nursing care not requiring the services of a registered nurse.

c. Nursing care shall be documented on each shift by staff members [persons] rendering care to patients. This documentation shall describe the nursing care provided and shall include information and observations significant [of significance which contribute] to the continuity of patient care.

(b) Rehabilitation nursing services [Services] shall include physical and psychosocial assessment [of function] of the following:

1. [All] Body systems related to the patient's physical rehabilitation nursing needs, with special emphasis on skin integrity, bowel and bladder function, and respiratory and circulatory systems function;

2. Self-care skills development;

3. Interpersonal relationships;

4. Adaptation mechanisms and patterns used to manage stress; and

5. Sleep and rest patterns.

(c) Nursing services shall [also] include the following interventions:

1. Health maintenance and discharge teaching;

2. Prevention of the complications of immobility;

3. Physical care including hygiene, skin care, physical transfer from one place to another, positioning, and bowel and bladder care;

4. Psychosocial care including socialization, adaptation to an altered lifestyle; and

5. Reinforcement of the multidisciplinary treatment plan.

(d) A nurse [As appropriate, nurses] shall collaborate with the patient, family, and other disciplines and agencies in dis-

charge planning and teaching.

(e) Rehabilitation [nursing] shall monitor the degree of achievement of individualized nursing patient care goals.

(5) Multidisciplinary team. ~~[There shall be]~~ A multidisciplinary team shall develop ~~[responsible for developing the]~~ individual treatment plans and ~~[.]~~ discharge plans and shall conduct ~~[conducting the]~~ quality assurance reviews. The multidisciplinary team shall ~~[should]~~ include a physician, rehabilitation nurse, social worker~~;~~ or psychologist, and ~~[those]~~ therapists involved in the patient's care. ~~[At a minimum;]~~ A team shall ~~[must]~~ include a physician, rehabilitation nurse and two (2) therapists.

(6) Program manager.

(a) A single program manager shall be designated for each patient served. The provision of services by the institution to each patient shall be organized through the patient's program manager. The program manager shall:

1. Assume responsibility for the patient during the course of treatment;

2. Coordinate the treatment plan; and

3. Cultivate the patient's participation in the program.

(b) When more than one (1) major program is being provided simultaneously, there shall be only one (1) program manager. When the patient's plan changes sequentially from one (1) program area to another, a new program manager may be assigned.

(c) The patient's program manager shall evaluate regularly the appropriateness of the treatment plan in relation to the progress of the patient toward the attainment of stated goals. The program manager shall assure that:

1. The patient ~~[person]~~ is adequately oriented;

2. The plan proceeds in an orderly, purposeful, and timely manner; and

3. The discharge decision and arrangements for follow-up are properly made.

(7) Treatment plan.

(a) The multidisciplinary team, with the participation of the patient shall, within seven (7) days after admission for rehabilitation, develop an individual treatment plan based on the patient's medical evaluation and psychosocial history and assessment, and which should be reviewed at least biweekly. The treatment plan shall include:

1. An ~~[A multidisciplinary]~~ assessment of the biological, social and psychological needs of the patient, ~~[patients]~~ performed by qualified health care professionals;

2. A description of the patient's capacities, strengths, disabilities, and weaknesses;

3. Identification of the patient's rehabilitation goals stated in functional, performance and behavioral objectives relative to the performance of life tasks and capabilities, with criteria for termination of treatment or discharge from the program;

4. Participation of the patient and his~~/her~~ family, to the extent possible;

5. Physician input relative to both the general medical and rehabilitation medical needs of the patient;

6. Discharge planning addressed as part of goal setting as early as possible in the rehabilitation process;

7. Time intervals at which treatment or service outcomes will be reviewed;

8. Anticipated time frame(s) for the accomplishment of the individual's specified goals;

9. The measures to be used to access the effects of treatment or services; and

10. The person ~~[person(s)]~~ responsible for implementation of the plan.

(b) The institution shall obtain and retain a signed consent form where applicable.

(c) The institution shall adopt a procedure to protect against the release of a patient ~~[the person served]~~ to an unauthorized individual if a patient is ~~[when individuals served are]~~ unable to represent his ~~[their]~~ own interests.

(8) Therapeutic services.

(a) ~~[In addition to physician and nursing services]~~ The institution shall provide ~~[the following]~~ allied services directly or under contract. Allied ~~[These]~~ services shall be provided at an intensity

appropriate to the disability and to the patient's response to treatment, with a minimum average level of three (3) to five (5) hours of therapeutic service per person per day at least five (5) days per week.

(b) Occupational therapy services shall be provided by or under the supervision of an individual certified by the American Occupational Therapy Association as an occupational therapist. Services shall include:

1. Assessment and treatment of functional performance; independent living skills; prevocational or ~~[/]~~ work adjustment skills; educational, play or ~~[/]~~ leisure and social skills.

2. Assessment and treatment of performance components; neuromuscular, sensori-integrative, cognitive and psychosocial skills.

3. Therapeutic interventions, adaptations and prevention.

4. Individualized evaluations of past and current performance, ~~[shall be]~~ achieved through observation of individual or group tasks, standardized tests, record review, interviews, or activity histories.

5. Assessment of ~~[Assess]~~ architectural barriers in home and workplace, and recommendation for ~~[recommend]~~ equipment, adaptations, and different arrangements.

6. Treatment goals, ~~[shall be]~~ achieved by ~~[through use of selected]~~ modalities and techniques which include:

a. Task ~~[Tasks]~~ oriented activities; simulation or actual practice of work, self-care, home management, leisure and social skills and their components, creative media, games, computers and other equipment;

b. Prevocational training;

c. Sensorimotor activities;

d. Patient and ~~[/]~~ family education and counseling;

e. Design, fabrication and application of orthotic devices;

f. Guidance in use of adaptive equipment and prosthetic devices;

g. Adaptation to physical and social environment, and use of therapeutic milieu;

h. Joint protection and ~~[/]~~ body mechanics;

i. Positioning;

j. Work simplification and ~~[/]~~ energy conservation; and

k. Cognitive remediation.

7. Occupational therapy services that monitor the extent to which goals are met relative to assessing and increasing patient's functional ability ~~[abilities]~~ in daily living skills.

(c) Physical therapy services shall be provided by or under the supervision of a licensed physical therapist employed on a full-time basis by a freestanding specialty hospital, or at least twenty (20) hours per week for a general hospital based unit.

1. Services shall include the following:

a. An initial physical therapy evaluation and assessment of the patient prior to the provision of services;

b. Development of treatment goals and plans in accord with the initial evaluation findings, with treatment aimed at preventing or reducing disability or pain~~;~~ and restoring lost function;

c. Therapeutic interventions which focus on posture, locomotion, strength, endurance, balance, coordination, joint mobility, flexibility, and restoring loss of function.

2. Physical therapy services shall monitor the extent to which services have met therapeutic goals relative to the initial and all subsequent examinations, and the degree to which improvement occurs relative to the identified movement dysfunction or reduction of pain associated with movement.

(d) Psychological services shall be provided by or under the supervision of a licensed psychologist.

1. Assessment areas shall include psychological, vocational, and neuropsychological functioning.

2. Interventions include individual and group psychotherapy; family consultation and therapy; and design of ~~[such]~~ specialized psychological intervention programs including ~~[as]~~ behavior modification, behavioral treatment regimens for chronic pain ~~[patients]~~, and ~~[the use of]~~ biofeedback and relaxation procedures.

3. Psychological services shall monitor the cognitive and emotional adaptation of the patient and family to the patient's disability.

(e) Speech-language services shall be provided by or under the supervision of a licensed speech-language pathologist certified in [who meets the standards for the Certificate of] Clinical competency by the American Speech-Language, and Hearing Association. Services shall include the following:

1. Screening to identify individuals who require further evaluation to determine the presence or absence of a communicative disorder.

2. Speech and language competency evaluation resulting in the pathologist's plan, direction, and conduction of a [When the speech and language competencies of individuals are evaluated, the pathologist plans, directs and conducts] habilitative, rehabilitative, and counseling programs to improve language, voice, cognitive linguistic skills, articulation, fluency, and adjustment to hearing loss, and an assessment and provision of [assesses and provides] alternative and augmentative communicative devices.

3. A plan [Plans] for discharge and provision [provides] for the patient's understanding of communication abilities and prognosis.

4. Monitoring of services [are monitored] for effectiveness of actions taken to improve communication skills of patients.

(9) The institution shall provide the following services directly or through a contractual arrangement with other providers, as needed, in accordance with the institution's program narrative:

(a) Social work services shall be provided by an individual with a masters degree in social work from a curriculum accredited by the Council for Social Work Education.

1. The scope of rehabilitation social services shall include the following areas related to work assessment and interventions to facilitate rehabilitation:

a. Assessment of the personal coping [coping] history and current psychosocial adaptation to the disability;

b. Assessment of immediate and extended family and other support persons relative to increasing support networks;

c. Assessment of housing, living arrangements, and stability and source of income relative to facilitating discharge plans, [; and]

2. Intervention strategies, aimed at increasing effectiveness of coping, strengthening informal support systems, and facilitating continuity of care, shall include at least the following:

a. Discharge planning [activities];

b. Casework with individual patients;

c. Family counseling and therapy;

d. Group work focused on both education and therapy; and

e. Community service linkage [f] referrals.

3. Social work services shall monitor the achievement of goals relative to discharge planning activities designed to meet the basic sustenance, shelter, and comfort needs of patients and their families.

(b) Audiology services provided by or under the supervision of a licensed audiologist, and certified by the American Speech-Language, and Hearing Association. After determination of the patient's [When the] range, nature, and degree of [the patient's] auditory and vestibular function using instrumentation such as audiometers, electroacoustic emittance equipment, brain stem evoked response equipment, and electronystagmographic equipment, [is determined;] the audiologist shall direct and conduct required [professional plan directs and conducts] aural habilitation and rehabilitation programs. Programs [These] shall include:

1. Hearing aid and assistive listening device selection and orientation;

2. Counseling, guidance and auditory training; and

3. Speech reading.

(c) Vocational and vocational rehabilitation services shall [These services] provide assessment and evaluation of the patient's or [f] client's need for services to enable return to productive activity through the use of testing, counseling, and other service related activities. [These] Identified needs are met either directly or through referral [appropriate referrals]. Services shall include:

1. Evaluation and assessment focusing on maximizing the independent, productive functioning of the individual[; and];

2. Comprehensive services to [shall] include at least [; at a minimum;] the following areas:

a. Physical and intellectual capacity evaluation;

b. Interest and attitudes;

c. Emotional and social adjustment;

d. Work skills and capabilities;

e. Vocational potential and objectives; and

f. Job analysis.

3. The use of [Appropriate] instruments, equipment and methods, under supervision of a qualified therapist; [shall be used;]

4. Preparation of a written report, with interpretation and recommendations, to be [shall be prepared and] shared with the individual and referral source;

5. Monitoring [Services shall monitor] the degree to which appropriate work skills are achieved; the improvement in independent functioning relative to work skill capability; and, the achievement of vocational objectives.

(d) Prosthetic [and/or] orthotic services.

1. Prosthetic and orthotic [These] services shall be provided by a specialist who is [authorized specialists who are] qualified to manage the orthotic [f] prosthetic [f] needs of a patient [disabled persons] by:

a. Performing an examination;

b. [by] Participating in the prescribing of [needed] specialized equipment;

c. [by] Designing and fitting specialized [such] equipment; and

d. [by] Following up to ensure that the equipment is properly functioning and fitting.

2. Monitoring of prosthetic [and/or] orthotic services shall include:

a. Documented evidence of communication with the prescribing physician; and

b. Patient satisfaction with the [orthosis or prosthesis relative to] function and fit of the equipment.

(e) Therapeutic recreation services shall be provided by or under the supervision of a therapeutic recreation specialist, [or under the supervision of] an occupational therapist. The [These] services may be provided in conjunction with occupational therapy services. Services shall include the following:

1. Assessment of the patient's leisure or [f] social or [f] recreational abilities, deficiencies, interests, barriers, life experiences, needs, and potential;

2. Treatments [Treatment services] designed to improve social, emotional, cognitive and physical functional behaviors as a necessary prerequisite to future leisure or [f] social involvement;

3. Leisure education designed to help the patient acquire knowledge, skills and attitudes needed for independent leisure or [f] social involvement, community adjustment, responsible decision-making, and use of free time; and

4. Monitoring which measures the extent to which goals are achieved relative to the use of leisure time and socialization skills.

(f) Pharmaceutical services. The institution shall provide [have adequate provisions] for [the] handling, storing, recording, and distribution [distributing] of pharmaceuticals in accordance with state and federal law [laws and regulations]. A [An adequate] supply of [and other] medicinal agents adequate to meet institutional needs shall be available on site [at all times to meet the requirements of the institution]. They shall be stored in a safe manner and kept properly labeled and accessible. Controlled substances and other dangerous or poisonous drugs shall be handled in a safe manner to protect against their unauthorized use. Controlled substances shall [must] be under double lock. There shall be adequate refrigeration for biologicals and drugs which require refrigeration. [The existing laws, rules and regulations governing drugs and poisons shall be complied with;]

1. An institution which maintains a pharmacy for the compounding and dispensing of drugs shall provide pharmaceutical services under the supervision of a registered pharmacist on a full-time or part-time basis, according to the size and demands of the program.

a. The pharmacist shall be responsible for supervising and coordinating ~~[all]~~ the activities of the pharmacy department.

b. Additional personnel competent in their respective duties shall be provided in keeping with the size and activity of the department.

2. **An institution** ~~[Facilities]~~ not maintaining a pharmacy shall have a drug room utilized only for the storage and distribution of drugs, drug supplies and equipment. Prescription medications shall not be dispensed ~~[by a registered pharmacist]~~ in this area. The drug room shall be operated under the supervision of a pharmacist employed at least on a consultative basis.

a. The consulting pharmacist shall assist in **establishing procedures** ~~[drawing up correct procedures, rules]~~ for the distribution of drugs, and shall visit the institution on a **regular schedule** ~~[regularly scheduled basis in the course of his duties]~~.

b. The drug room shall be kept locked and the key shall be in the possession of a responsible person on the premises, **as** designated by the administrator.

(c) **A record** ~~[Records]~~ shall be kept of **each transaction** ~~[all transactions]~~ of the pharmacy or drug room and **shall be** correlated with other institution records where indicated.

3. **The pharmacist** ~~[In accordance with accounting procedures of the institution, the pharmacy]~~ shall establish and maintain a system of records and bookkeeping, in accordance with policies of the institution, for maintaining **adequate** control over ~~[the]~~ requisitioning and dispensing ~~[of all]~~ drugs and drug supplies, and **for** charging patients for drugs and pharmaceutical supplies.

4. A record of the stock on hand and of the dispensing of all controlled substances shall be maintained in such a manner that the disposition of any particular item may be readily traced.

5. The medical staff in cooperation with the pharmacist and other disciplines, as necessary, shall develop policies and procedures that govern the safe administration of drugs, including:

a. The administration of medications only upon the order of an individual who has been assigned medical clinical privileges or who is an authorized member of the house medical staff;

b. Review of the **ordering practitioner's** ~~[physician's, or dentist's, or other ordering practitioner acting within his statutory scope of practice when applicable]~~ original order, or a direct copy, by the pharmacist dispensing the drugs;

c. The establishment and enforcement of automatic stop orders;

d. Proper accounting for and disposition of unused medications or special prescriptions returned to the pharmacy as a result of the patient being discharged, or when such medications ~~or~~ ~~[/]~~ prescriptions do not meet ~~[sterile and label]~~ requirements **for sterility or labeling**;

e. Provision for emergency pharmaceutical services; and

f. Provision for reporting adverse medication reactions to the appropriate committee of the medical staff.

6. Therapeutic ingredients of medications dispensed shall be included in the United States Pharmacopoeia, National Formulary, United States Homeopath-Pharmacopoeia, New Drugs, or Accepted Dental Remedies, ~~[except for a drug any drugs]~~ unfavorably evaluated therein~~{}]~~, or shall be approved for use by the appropriate committee of the medical staff.

a. A pharmacist shall be responsible for determining specifications and choosing acceptable sources for all drugs, with approval of the appropriate committee of the medical staff.

b. There shall be available a formulary or list of drugs accepted for use in the institution which shall be developed and amended at regular intervals by the appropriate committee of the medical staff.

(g) Radiology services.

1. The institution shall provide diagnostic radiology services directly or through arrangements with a radiology service which has a current license or registration pursuant to KRS 211.842 to 211.850 and **associated** ~~[any]~~ administrative regulations ~~[promulgated thereunder]~~. If the institution provides radiology services directly:

a. The institution shall have a radiologist, on at least a consulting basis to function as medical director of the department

and to interpret films that require specialized knowledge for accurate reading.

b. Personnel adequate to supervise and conduct the services shall be provided.

2. ~~[There shall be]~~ Written policies and procedures governing radiologic services **shall be in accordance with 902 KAR 100:115**. ~~[and administrative routines that support sound radiologic practices]~~.

a. ~~Signed reports shall be filed in the patient's record and duplicate copies kept in the department.~~

b. Radiologic services shall be performed only upon written order of a physician or dentist, and the order shall contain a concise statement of the reason for the service/examination.

c. Reports of interpretations shall be written or dictated and signed by the radiologist.

d. The use of all x-ray apparatus shall be limited to certified radiation operators, under the direction of medical staff members as necessary. The same limitation shall apply to personnel applying and removing radium element, its disintegration products, and radioactive isotopes.]

3. The radiology department shall be free of hazards for patients and personnel. Proper safety precautions shall be maintained against fire and explosion hazards, electrical hazards and radiation hazards.

(h) Laboratory services. The institution shall provide laboratory services directly or through arrangements with a licensed facility which has the appropriate laboratory facilities, or with an independent laboratory licensed pursuant to KRS 333.030 and **associated** ~~[any]~~ administrative regulations ~~[promulgated thereunder]~~.

1. Laboratory facilities and services shall be available at all times.

a. ~~[Adequate provision shall be made to assure the availability of]~~ Emergency laboratory services **shall be available** twenty-four (24) hours a day, seven (7) days a week, including holidays, either in the institution or through a contractual arrangement as specified in subsection (10) of this section.

b. ~~[If services are provided by an outside laboratory:]~~ The conditions, procedures, and availability of ~~[such]~~ services **provided by an outside laboratory** shall be in writing and available in the institution.

2. Dated reports of ~~[all]~~ laboratory services provided shall be filed with the patient's medical record and duplicate copies **shall be** kept in the department.

a. ~~[When work is performed by an outside laboratory:]~~ The original report from **work performed by an outside** ~~[this]~~ laboratory shall be **filed** ~~[contained]~~ in the patient's medical record.

b. The laboratory report shall have the name of the technologist who performed the test.

c. **A request for a laboratory test shall be** ~~[There shall be a procedure for assuring that all requests for laboratory tests are]~~ ordered and signed by **an** ~~[a medical staff member, or other]~~ **ordering practitioner acting within his statutory scope of practice**.

3. If laboratory services are provided directly, there shall be a basic clinical laboratory which provides services necessary for routine examinations.

a. Equipment necessary to perform the basic tests shall be provided by the facility.

b. ~~[All]~~ Equipment shall be in good working order, routinely checked, and **precisely calibrated** ~~[precise in terms of calibration]~~.

c. ~~[Provision shall be made to carry out adequate]~~ Clinical laboratory examinations **shall include** ~~[including]~~ chemistry, microbiology, hematology, serology, and clinical microscopy.

d. There shall be a clinical laboratory director and a sufficient number of supervisors, technologists and technicians to perform promptly and proficiently the tests requested of the laboratory. Laboratory services shall be under the direction of a pathologist on a full-time, part-time, or a consultative basis. The laboratory shall not perform procedures and tests which are outside the scope of training of the laboratory personnel.

(i) Dietary services.

1. The institution shall provide dietary services directly or by

contract.

2. The dietary service shall be organized, directed and staffed to provide quality food service and optimal nutritional care.

a. The dietary 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.

b. The dietary service shall have at least one (1) qualified dietician or nutritionist, either full time, part time, or on a consultative basis, to supervise the nutritional aspects of patient care.

c. Sufficient additional personnel shall be employed to perform assigned duties to meet the dietary needs of all patients.

d. The dietary department shall have available for all dietary personnel current written policies and procedures for food storage, handling, and preparation.

e. An in-service training program, which shall include the proper handling of food, safety and personal grooming, shall be given at least quarterly for new dietary employees.

3. 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 the medical staff member's orders.

4. Meals shall correspond with the posted menu. When changes in menu are necessary, substitutions shall provide equal nutritive value and the changes shall be recorded on the menu. Menus shall be kept on file for thirty (30) days.

5. Each diet [All diets], regular or [and] therapeutic, shall be prescribed in writing, dated, and signed by the attending medical staff member or other ordering practitioner acting within his statutory scope of practice. Ordering information [on the diet order] shall be specific and complete and shall include the title of the diet, modifications in specific nutrients stating the amount to be allowed in the diet, and specific problems that may affect diet or eating habits.

6. Food shall be:

a. Prepared by methods that conserve nutritive value, flavor, and appearance;

b. [and shall be] Served at the proper temperature; and

c. Served [temperatures and] in a form to meet individual patient needs, including cut, chopped, or ground [needs (e.g., it shall be cut, chopped, or ground to meet individual patient needs)].

7. If a patient refuses foods served, nutritious substitutions shall be offered.

8. At least three (3) meals or their equivalent shall be served daily with not more than a fifteen (15) hour span between a substantial evening meal and breakfast, unless otherwise directed by the attending medical staff member. Meals shall be served at regular times. [with] Between-meal or bedtime snacks of nourishing quality shall be offered.

9. The dietary service [institution] shall comply with KRS 217.015 to 217.045 [all applicable provisions of KRS 217.005 to 217.215] [219.011 to KRS 219.081] and 902 KAR 45:005 [(Kentucky's Food Service Establishment Act and Food Service Code)].

(10) If a service is [When services are] provided under contract, the contract shall:

(a) Assure that the service is [services are provided] in accordance with the plan of care approved by the physician responsible for the patient's care, [(except in the case of an adverse reaction to a specific treatment)].

(b) Specify the geographical area [areas] in which the service is [services are] to be furnished;

(c) Provide that personnel and services contracted for meet the same requirements as those which would be applicable if the personnel and services were furnished directly;

(d) Provide that personnel will participate in conferences required to coordinate the care of an individual patient, as needed;

(e) Provide for the preparation of treatment records, with progress notes and observations, and their [for the] prompt incorporation [of such] into the clinical records of the institution; and

(f) Specify the period of time the contract is to be in effect and the manner of termination or renewal.

(11) Outpatient services.

(a) An institution which has an organized outpatient department shall have written policies and procedures relating to the staff, functions of service, and outpatient medical records.

(b) The outpatient department shall be organized in sections or clinics [(clinics)], the number of which shall depend on the size and degree of departmentalization of the medical staff, the available facilities, patient needs [the needs of the patient it serves], and the program narrative.

(c) The outpatient department shall have appropriate cooperative arrangements and communications with community agencies such as home health agencies, the local health department, social and welfare agencies, and other outpatient departments.

(d) Services offered by the outpatient department shall be under the direction of a physician who is a member of the medical staff.

1. A registered nurse shall be responsible for the nursing services of the department.

2. The number and type of other personnel employed shall be determined by the volume and type of services provided and type of patient served in the outpatient department.

(e) Necessary laboratory and other diagnostic tests shall be available either through the facility or a laboratory in a licensed facility or a laboratory licensed pursuant to KRS 333.030 and associated [any] administrative regulations [promulgated thereunder].

(f) Case records shall be maintained and, where appropriate, coordinated with other institution case records.

1. The outpatient medical record shall be filed in a location which ensures ready accessibility to the medical staff members, nurses, and other personnel of the outpatient department.

2. Information in the medical record shall be complete and sufficiently detailed relative to the patient's history, physical examination, laboratory and other diagnostic tests, diagnosis, and treatment to facilitate continuity of care.

TIMOTHY L. VENO, Inspector General

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: May 10, 1999

FILED WITH LRC: May 11, 1999 at 2 p.m.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Adult and Child Health
(As Amended at ARRS, November 9, 1999)

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 sub-

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stances, 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.

CABINET FOR HEALTH SERVICES Department for Public Health Division of Adult and Child Health (As Amended at ARRS, November 9, 1999)

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 a [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 exempts ~~[is to exempt certain stimulant or depressant products]~~ from the provisions of KRS Chapter 218A that stimulant or depressant products 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) Cafergot P-B Suppository, suppository, NDC 00078-0035: pentobarbital 60 mg;
- (80) Cafergot 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) Charpast, 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 so-

- dium 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

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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;
 (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) Spasmin, 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.

CABINET FOR HEALTH SERVICES Department for Public Health Division of Adult and Child Health (As Amended at ARRS, November 9, 1999)

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 a [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 exempts [~~is to exempt certain anabolic steroid products~~] from the provisions of KRS Chapter 218A that anabolic steroid products 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) DURATESTRIN®, 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;
- (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.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Member and Provider Services
(As Amended at ARRS, November 9, 1999)

907 KAR 1:675. Program integrity.

RELATES TO: KRS 205.8451, 205.8453, 42 CFR 431 Sub-part E, 455.12, 455.13, 455.16(c)(4)

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 205.8453(4) [, 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 establishes [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) "Benefit" is defined in KRS 205.8451(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:

- (a) An adult recipient or responsible party has been found, through an investigative process, to have committed MA IPV; and
- (b) 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) [(6)] "Judicial review" means a review of a final agency order [orders] by the appropriate circuit court, plus [any] further appeal to the Kentucky Court of Appeals or Kentucky Supreme Court.

(6) [(7)] "Medicaid intentional program violation" or "MA IPV" [(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 a [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.]

(7) [(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.

(8) [(10)] "Recipient" is [means as] defined in KRS 205.8451.

(9) ~~[(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 1:671.

(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. A Medicaid intentional program violation **shall be deemed to occur** [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 a Medicaid benefit [benefits];

(2) Misrepresenting, concealing, or withholding a fact to obtain a Medicaid benefit [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 a health care benefit [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 with [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, [(4)] 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 **the money expended for benefits by the department during the period of noneligibility** [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; and [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 **unless** [until] the hearing officer:

(1) Rules that the responsible party committed a Medicaid intentional program violation; and

(2) Revokes the recipient's current 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 listed 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 a 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 a [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 GFR 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) [(e)] 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;~~

~~(a) Comply with the requirements of KRS 13B.130;~~

~~(b) [and~~

~~1.] Be binding on the department in that the department shall bear the burden of proof based on the preponderance of evidence;~~

~~(c) [2:] Summarize the facts of the case;~~

~~(d) [3:] Specify the reasons for the decision; and~~

~~(e) [4:] Identify:~~

~~1. [a:] The supporting evidence;~~

~~2. [b:] Kentucky Revised Statutory citations, if applicable; .~~

~~3. [c:] Kentucky administrative regulations; and~~

~~4. [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 a fiscal record or [records and] accountable document [documents].~~

~~(9) The [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, and [but] a hearing officer later determines that the responsible party or representative had good cause for not appearing, pursuant to [as defined in] subsection (2) of this section:~~

~~(a) The previous decision shall be void; and~~

~~(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 the [all] money expended by the department 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 shall continue [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 shall be [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 woman [women] through postpartum.

(2) An individual meeting the criteria for extraordinary circumstances, as determined by the department's peer review organization, shall [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.

(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 who 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,

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of the disqualification period, when the extraordinary circumstance no longer exists. If the disqualification time period expires during the extraordinary circumstance period, an [no] additional ineligibility period shall not 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 a [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 if [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 an [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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

JUSTICE CABINET
Department of Criminal Justice Training
(Amended After Hearing)

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 enforcement 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 1:0110 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 one (1) year [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 privileges, 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) [(e)] 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.

mand.

(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 attending [enrolled in] a basic training course. For purposes of this section, "attending a basic training course" shall include all dates of training and periods when residing in the dormitory. A recruit shall not report to the dormitory having consumed alcoholic beverages, controlled substances, or other intoxicating substances. 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. Testing shall be requested if a department or dormitory staff member, instructor, section supervisor, branch manager, director or commissioner has a reasonable suspicion that the recruit has violated the provisions of this section. Testing may be randomly requested of all members of a basic training class or all dormitory residents. 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-possessioned 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, (b)] 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-possessioned 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 shall [may] be notified of the activity if it constitutes a felony or class A misdemeanor, and may be notified of other activity when appropriate.

(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.

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(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. Penalty: ~~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. A penalty recommendation for the violation shall be solicited 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 [f] 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 for which suspension or [serious enough to authorize] expulsion is authorized, and the facts demonstrate that suspension or expulsion is the appropriate penalty should the recruit be found guilty of the conduct violation.

(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 **forty-eight (48) hours** [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 **five (5)** [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

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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: November 5, 1999

FILED WITH LRC: November 5, 1999 at noon

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 alterna-

tives 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.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Member and Provider Services
(Amended After Hearing)

907 KAR 1:060. Medical transportation.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.030, 194A.050 [194.050], Chapter 205, 42 CFR 440.170, 42 USC 1396(d)[; EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. [Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services.] KRS 205.520 authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the provisions relating to the service of transportation for access to medical services for which payment shall be made by the Medicaid Program in behalf of both the categorically needy and the medically needy.

Section 1. Definitions. (1) "Household" means a single housing unit which is legally considered the residence of one (1) or more persons who may or may not be related. An apartment building, duplex, four-plex, etc. shall not be considered a single housing unit.

(2) "Medical necessity" means a condition requiring medical attention.

(3) "Medical service area" means a county of residence and contiguous counties.

Section 2. Transportation under the Medicaid Program shall be provided only to a Medicaid eligible recipient [recipients] and if necessary, an attendant or parent who accompanies [to accompany] the recipient.

Section 3. Ambulance Services. (1) Ambulance services shall be provided only if:

(a) Service is of medical necessity; and

(b) [medically necessary and if] The criteria shown in this

section are met.

(2) ~~[(+)]~~ Emergency ambulance services shall be provided without preauthorization to and from the nearest hospital emergency room or appropriate medical facility or provider in accordance with [as defined in] 907 KAR 1:061 and specified in the [incorporated] Medical Transportation Services Manual. A statement that the Medicaid recipient received emergency services shall be provided by ~~[obtained from]~~ the medical personnel of the facility which treated the recipient.

(3) ~~[(2)]~~ Nonemergency ambulance services to a hospital, clinic, physician's office or other health facility shall be provided if preauthorized.

(4) If the Department for Community Based Services (DCBS) ~~[Social Insurance]~~ local office is closed, the nonemergency ambulance service shall be postauthorized. Preauthorization and postauthorization shall be performed by the Department for Medicaid Services or its authorized representative in accordance with Section 4 of [utilizing criteria shown in] this administrative regulation.

(5) If a recipient has both Medicare and Medicaid, and if the transportation may be covered by Medicare, the provider shall bill Medicare first, and preauthorization by the local DCBS office shall not be required. If Medicare subsequently denies the payment for the transportation, the provider shall obtain postauthorization. In order to have the transportation postauthorized, the provider shall give a copy of the Medicare denial to the local DCBS office and a voucher shall be issued by DCBS. The voucher shall require only the signature of the transportation provider.

Section 4. Locally Authorized Medical Transportation. (1) A system of preauthorization shall be [transportation preauthorization system] administered at each local Department for Community Based Services office and [Social Insurance office] shall provide for preauthorized nonemergency transportation approvals, including nonemergency ambulance services. A Medicaid-eligible recipient may receive these services if he meets, [limited to the provision of the services under] the following conditions:

(a) The recipient shall be traveling to or from a Medicaid covered service, exclusive of pharmaceutical services;

(b) The service shall be determined to be of medical necessity [medically necessary];

(c) ~~[Payment for transportation shall be necessary to ensure that the medical service is secured; and~~

(d) ~~Failure by the Medicaid Program to pay for transportation results in a hardship to the Medicaid recipient. A hardship shall not be considered to exist if] Free transportation which is appropriate for the recipient's medical needs is not available or [if] use of an appropriate operational household vehicle is not available [appropriate, and is not used for commercial purposes].~~

(2) Locally authorized medical transportation shall be provided ~~[as necessary] on a [an exceptional] postauthorization basis if:~~

(a) ~~[with the additional limitation that postauthorization shall be justified by] The recipient justifies [indicating] the need for medical transportation;~~

(b) ~~The need for transportation services was [arose and was provided] outside normal working hours; and~~

(c) ~~[that] Payment for the transportation has not been made;~~

or

(d) Medicare payment has been denied.

Section 5. Determination of Necessity. (1) ~~[A]]~~ Approvals for nonemergency transportation services and the provision of preauthorization and postauthorization, shall be made by the Department for Medicaid Services or by the department's authorized representative.

(2) If criteria established in Section 4 are met, [Only] transportation within the medical service area shall be approved. Transportation services provided outside the medical service area shall be approved by the Department for Medicaid Services or the department's authorized representative if:

(a) The medical service required by the recipient is not available in the medical service [that] area; and

(b) The recipient is ~~[has been appropriately]~~ referred by a ~~[the]~~ medical provider within his medical service area.

(3) ~~[Only]~~ The least expensive available transportation suitable for the recipient's needs shall be approved.

Section 6. **Appeal Rights. A recipient shall have the right of appeal as established in 907 KAR 1:563.**

Section 7. Incorporation ~~[Material Incorporated]~~ by Reference. (1) The following material is incorporated by reference:

(a) MAP-720 Authorization for emergency ambulance services to facility other than a hospital emergency room, July 1997 edition, Department for Medicaid Services; and

(b) MAP-13 Medical Transportation Voucher, July 1997 edition, Department for Medicaid Services.

(2) This material may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [“Medicaid Transportation Services Manual”, dated January 1996 shall be incorporated by reference in this administrative regulation.

(2) The manual shall be on file in the Office of the Commissioner, Department for Medicaid Services, Cabinet for Health Services, 275 East Main Street, Third Floor East, Frankfort, Kentucky, 40621.

(3) The manual shall be available for review during the normal business week, Monday through Friday, 8 a.m. through 4:30 p.m. (eastern standard time), excluding state holidays.

(4) Each participating in-state provider shall be provided one (1) copy of the manual and appropriate manual updates following their incorporation by reference. Additional copies may be obtained from the Department for Medicaid Services upon payment of an appropriate fee which approximates cost in accordance with KRS 61.872.

Section 7. ~~The provisions of this administrative regulation as amended shall be effective for services provided on or after January 18, 1996.]~~

JIMMY D. HELTON, Secretary
DENNIS BOYD, Commissioner
JOHN H. WALKER, Attorney

APPROVED BY AGENCY: October 28, 1999
FILED WITH LRC: October 28, 1999 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: All emergency and non-emergency providers participating in the Medicaid Program.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Budget neutral.

2. Continuing costs or savings: Budget neutral.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and

enforcement of administrative regulation: Federal and state matching funds.

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

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

(b) Kentucky: No public comments received.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Improve access to medical appointments.

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

(c) If detrimental effect would result, explain detrimental effect: Recipients would not have appropriate transportation to medical appointments.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Member and Provider Services
(Amended After Hearing)

907 KAR 1:061. Payments for medical transportation.

RELATES TO: KRS 205.520, 42 USC 1396, 440.170, 447.200 through 447.205

STATUTORY AUTHORITY: KRS 194A.030, 194A.050 [194.050, Chapter 205, 42 CFR 440.170, 447.200 through 447.205, 42 USC 1396(d), EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. [Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services.] KRS 205.520 authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the method for determining amounts payable by the Department for Medicaid Services for medical transportation services.

Section 1. Definitions. [For purposes of this administrative regulation, the following definitions apply:]

(1) "Advanced life support[^(a)] (ALS) ambulance services" means ambulance services meeting the standards for advanced life support services established in accordance with 902 KAR 14:070, 907 KAR 14:080, 907 KAR 14:082, and 907 KAR 14:084.

(2) "Advanced Life Support (ALS) Medical First Response Providers" means the utilization of certified and licensed emergency medical professionals in accordance with 902 KAR 14:100 to provide advanced prehospital medical care.

(3) "Affiliate ambulance service" means a Class I ground ambulance provider who has entered into a formal written agreement with an ALS medical first response provider to jointly respond to prehospital medical emergencies for coordinated medical care and transportation [as set by the Department for Health Services; if provided by a Medicaid provider appropriately licensed by the Cabinet for Health Services for the provision of ALS services].

(2) "Appropriate medical facility or provider" means a local medical provider other than an emergency room of a hospital who can provide necessary emergency care when a hospital emergency room is not located within the medical service area.

(3) "Air ambulance provider" means an air ambulance service meeting the standards for provision of air ambulance services [as set by the Department for Health Services], if provided by a Medicaid provider [appropriately] licensed [by the Cabinet for Health Services] for the provision of air ambulance services in accordance with 902 KAR 14:090.

(5) [(4)] "Ambulatory recipient who is disoriented" means an individual who is confused, especially with respect to time, place, and identity of persons or objects. The extent of disorientation shall be sufficient to preclude the recipient from safely utilizing, unaccompanied, alternate methods of transportation.

(6) "Appropriate medical facility or provider" means a local medical provider other than an emergency room of a hospital who can provide necessary emergency care when a hospital emergency room is not located within the medical service area.

(7) [(5)] "Attendant" means an individual who accompanies the recipient, if necessary, to, from, and while receiving medical services. A parent who accompanies [must accompany] a minor child shall be [is] considered to be an attendant.

(8) [(6)] "Basic life support[^(a)] (BLS) ambulance services" means ambulance services meeting the standards for basic life support services established in 902 KAR 14:080 [as set by the Department for Health Services;] if provided by a Medicaid provider appropriately licensed [by the Cabinet for Health Services] for the provision of BLS services in accordance with 902 KAR 14:080, 907 KAR 14:082 and 907 KAR 14:084.

(9) [(7)] "Commercial transportation carrier [carriers]" means a commercial carrier which:

(a) Is [those commercial carriers] licensed in accordance with KRS 281A.010(8) [the laws of Kentucky], other states, or of the United States to transport members of the general public; and

(b) Has the authority provided by the Transportation Cabinet to operate in the county in which the transportation services is initiated.

(10) [such as a taxi cab;

(8) "Department" means the Department for Medicaid Services.

(11) [(9)] "Loaded miles" means the miles in which [when] the transportation carrier is transporting at least one (1) recipient to or from a Medicaid covered service. Reimbursement shall be made to a provider for loaded miles only [patient].

(12) [(10)] "Medical condition" means a [is defined as any] condition of the recipient which does not allow him to travel alone or without physical assistance.

(13) "Membership or subscription fee" means a charge from the provider to the recipient which entitles the recipient to free or discounted ambulance transportation services.

(14) [(11)] "Noncommercial group carrier [carriers]" means a vendor licensed in accordance with KRS 281.619, [those vendors] who provides [provide] bus or bus-type medical transportation to an identifiable segment of the eligible recipient group, but not including a vendor [vendors] whose transportation costs are allowable costs under their reimbursement system (except community mental health centers). The segment may be identifiable by geographical boundary, type of medical service required, common medical destination (i.e., clinic, primary care center, etc.), or other similar grouping method. Included within this definition are:

(a) Community action agencies (or successor agencies) providing bus or bus-type service for a poverty or near-poverty area target population; and

(b) Other similar providers as identified by the department.

(15) [(12)] "Nonemergency health transportation services

(NEHT)" means transportation services provided by a Medicaid provider meeting the standards for nonemergency health transportation services and licensed in accordance with 902 KAR 14:060 and 902 KAR 14:070. (16) ~~[as set by the Department for Health Services, if provided by a Medicaid provider appropriately licensed by the Cabinet for Health Services for the provision of NEHT services:~~

(13)] "Private automobile carrier" means a person owning or having access to a private vehicle not used for commercial transportation purposes and who uses that vehicle for the occasional medical transportation of eligible recipients.

(17) [(14)] "Recipient" means an individual who is eligible for Medicaid benefits and meets the criteria for transportation services as defined in 907 KAR 1:060.

(18) [(15)] "Specialty carrier" means a vendor who:

(a) Provides, through specially equipped vehicles, medical transportation for nonambulatory recipients ~~[(those who are required to travel by wheelchair)]~~ or for ambulatory but disoriented recipients;

(b) ~~[(those who are sufficiently disoriented as to time, place, person or objects so as to be unable to travel to or from medical services unaccompanied or unsupervised), and who]~~ Provides services not [normally] available from other transportation vendors; and

(c) Has a disabled persons certificate in accordance with KRS 281.014(5) [- The equipment required shall be a van or similar type vehicle with a ramp or lift for wheelchairs; and the service shall be the accompaniment of the recipient from point of origin to point of destination where the recipient is placed in the charge of the receiving individual, including physical assistance or guidance to the recipient. To be considered a specialty carrier for purposes of reimbursement from the department, the carrier shall be recognized by the department as a specialty carrier] with approval [given] by the department for reimbursement at specialty carrier rates and is licensed appropriately in accordance with KRS Chapter 281.

(19) ~~[- The department may require the submission of documentation designed to show that the vendor is capable of providing specialty carrier service in an adequate and safe manner:~~

(16)] "Upper limit" means the maximum reimbursement rate that the department shall pay the transportation provider for the services provided.

[(17) "Waiting time" means that period of time following provision of transportation to a medical vendor during which the private automobile vendor is waiting for the recipient to receive medical treatment, in order to provide the return trip required by the recipient. In the instance of an eligible recipient being admitted to a medical institution for inpatient care, waiting time is considered to have occurred if the private automobile vendor waits a sufficient period of time to ensure the recipient's admittance to the facility.]

Section 2. Licensed Ambulance Services Reimbursement. (1) The department shall reimburse licensed participating ambulance services at the lesser of their usual and customary charges or the maximum rate established by the department.

(2) The maximum rate shall be the amount arrived at by combining the base rate, mileage allowance, oxygen rate, and cost of other supplies, as applicable:

(a) The base rate for ALS emergency transportation to the emergency room of a hospital shall be set at eighty-five (85) dollars per one (1) way trip; the mileage allowance for trips shall be three (3) dollars and fifty (50) cents per mile for mileage from mile one (1); a flat rate of twenty-five (25) dollars shall be set for an [each] additional recipient with no additional allowance for mileage.

(b) The rate for air ambulance transportation shall be an all-inclusive rate. Reimbursement shall be the provider's usual and customary charge not to exceed the upper limit of \$3,500. A claim [All-claims] for air ambulance transportation services shall be submitted to the department and shall be reviewed for determination that air transport was medically necessary and appropriate.

(c) The base rate for BLS emergency transportation to the

emergency room of a hospital shall be set at sixty-five (65) dollars per one (1) way trip; the mileage allowance for trips shall be two (2) dollars and fifty (50) cents per mile for mileage from mile one (1); a flat rate of twenty (20) dollars shall be set for an [each] additional recipient with no additional allowance for mileage.

(d) The base rate for an [any] ALS or BLS providing emergency ambulance transportation to an appropriate medical facility or provider which is not the emergency room of a hospital shall be set at fifty-five (55) dollars per one (1) way trip; the mileage allowance for trips shall be two (2) dollars per mile from mile one (1); a flat rate of fifteen (15) dollars shall be set for an [each] additional recipient with no additional rate for mileage. Payment shall be contingent upon review of required documentation. Claims shall be reviewed by the department. Required documentation shall be a statement of a medical emergency by the attending medical provider.

(e) The base rate for NEHT services if [when] transporting a recipient who is on a stretcher to a medical provider, other than a pharmacy, shall be set at forty (40) dollars per one (1) way trip; the mileage allowance for trips shall be one (1) dollar and fifty (50) cents per mile. The reimbursement for NEHT services if [when] transporting a recipient who is in a wheelchair shall be in accordance with Section 6 of this administrative regulation.

(f) The base rate for nonemergency transportation for a [all] licensed ambulance service if [services when] no medical care or treatment of a recipient is required or indicated during transport shall be the rate specified in paragraph (e) of this subsection.

(g) An oxygen rate, which is set at ten (10) dollars per one (1) way trip; for a [all] licensed ambulance service [services], excluding air ambulances.

(h) The cost of other itemized supplies for ALS or BLS emergency transportation services shall be the actual cost as reflected on the transportation provider's invoice which shall be maintained in the provider's files and shall be produced upon request by the department.

(i) The base rate for BLS emergency transportation with an ALS medical first response provider to stabilize the patient before the BLS run is completed to the emergency room of a hospital, shall be:

1. Eighty-five (85) dollars per one (1) way trip;
2. Two (2) dollars and fifty (50) cents per mile for mileage from mile one (1); and
3. Flat rate of twenty-five (25) dollars for an additional recipient with no additional allowance for mileage.

(j) The base rate for BLS providing emergency transportation with ALS medical response provider assistance to medical facility or provider which is not the emergency room of a hospital shall be:

1. Fifty-five (55) dollars per one (1) way trip;
2. Two (2) dollars per mile from mile one (1); and
3. Flat rate of fifteen (15) dollars for an additional recipient with no additional rate for mileage.

(k) Payment for services identified in paragraphs (i) or (j) of this subsection shall be contingent upon review of required documentation by the department. Required documentation shall be a statement of medical emergency by the attending medical provider and ALS medical first response provider.

(3) The department shall not reimburse a licensed participating ambulance service provider who charges a membership or subscription fee that entitles the recipient to free or discounted ambulance transportation if a recipient has paid that membership or subscription fee.

Section 3. Commercial Transportation Carrier [Carriers] Reimbursement. The department shall reimburse a participating commercial transportation carrier [carriers] at usual commercial rates with limitations as follows:

(1) For taxi services provided in regulated areas in accordance with KRS 281.635(4), the provider shall be reimbursed the normal passenger rate charged to the general public for a one (1) way trip regardless of the number of Medicaid eligible recipients transported when the trip is within the medical service area ([as defined in 907 KAR 1:060]), i.e., the taxi shall be paid the single

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passenger rate regardless of the number of additional passengers).

(2) For a taxi service in an area [~~taxi services in those areas~~] of the state where taxi rates are not regulated by the appropriate local rate setting authority, and for taxi services in regulated areas when they go outside the medical service area [~~as defined in 907 KAR 1:060~~], the provider shall be reimbursed the normal passenger rate charged the general public for a single passenger [~~(without payment for additional passengers, if any)~~], up to the upper limit [~~(reimbursement for transport of a parent or attendant shall be considered included within the upper limit allowed for the trip)~~]. The upper limit for a taxi transporting a recipient shall be:

(a) The usual and customary charge up to a maximum of six (6) dollars for trips of five (5) miles or less, one (1) way, loaded miles;

(b) The usual and customary charge up to a maximum of twelve (12) dollars for trips of six (6) to ten (10) miles, one (1) way, loaded miles;

(c) The usual and customary charge up to a maximum of twenty (20) dollars for trips of eleven (11) to twenty-five (25) miles, one (1) way, loaded miles;

(d) The usual and customary charge up to a maximum of thirty (30) dollars for trips of twenty-six (26) miles to fifty (50) miles, one (1) way, loaded miles; or

(e) For trips of fifty-one (51) miles or above, the lesser of the usual and customary charge or an amount derived by multiplying one (1) dollar by the actual number of miles, not to exceed a maximum of seventy-five (75) dollars per trip, one (1) way, loaded miles; and

(f) Inclusive of the cost for transporting a parent or attendant

Section 4. Private Automobile Carrier [Carriers] Reimbursement. (1) The department shall reimburse private automobile carriers the minimum rate per mile paid to state employees in accordance with 200 KAR 2:006 [~~at the basic rate of twenty-two (22) cents per mile plus a flat fee of four (4) dollars per recipient if waiting time is required. For round trips of less than five (5) miles the rate shall be computed on the basis of a maximum allowable fee of six (6) dollars for the first recipient plus four (4) dollars each for waiting time for additional recipients.~~].

(2) A private automobile carrier [carriers] shall have a signed participation agreement with the department prior to furnishing a reimbursable medical transportation service and provide proof of a current driver's license and minimum state-required insurance coverage.

(3) [services:

(2) For round trips of five (5) to twenty-five (25) miles the rate for private automobile carriers shall be computed on the basis of a maximum allowable fee of ten (10) dollars for the first recipient plus four (4) dollars each for waiting time for additional recipients. The maximum allowable fee rates shall not be utilized in situations where mileage is paid.

(3) Even though the maximum allowable fee rate when computed on the basis of twenty-two (22) cents per mile plus four (4) dollars for waiting time would not equal the six (6) dollars or ten (10) dollars allowable amounts, the higher amount may be paid to encourage private automobile carriers to provide necessary medical transportation. Additionally, nothing in this section requires the department to pay the amounts specified if the private automobile carrier expresses a preference for reimbursement in a lesser amount; then the lesser amount shall be paid. Toll charges shall be reimbursable if [when] presented with a receipt.

(4) [Waiting time shall be a reimbursable component of the private automobile carrier transportation fee only if waiting time occurs. If waiting time occurs due to admittance of the recipient into the medical institution, the private automobile carrier may be reimbursed for the return trip to the point of recipient pickup as though the recipient were in the vehicle; that is, the total reimbursable amount shall be computed on the basis of the maximum allowable fee or mileage rate plus waiting time as shown in this section. Waiting time shall not be paid for the attendant or caretaker relative (e.g., mother, father) who is accompanying the recipient and not personally being transported for Medicaid covered

service:

(5) If a private automobile carrier is transporting more than one (1) recipient, only one (1) mileage payment shall be allowed. Mileage shall be computed on the basis of the distance between the most remote recipient and the most remote medical service utilized [~~(to include any necessary additional mileage to pick up and discharge the additional recipients).~~].

Section 5. Noncommercial Group Carriers. The department shall reimburse a participating noncommercial group carrier for [~~carriers based on~~] actual reasonable, allowable costs [cost] to the provider based on cost data submitted to the department by the provider; however, the minimum rate shall be twenty (20) cents per recipient per mile transported and the rate upper limit shall be fifty (50) cents per recipient per mile transported. Payment for a parent or other attendant shall be at the recipient rate.

Section 6. Specialty Carriers. (1) Participating specialty carriers shall be reimbursed at the lesser of the following rates:

(a) The actual charge for the service; or

(b) The usual and customary charge for that service by the carrier, as shown in the schedule of usual and customary charges submitted by the carrier to the department; or

(c) The program maximum established for the service.

(2) Program maximums shall be:

(a) For nonambulatory recipients who require the use of a wheelchair, the upper limit shall be twenty-five (25) dollars for the first recipient plus four (4) dollars for each additional [~~nonambulatory~~] recipient transported on the same trip, for each time a recipient is transported to or transported from the medical service site. To this base rate shall be added one (1) dollar and fifty (50) cents per loaded mile for the first recipient for miles the recipient is transported, and toll charges actually incurred and verified; mileage charges shall not be allowed for additional recipients.

(b) For ambulatory recipients who are disoriented, the upper limit shall be twelve (12) dollars and fifty (50) cents for the first recipient plus four (4) dollars for each additional [~~ambulatory disoriented~~] recipient transported on the same trip, for each time a recipient is transported to or transported from the medical service site. To this base rate shall be added one (1) dollar and fifty (50) cents per loaded mile for the first recipient for miles the recipient is transported, and toll charges actually incurred and verified; mileage charges shall not be allowed for additional recipients.

(c) For [both] paragraphs (a) and (b) of this subsection, empty vehicle miles shall not be included when computing allowable reimbursement for mileage.

(3) Reimbursement shall be made at specialty carrier rates for the following types of recipients only:

(a) Nonambulatory recipients who need to be transported by wheelchair, but shall not include recipients who need to be transported as stretcher patients; and

(b) Ambulatory recipients who are disoriented and require an attendant as authorized by a physician.

(4) The recipient or guardian [~~specialty carrier~~] shall obtain a statement from the recipient's physician (or, if the recipient is in a nursing facility, from the director of nursing, charge nurse, or medical director in lieu of a physician) to verify that transportation by the specialty carrier is medically necessary due to the recipient's nonambulatory or disoriented condition. Claims for payment which are submitted without the required statement of verification shall not be paid.

Section 7. Specially authorized transportation services authorized in unforeseen circumstances may be paid for at a rate adequate to secure the necessary service. The amount allowed shall not exceed the usual and customary charge of the provider. The department shall review and approve or disapprove requests for specially authorized transportation services based on medical necessity.

Section 8. Use of Flat Rates. Transportation payment shall not exceed the lesser of:

(1) Six (6) dollars per trip, one (1) way (or twelve (12) dollars

for a round trip); or

(2) The usual fee for the participating transportation provider computed in the usual manner, if:

(a) [(4)] The recipient chooses to use a medical provider outside the medical service area as (defined in 907 KAR 1:060); [and]

(b) [(2)] The medical service is available in the recipient's medical service area; and

(c) [(3)] The recipient has not been appropriately referred by the medical provider within his medical service area.

Section 9. Posting of Rates. A [All] transportation provider [providers], except a private auto provider [providers], shall be allowed to post his [their] rates with the Department for Community-Based Services [Social Insurance] offices in the counties they serve. These rates shall apply for all Medicaid recipients and shall be effective for a twelve (12) month period and may be revised once per quarter. The rate charged to the Medicaid Program shall not exceed the rate charged to the general public.

Section 10. Meals and Lodging. The flat rate for meals and lodgings for a recipient or attendant if [recipients and attendants when] preauthorized (or postauthorized, if appropriate) by the department shall be reimbursed at the actual charge up to the upper limits as paid to state employees in accordance with 200 KAR 2:006. [as follows:

(1) Standard area:

(a) Meals: breakfast -- four (4) dollars per day; lunch -- five (5) dollars per day; dinner -- eleven (11) dollars per day; and

(b) Lodgings: forty (40) dollars per day.

(2) High rate area:

(a) Meals: breakfast -- five (5) dollars per day; lunch -- six (6) dollars per day; dinner -- fifteen (15) dollars per day; and

(b) Lodgings: fifty-five (55) dollars per day.]

Section 11. Limitations. (1) [Any] Reimbursement for medical transportation shall be contingent upon the recipient receiving the appropriate pre- or postauthorization, for medical transportation as required by the department.

(2) [(a)] Authorization shall not be granted for a recipient [recipients] transported for purposes other than to take the recipient to or from a covered Medicaid service [services] being provided to that recipient, except in the instance of one (1) parent accompanying a child to or from a covered medical service [services] being provided to the child or if one (1) attendant is authorized for a recipient traveling to or from a covered medical service [services] based on the medical condition of the recipient.

(3) [(b)] Reimbursement shall be limited to a transportation service [services] and shall not include the service [services], salary or time of the attendant or parent.

[(3) An individual who owns a taxi company and who uses the taxi as his personal vehicle shall be reimbursed at the private auto rate when transporting household family members.]

(4) Mileage for reimbursement purposes shall be computed by the most direct accessible route from point of pick up to point of delivery.

(5) Provisions of this administrative regulation do not apply to recipients in counties served by a human service transportation delivery system in accordance with 603 KAR 7:080 and 907 KAR 3:065.

Section 12. Appeal Rights. A recipient shall have the right of appeal as established in 907 KAR 1:563.

[Section 12. The provisions of this administrative regulation as amended shall be effective for services provided on or after January 18, 1996:]

JIMMY D. HELTON, Secretary
DENNIS BOYD, Commissioner
JOHN H. WALKER, Attorney

APPROVED BY AGENCY; October 26, 1999

FILED WITH LRC: October 28, 1999 at 10 a.m.

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: All emergency and non-emergency providers participating in the Medicaid Program.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Budget neutral.

2. Continuing costs or savings: Budget neutral.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

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

(b) Kentucky: No public comments received.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Improve access to medical appointments.

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

(c) If detrimental effect would result, explain detrimental effect: Recipients would not have appropriate transportation to medical appointments.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: It is anticipated that amending the rates included in this administrative regulation would result in a negligible increase in reimbursement for medical transportation.

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, NOVEMBER 15, 1999

TOURISM CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:225. 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)

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 Oc-

tober 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.

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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: November 15, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1999 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 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 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: Jennifer F. Fields, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-3400, FAX (502) 564-6508.

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 non-waterfowl 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. 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

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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.

**ECONOMIC DEVELOPMENT CABINET
Department of Financial Incentives
Kentucky Enterprise Zone Program
(Amendment)**

306 KAR 1:010. Definitions.

RELATES TO: KRS 154.45-001-154.45-120 [154.655]

STATUTORY AUTHORITY: KRS Chapter 13A, 154.45-070 [154.680(4)]

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation provides definitions for terms used in relation to the Kentucky Enterprise Zone Program. [KRS 154.650 et seq. establishes and directs the Enterprise Zone Authority of Kentucky (hereinafter referred to as the authority) to organize and regulate the implementation of the Enterprise Zone Act. This administrative regulation is being amended to comply with the deficiencies found during quadrennial review by the Task Force on Economic Development. This administrative regulation sets forth definitions.]

Section 1. Definitions. (1) "Area" means a census block or group of census blocks for which census data is available, as determined by Employment Services.

(2) "Authority" means the Kentucky Enterprise Zone Authority.

(3) "Building materials" means tangible personal property that enters into and becomes a permanent part of a building or other structure on land as an improvement to real property. The term shall not include tangible personal property used in the ordinary repair, maintenance or improvement of existing structures, except for remodeling or rehabilitation.

(4) "Designee" means the authorized representative of the local enterprise zone.

(5) "Employee" means a person who works twenty (20) hours or more per week and is employed by a business located in an enterprise zone, but shall not include a person hired by the business to work as a seasonal employee.

(6) "Employment services" means the Workforce Development Cabinet, Department for Employment Services.

(7) "Equipment" means assets used in the operation of a business which are subject to depreciation under Sections 167 and 168 of the Internal Revenue Code, including assets which are expensed under Section 179 of the Internal Revenue Code.

The term "equipment" shall not include the following:

(a) Any tangible personal property used to maintain, restore, mend, or repair machinery or equipment;

(b) Consumable operating supplies;

(c) Office supplies; or

(d) Maintenance supplies.

(8) "Existing business" is defined in KRS 154.45-010(4).

(9) "Machinery" means assets used in the operation of a business which are subject to depreciation under Sections 167 and 168 of the Internal Revenue Code, including assets which are expensed under Section 179 of the Internal Revenue Code that meet the following criteria:

(a) A mechanical device or an integrated combination of mechanical devices designed to perform or produce, through the transmission of force, motion, or energy from one (1) part of the device or devices to another, a certain function, result, or effect;

(b) Any material incorporated into the machinery as a part of its installation; and

(c) Any attached equipment necessary to the mechanical operation of the machinery. Machinery shall not include any tangible personal property purchased and used by the qualified business to maintain, restore, mend or repair machinery.

(10) "New business" is defined in KRS 154.45-010(6).

(11) "Public assistance" means, but is not limited to, Kentucky Transitional Assistance Program benefits, food stamps, or Medicaid benefits.

(12) "Qualified business" is defined in KRS 154.45-010(7).

(13) "Remodeling" means the alteration of an existing building or structure where the value for property tax purposes is increased by at least twenty (20) percent.

(14) "Rehabilitation" means the restoration of an existing building or structure from a state of decay that has been unoccupied for a continuous period of at least twelve (12) months.

(15) "Seasonal employee" means a person who is employed by a qualified business to work only during certain seasons or definite portions of the year.

(16) "Substantial performance in the zone" means services performed by an employee of a qualified business either:

(a) At the location of the qualified business in the enterprise zone; or

(b) Outside the enterprise zone, so long as the services performed outside the enterprise zone are exclusively directed from the location of the qualified business within the enterprise zone and the employee does not have a separate business location outside the enterprise zone.

(17) "Targeted workforce" is defined in KRS 154.45-010(9).

(18) "Unemployed" means a person who received no more than \$1,000 of income from wages for the most recent ninety (90) day period prior to being hired by the business located within the enterprise zone for which information is available to employment services. ["Qualified business" is governed by KRS 154.655(5).

(2) Employees shall include all full-time employees and all part-time employees who are employed on a regular basis by the business physically located within the same zone, and must not be the result of a dismissal.

(3) "Substantial performance in the zone" means any business performed outside of the zone area only if the business originates in the office of the business physically located within the zone, if the employees are dispatched from that office and if the employees are required to report to that office.

(4) New business data source means the Department for Social Insurance, Division of Unemployment Insurance or the Department for Employment Services, Human Resources Cabinet.]

GORDON C. DUKE, Commissioner

ROBIN FIELDS KINNEY, General Counsel

APPROVED BY AGENCY: November 12, 1999

FILED WITH LRC: November 15, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1999 at 10 a.m. in Room G1, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this

hearing shall notify this agency in writing by December 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 cancelled. Persons who need accommodation for a disability should request the needed accommodation in the notification of intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made by a person in his notification of intent to attend the hearing. 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 agency contact person: Phyllis Bruning, Director, Kentucky Enterprise Zone Program, Cabinet for Economic Development, 24th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-7670, FAX: (502) 564-7697.

REGULATORY IMPACT ANALYSIS

Contact Person: Phyllis Bruning

(1) Type and number of entities affected: All Kentucky businesses located in an enterprise zone that apply for certification as an enterprise zone qualified business.

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects on 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: No monetary savings can be quantified.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General fund of the Cabinet for Economic Development.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applicable to this administrative regulation. Tiering was not applied because the provisions apply to all businesses who submit an application for certification as an enterprise zone qualified business.

ECONOMIC DEVELOPMENT CABINET Department of Financial Incentive Kentucky Enterprise Zone Program (Amendment)

306 KAR 1:020. Application process for new or existing business.

RELATES TO: KRS 154.45-001-154.45-120 [154.660]

STATUTORY AUTHORITY: KRS Chapter 13A, 154.45-070 [154.680(4)]

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes the requirements for a new or existing business applying for certification as an enterprise zone qualified business. ~~[is being amended to comply with the deficiencies found during quadrennial review by the Task Force on Economic Development. This administrative regulation sets forth the procedures by which an application is to be made. This administrative regulation also established a procedure to alter the zone's boundary.]~~

Section 1. Application Process for New or Existing Business.

(1) A new business seeking certification as an enterprise zone qualified business shall submit an Application for Qualified Business Certification as a New Business within an Enterprise Zone to the authority which contains the following information:

(a) Certification from Employment Services that an authorized representative from the business has applied for certification and has executed the Kentucky Enterprise Zone Program Employer Orientation form;

(b) Certification from Employment Services for each employee hired by the business that meets the targeted workforce criteria pursuant to KRS 154.45-010 and an executed original of the Kentucky Enterprise Zone Program Employee/Employer Certification form;

(c) An executed original of the Cabinet for Economic Development Economic Incentive Disclosure Statement; and

(d) An executed original of the Application for Qualified Business Certification as a New Business within an Enterprise Zone.

(2) An existing business seeking certification as an enterprise zone qualified business with a minimum of twenty (20) percent increase in capital investment shall submit an application to the authority which contains the following information:

(a) A balance sheet for the business located within the enterprise zone dated within ninety (90) days from the date the application is submitted to the local zone administrator;

(b) An executed original of the Cabinet for Economic Development Economic Incentive Disclosure Statement; and

(c) An executed original of the Application for Qualified Business Certification as an Existing Business within an Enterprise Zone.

(3) An existing business seeking certification as an enterprise zone qualified business with a minimum of twenty (20) percent increase in the number of employees hired, of which at least twenty-five (25) percent are from the targeted workforce, shall submit an application to the authority which contains the following information:

(a) Certification from Employment Services that the business has been informed of the targeted workforce criteria required pursuant to KRS 154.45-010;

(b) Certification from Employment Services for each employee hired by the business meeting the targeted workforce criteria pursuant to KRS 154.45-010;

(c) An executed original of the Cabinet for Economic Development Economic Incentive Disclosure Statement; and

(d) An executed original of the Application for Qualified Business

ness Certification as an Existing Business within an Enterprise Zone.

(4) For a new or existing business seeking certification as an enterprise zone qualified business under subsection (1) of this section, Employment Services shall determine persons employed from the targeted workforce, as follows:

(a) For employees hired who had been unemployed, previous employment history and income from wages shall be considered for the most recent three (3) year period for which employment records and income records are available.

(b) For employees who received public assistance, history of receipt of public assistance shall be considered for the most recent three (3) year period for which public assistance records are available.

Section 2. Application for Expansion of an Enterprise Zone by Local Government. (1) A local government seeking expansion of an enterprise zone shall submit an application to the authority which contains the following information:

(a) An executed original and eleven (11) copies of the Application for Expansion of an Enterprise Zone;

(b) A legal description of the area proposed for expansion;

(c) Certification from Employment Services that the area proposed for expansion meets the eligibility criteria pursuant to KRS 154.45-040;

(d) An executed copy of an interlocal agreement if two (2) or more local governments are included in the area proposed for expansion;

(e) An executed copy of all resolutions adopted by each local government included in the area proposed for expansion; and

(f) A map of the enterprise zone including the area proposed for expansion, drawn at up to a maximum scale of 200 feet to the inch, clearly showing enterprise zone boundaries, streets, property lines, zoning, and census tract, group, or block data.

(2) Upon review of the application for expansion of an enterprise zone, the authority may require any of the following:

(a) Oral presentation by the local government requesting the expansion.

(b) Additional information from a local government included in the area proposed for expansion.

(c) Inspection or evaluation of the area proposed for expansion.

Section 3. Incorporation by Reference. (1) The "Application for Qualified Business Certification as a New Business within an Enterprise Zone (10/99)" is incorporated herein by reference. A copy of the form may be inspected, copied or obtained from the Cabinet for Economic Development Kentucky Enterprise Zone Program, Capital Plaza Tower, 24th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-7670 from 8 a.m. to 4:30 p.m., Monday through Friday.

(2) The "Application for Qualified Business Certification as an Existing Business within an Enterprise Zone (10/99)" is incorporated herein by reference. A copy of the form may be inspected, copied or obtained from the Cabinet for Economic Development Kentucky Enterprise Zone Program, Capital Plaza Tower, 24th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-7670 from 8 a.m. to 4:30 p.m., Monday through Friday.

(3) The "Application for Expansion of an Enterprise Zone (10/99)" is incorporated herein by reference. A copy of the form may be inspected, copied or obtained from the Cabinet for Economic Development Kentucky Enterprise Zone Program, Capital Plaza Tower, 24th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-7670 from 8 a.m. to 4:30 p.m., Monday through Friday.

(4) The "Cabinet for Economic Development Economic Incentive Disclosure Statement (10/99)" is incorporated herein by reference. A copy of the form may be inspected, copied or obtained from the Cabinet for Economic Development Kentucky Enterprise Zone Program, Capital Plaza Tower, 24th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-7670 from 8 a.m. to 4:30 p.m., Monday through Friday.

(5) The "Kentucky Enterprise Zone Program Employer Ori-

entation Form (10/99)" is incorporated herein by reference. A copy of the form may be inspected, copied or obtained from the Cabinet for Economic Development Kentucky Enterprise Zone Program, Capital Plaza Tower, 24th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-7670 from 8 a.m. to 4:30 p.m., Monday through Friday.

(6) The "Kentucky Enterprise Zone Program Employee/Employer Certification Form (10/99)" is incorporated herein by reference. A copy of the form may be inspected, copied or obtained from the Cabinet for Economic Development Kentucky Enterprise Zone Program, Capital Plaza Tower, 24th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-7670 from 8 a.m. to 4:30 p.m., Monday through Friday. [Application Process:

(1) The authority shall make available application forms:

(2) As part of the application review process, the authority may:

(a) Require applicants to submit oral presentations;

(b) Inspect and evaluate the proposed zone area; and

(c) Request additional information as they deem necessary.

(3) Failure of an applicant to receive a designation does not preclude future applications.]

GORDON C. DUKE, Commissioner

ROBIN FIELDS KINNEY, General Counsel

APPROVED BY AGENCY: November 12, 1999

FILED WITH LRC: November 15, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1999 at 10 a.m. in Room G1, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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 cancelled. Persons who need accommodation for a disability should request the needed accommodation in the notification of intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made by a person in his notification of intent to attend the hearing. 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 agency contact person: Phyllis Bruning, Director, Kentucky Enterprise Zone Program, Cabinet for Economic Development, 24th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-7670, FAX: (502) 564-7697.

REGULATORY IMPACT ANALYSIS

Contact Person: Phyllis Bruning

(1) Type and number of entities affected: All Kentucky businesses located in an enterprise zone that apply for certification as an enterprise zone qualified business.

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects on 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: No monetary savings can be quantified.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

- (b) Reporting and paperwork requirements: None
- (4) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on state and local revenues.
- (5) Source of revenue to be used for implementation and enforcement of administrative regulation: General fund of the Cabinet for Economic Development.
- (6) To the extent available from the public comments received, the economic impact, including effects of economic activities from administrative regulation, on:
 - (a) Geographical area in which administrative regulation will be implemented: None
 - (b) Kentucky: None
 - (c) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered.
- (7) Assessment of expected benefits:
- (8) Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: None
 - (a) State whether a detrimental effect on environmental and public health would result if not implemented: No
 - (b) If detrimental effect would result, explain detrimental effect: Not applicable.
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
 - (a) Necessity of proposed regulation if in conflict: Not applicable
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable
- (10) Any additional information or comments: None
- (11) TIERING: Is tiering applied? Tiering is not applicable to this administrative regulation. Tiering was not applied because the provisions apply to all businesses who submit an application for certification as an enterprise zone qualified business.

**ECONOMIC DEVELOPMENT CABINET
Department of Financial Incentive
Kentucky Enterprise Zone Program
(Amendment)**

306 KAR 1:030. Eligibility requirements for expansion of an enterprise zone.

RELATES TO: KRS 154.45-001-154.45-120 [154.665]
STATUTORY AUTHORITY: KRS Chapter 13A, 154.45-070 [154.680(4)]

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes the eligibility requirements for expansion of an existing enterprise zone. [is being amended to comply with the deficiencies found during quadrennial review by the Task Force on Economic Development. This administrative regulation establishes specific eligibility criteria for designation of enterprise zones.]

Section 1. Expansion of an Enterprise Zone. (1) The average rate of unemployment as required by KRS 154.45-040(a) and the income data required pursuant to KRS 154.45-040(b) shall be determined by the most recent decennial United States census available to Employment Services.

(2) The decrease in population required pursuant to KRS 154.45-040(c) shall be determined by the most recent population data available and certified by Employment Services. (Eligibility Requirements. KRS 154.665 establishes the areas eligible for designation as an enterprise zone:

- (1) Average rate of unemployment for areas seeking eligibility for an enterprise zone shall be determined by:
 - (a) The 1990 decennial United States Census; or
 - (b) Other statistical data based on Bureau of Labor Statistics Methodology:
 - (2) Income data shall be based on:
 - (a) The 1990 decennial United States Census; or

(b) ~~Authority approval of a study or survey by another source.;~~

GORDON C. DUKE, Commissioner
ROBIN FIELDS KINNEY, General Counsel

APPROVED BY AGENCY: November 12, 1999

FILED WITH LRC: November 15, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1999 at 10 a.m. in Room G1, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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 cancelled. Persons who need accommodation for a disability should request the needed accommodation in the notification of intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made by a person in his notification of intent to attend the hearing. 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 agency contact person: Phyllis Bruning, Director, Kentucky Enterprise Zone Program, Cabinet for Economic Development, 24th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-7670, FAX: (502) 564-7697.

REGULATORY IMPACT ANALYSIS

Contact Person: Phyllis Bruning

(1) Type and number of entities affected: All Kentucky businesses located in an enterprise zone that apply for certification as an enterprise zone qualified business.

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects on 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: No monetary savings can be quantified.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General fund of the Cabinet for Economic Development.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered.

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environmental and

public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applicable to this administrative regulation. Tiering was not applied because the provisions apply to all businesses who submit an application for certification as an enterprise zone qualified business.

**ECONOMIC DEVELOPMENT CABINET
Department of Financial Incentive
Kentucky Enterprise Zone Program
(Amendment)**

306 KAR 1:040. Qualified business certificates. [Qualification:]

RELATES TO: KRS 154.45-001-154.45-120 [154-680]

STATUTORY AUTHORITY: KRS Chapter 13A, 154.45-070 [154-680(4)]

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes the procedure when issuing a qualified business enterprise zone certificate and the use of revenue exemption certificates. [sets forth the requirements imposed upon a qualified business prior to their obtaining the benefits under KRS Chapters 132, 138, 139 and 141.]

Section 1. Qualified Business Certificates. (1) To determine if a qualified business or a business applying for certification as a qualified business having more than one (1) business location within the same enterprise zone is eligible to have additional locations certified under the same enterprise zone qualified business number, the authority shall consider if each business location is operating under the same federal employer identification number or Social Security number.

(2) A qualified business or a business applying for certification as a qualified business certified by the authority as having more than one (1) business location operating under the same federal employer identification number or Social Security number within the same enterprise zone may be issued a separate certificate with the same enterprise zone business number and a separate location number, in parentheses, for each additional location within the same enterprise zone.

(3) A qualified business certified by the authority as having more than one (1) business location operating under the same federal employer identification number or Social Security number within the same enterprise zone shall only be entitled to claim an exemption pursuant to KRS 154.45-090 for the additional business location from the date the additional business location was certified by the authority.

Section 2. Change of Business Name or New/Additional Location to Qualified Business Certificate. When a qualified business plans to move from a certified location to a new location within the same enterprise zone or changes the name of the qualified business, the qualified business shall request a new certificate from the authority by submitting either an executed original of a Request for Change or Additional Location to Enterprise Zone Qualified Business Certificate form or a letter signed by an authorized representative of the business and the local enterprise zone authorized representative containing the same information requested on the above-mentioned form. Any previously qualified business that changes location or adds an additional location within an enterprise zone or changes its name

shall not be eligible for any exemptions provided by KRS 154.45-090 unless the authority issues an updated certificate.

Section 3. Merger or Sale of qualified business. (1) A qualified business sold or merged with another business that remains within the same enterprise zone and continues normal operation of the qualified business may be eligible to have the qualified business certificate transferred provided the business seeking to retain certification as a qualified business maintains the eligibility requirements pursuant to KRS 154.45-010.

(2) To retain certification resulting from the sale or merger of a qualified business, the business seeking to retain the qualified business certificate shall submit to the authority the following information:

(a) An executed original of a Request for Change or Additional Location to Enterprise Zone Qualified Business Certificate form;

(b) Verification from the original enterprise zone qualified business that it agrees to surrender its qualified business certificate;

(c) Verification that the business seeking to retain certification meets the criteria pursuant to KRS 154.45-010; and

(d) The federal employer identification number (FEIN) of the business seeking to retain certification as a qualified business.

Section 4. Revenue Exemption Certificates. (1) To claim an exemption on sales and use tax for building materials used for remodeling, rehabilitation, or new construction within an enterprise zone, the property owner within an enterprise zone shall complete Revenue Form 51A152 and submit it to the vendor at the time the building materials are purchased.

(2) To claim an exemption on sales and use tax for new and used machinery and equipment purchased and used within the enterprise zone, a qualified business shall complete Revenue Form 51A151 and submit it to the vendor at the time the machinery or equipment is purchased.

(3) To claim an exemption on sales and use tax for exempt building materials, machinery or equipment installed in an enterprise zone, a contractor having contracts with a qualified business or other property owner within an enterprise zone must jointly execute the appropriate certificate of exemption with the person or business entitled to receive the exemption.

(4) To claim an exemption on vehicle usage tax for commercial and noncommercial vehicles purchased and used by the qualified business solely for business use, the qualified business shall complete Revenue Form 71A151 and submit it to the county clerk in the county where the vehicle is registered.

(5) To claim the enterprise zone tax credit exemption, a qualified business that files its state income tax pursuant to KRS 141.040 shall submit a Schedule EZC Form 720, 41A720EZC with its state income tax return.

Section 5. Incorporation by Reference. (1) The "Request for Change or Additional Location to Enterprise Zone Qualified Business Certificate (10/99)" is incorporated by reference. A copy of the form may be inspected, copied or obtained from the Cabinet for Economic Development Kentucky Enterprise Zone Program, Capital Plaza Tower, 24th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-7670 from 8 a.m. to 4:30 p.m., Monday through Friday.

(2) The "Enterprise Zone Sales And Use Tax Exemption Certificate for Qualified Businesses Machinery And Equipment (7/92)" is incorporated by reference. A copy of the form may be inspected, copied or obtained from the Cabinet for Economic Development Kentucky Enterprise Zone Program, Capital Plaza Tower, 24th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-7670 from 8 a.m. to 4:30 p.m., Monday through Friday.

(3) The "Enterprise Zone Sales And Use Tax Exemption Certificate for Building Materials (1/94)" is incorporated by reference. A copy of the form may be inspected, copied or obtained from the Cabinet for Economic Development Kentucky Enterprise Zone Program, Capital Plaza Tower, 24th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-7670 from 8 a.m. to 4:30

p.m., Monday through Friday.

(4) The "Enterprise Zone Motor Vehicle Usage Tax Exemption Certification (6/92)" is incorporated by reference. A copy of the form may be inspected, copied or obtained from the Cabinet for Economic Development Kentucky Enterprise Zone Program, Capital Plaza Tower, 24th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-7670 from 8 a.m. to 4:30 p.m., Monday through Friday.

(5) The "Enterprise Zone Tax Credit Schedule EZC Form 720 (10/98)" is incorporated by reference. A copy of the form may be inspected, copied or obtained from the Cabinet for Economic Development Kentucky Enterprise Zone Program, Capital Plaza Tower, 24th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-7670 from 8 a.m. to 4:30 p.m., Monday through Friday. [Qualification: (1) Existing business' increase in capital investment will be based on:

- (a) Fixed assets;
- (b) A firm's net fixed assets:

1. As shown on the firm's most recent interim financial statement;

2. Dated within sixty (60) days of the date of application for certification as a qualified business:

- (2) The authority shall require:

(a) The firm's most recent fiscal or calendar year-end financial statement;

(b) Reports will be sent to the Kentucky Enterprise Zone Authority, Economic Development Cabinet, Frankfort, Kentucky: The authority may request appropriate financial statements which reflects the firm's increase in order to verify the fulfillment of the contract.

(3) Existing business' increase in number of employees shall be verified by the Department of Employment Services, Human Resources Cabinet, if hiring has been placed through this agency:

(a) By appropriate financial statements showing a breakout of employment and payroll; or

- (b) By affidavit of an authorized company official.

(4) New business' increase in number of employees shall be verified by the Department of Employment Services, Human Resources Cabinet, if hiring has been placed through this agency by appropriate financial statements showing a breakout of employment and payroll.

Section 2. Monitoring. The authority may monitor, audit and perform other investigations necessary to assure compliance with the requirements under the Act.

Section 3. Removal of Qualification. Should the authority determine that a qualified business has not fulfilled the terms of the contract used for certification or has not acted in good faith, the authority shall give written notice to the qualified business in question by certified mail. Within sixty (60) days of receipt of said notice, the qualified business may respond to the authority. The authority will render its decision within sixty (60) days of said response.]

GORDON C. DUKE, Commissioner
ROBIN FIELDS KINNEY, General Counsel

APPROVED BY AGENCY: November 12, 1999

FILED WITH LRC: November 15, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1999 at 10 a.m. in Room G1, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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 cancelled. Persons who need accommodation for a disability should request the needed accommodation in the notification of intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written re-

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REGULATORY IMPACT ANALYSIS

Contact Person: Phyllis Bruning

(1) Type and number of entities affected: All Kentucky businesses located in an enterprise zone that apply for certification as an enterprise zone qualified business.

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects on 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: No monetary savings can be quantified.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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(b) Kentucky: None

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applicable to this administrative regulation. Tiering was not applied because the provisions apply to all businesses who submit an application for certification as an enterprise zone qualified business.

ECONOMIC DEVELOPMENT CABINET
Department of Financial Incentive
Kentucky Enterprise Zone Program
(Amendment)

306 KAR 1:070. Duties of the authority.

RELATES TO: KRS 154.45-001-154.45-120 [154.680]

STATUTORY AUTHORITY: KRS Chapter 13A, 154.45-070 [154.680]

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation ~~establishes the duties of the authority. [is being amended to comply with the deficiencies found during quadrennial review by the Task Force on Economic Development. This administrative regulation sets forth the functions of the authority.]~~

Section 1. An annual report shall be prepared by the designee and submitted in writing to the authority each year at the annual meeting. The report shall include, but not be limited to, reaffirmation of the local government's commitment and incentives offered to a qualified business, the number of qualified businesses certified, the number of active qualified businesses, the number of qualified businesses decertified, and a statement regarding any changes in the make-up or structure of the enterprise zone. [Duties of the Authority. (1) By a vote of the majority of the authority or of those eligible to vote the zone shall be designated and determined eligible for the benefits available under this act:

(2) The authority shall keep all applications on file as a repository of information to be made available to other applicants as well as to assist the authority in assisting a designated area seeking federal Enterprise Zone status:

(3) The authority shall prepare guidelines and such other information as may be necessary from time to time to assist local governments and employers in obtaining the benefits of any incentive or inducement program provided by law and to further certify that qualified employers are made eligible for the benefits of this act.

Section 2. Conditions. ~~The application submitted by the applicant and the subsequent approval of said application by the authority and designation of an area as enterprise zone as submitted by applicant shall constitute a contract between the applicant and the authority which shall be binding as to both terms and conditions:~~

Section 3. Annual Review. ~~An annual report is to be prepared by the designee and submitted to the authority by February 15 each year wherein the designee certifies continued compliance with the requirements of the act and makes note of all changes in the zone's make-up and structure. This review shall be for informational and monitoring purposes:]~~

GORDON C. DUKE, Commissioner
ROBIN FIELDS KINNEY, General Counsel

APPROVED BY AGENCY: November 12, 1999

FILED WITH LRC: November 15, 1999 at 10 a.m.

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to be heard at the public hearing, or written comments on the proposed administrative regulation to the agency contact person: Phyllis Bruning, Director, Kentucky Enterprise Zone Program, Cabinet for Economic Development, 24th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-7670, FAX: (502) 564-7697.

REGULATORY IMPACT ANALYSIS

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(1) Type and number of entities affected: All Kentucky businesses located in an enterprise zone that apply for certification as an enterprise zone qualified business.

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects on 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: No monetary savings can be quantified.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General fund of the Cabinet for Economic Development.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applicable to this administrative regulation. Tiering was not applied because the provisions apply to all businesses who submit an application for certification as an enterprise zone qualified business.

JUSTICE CABINET
Department of Corrections
Division of Adult Institutions
(Amendment)

501 KAR 6:050. Luther Lockett Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.

Section 1. Incorporation by Reference. (1)(a) Luther Lockett Correctional Complex policies and procedures, November 15, 1999 [June 12, 1997], are incorporated by reference.

(b) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m.

(2) Luther Lockett Correctional Complex policies and procedures include:

LLCC 01-12-01 Duty Officer Responsibilities (Amended 11/15/99)
LLCC 01-13-01 Smoking: LLCC Facility (Amended 11/15/99) [Policy]
LLCC 02-01-02 Fiscal Management: Accounting Procedures
LLCC 02-01-03 Fiscal Management: Agency Funds (Amended 11/15/99)
LLCC 02-01-04 Fiscal Management: Insurance (Amended 11/15/99) [Policy]
LLCC 02-03-01 Fiscal Management: Audits
LLCC 02-05-05 Canteen Purchase Durable Items (Added 11/15/99)
LLCC 02-06-01 Inmate Control of Personal Funds (Amended 11/15/99) (Renumbered from LLCC 20-05-01)
LLCC 02-06-02 Storage and Disposition of Monies Received on Weekends, Holidays and between 4 p.m. and 8 a.m. Weekdays (Amended 11/15/99) (Renumbered from LLCC 20-05-02)
LLCC 06-01-01 [08-01-01] Offender Records (Amended 11/15/99)
LLCC 06-04-01 [08-04-01] Storage of Void Disciplinary Records (Amended 11/15/99)
LLCC 06-05-01 [08-05-01] Psychological and Psychiatric Reports (Amended 11/15/99)
LLCC 10-01-01 Special Management Inmates (Amended 11/15/99) (Renumbered from LLCC 12-01-01)
LLCC 11-01-01 Dining Room Guidelines (Amended 11/15/99) (Renumbered from LLCC 13-01-01)
LLCC 11-04-01 Food Service Meals (Amended 11/15/99) (Renumbered from LLCC 13-04-01)
LLCC 11-04-02 Food Service: Menu, Nutrition and Special Diets (Amended 11/15/99) (Renumbered from LLCC 13-04-02)
LLCC 11-05-02 Medical Screening of Food Handlers (Amended 11/15/99) (Renumbered from LLCC 13-05-02)
LLCC 11-06-01 Food services: Inspections and Sanitation (Amended 11/15/99) (Renumbered from LLCC 13-06-01)
LLCC 11-07-01 Food Services: Purchasing and Farm Products (Amended 11/15/99) (Renumbered from LLCC 13-07-01)
LLCC 11-08-01 OJT Food Service Training Placement (Amended 11/15/99) (Renumbered from LLCC 13-08-01)

[LLCC 11-09-01 Rules and Regulations of the Unit (Amended 6/12/97) (Deleted 11/15/99) (Renumbered to LLCC 15-01-04) (Amended 6/12/97)
LLCC 11-13-01 Inmate Dress and Use of Access Areas (Deleted 11/15/99) (Renumbered to LLCC 15-01-05)
[LLCC 11-19-01 Unit Shakedowns and Control of Excess Property (Amended 6/12/97) (Deleted 11/15/99) (Renumbered to LLCC 15-01-08)
LLCC 11-20-01 Mental Health Services (Amended 6/12/97)
LLCC 12-01-01 Sanitation, Living Condition Standards and Clothing Issues (Amended 11/15/99) (Renumbered from LLCC 14-01-01) [Special Management Inmates (Amended 6/12/97)]
LLCC 13-01-01 Health Maintenance Services: Sick Call and Pill Call (Amended 11/15/99) (Renumbered from LLCC 15-01-01) [Dining Room Guidelines (Amended 6/12/97)]
LLCC 13-01-02 Medical Services Co-Pay (Added 11/15/99)
LLCC 13-03-03 Medication Receipt Storage, Dispensing, and Administration (Amended 11/15/99) (Renumbered from LLCC 15-03-03)
LLCC 13-03-04 Inmate Self-Administration of Medication (Amended 11/15/99) (Renumbered from LLCC 15-03-04)
LLCC 13-03-05 Use of Psychotropic Medications (Amended 11/15/99) (Renumbered from LLCC 15-03-05)
[LLCC 13-04-01 Food Service: Meals (Amended 6/12/97) (Deleted 11/15/99) (Renumbered to LLCC 11-04-01)
LLCC 13-04-02 Food Service: Menu, Nutrition and Special Diets (Amended 6/12/97) (Deleted 11/15/99) (Renumbered to LLCC 11-04-02)]
LLCC 13-05-02 Licensure and Training Standards (Amended 11/15/99) (Renumbered from LLCC 15-05-02) [Medical Screening of Food Handlers (Amended 6/12/97)]
LLCC 13-06-01 Mental Health Services (Added 11/15/99) [Food Service: Inspections and Sanitation (Amended 6/12/97)]
LLCC 13-06-02 Specialized Health Services (Amended 11/15/99) (Renumbered from LLCC 15-06-02)
LLCC 13-06-03 Emergency Medical Dental Care and Mental Health Services (Amended 11/15/99) (Renumbered from LLCC 15-06-03)
LLCC 13-06-04 First Aid and CPR Training Program (Amended 11/15/99) (Renumbered from LLCC 15-06-04)
LLCC 13-07-01 Health Records (Amended 11/15/99) (Renumbered from LLCC 15-07-01) [Food Service: Purchasing and Farm Products]
LLCC 13-08-01 Special Diets (Amended 11/15/99) (Renumbered from LLCC 15-08-01) [OJT Food Service Training Placement]
LLCC 13-10-01 Inmate Medical Screenings and Health Evaluations (Amended 11/15/99) (Renumbered from LLCC 15-10-01)
LLCC 13-14-01 Informed Consent (Amended 11/15/99) (Renumbered from LLCC 15-14-01)
LLCC 13-15-01 Medical Restraints (Amended 11/15/99) (Renumbered from LLCC 15-15-01)
LLCC 13-16-01 Health Education and Special Health Programs (Amended 11/15/99) (Renumbered from LLCC 15-16-01)
LLCC 13-17-01 Serious Infectious Diseases (Amended 11/15/99) (Renumbered from LLCC 15-17-01)
LLCC 14-01-01 Inmate Rights and Responsibilities (Amended 11/15/99) (Renumbered from LLCC 16-01-01) [Sanitation, Living Condition Standards, and Clothing Issue (Amended 6/12/97)]
LLCC 14-03-01 Inmate Legal Services (Amended 11/15/99) (Renumbered from LLCC 16-03-01)
[LLCC 14-05-01 Institutional Inspections (Deleted 11/15/99)
LLCC 15-01-01 Health Maintenance Services: Sick Call and Pill Call (Deleted 11/15/99) (Renumbered to LLCC 13-01-01)]

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<u>LLCC 15-01-04</u>	<u>Rules and Regulations of the Unit (Amended 11/15/99) (Renumbered from LLCC 11-09-01)</u>	<u>[LLCG 18-01-01]</u>	<u>Inmate Correspondence (Amended 6/12/97) (Deleted 11/15/99) (Renumbered to LLCC 16-01-01)</u>
<u>LLCC 15-01-05</u>	<u>Inmate Dress and Access Areas (Amended 11/15/99) (Renumbered from LLCC 11-13-01)</u>	<u>LLCG 18-01-02</u>	<u>Inmate Privileged or Legal Mail Policy (Deleted 11/15/99) (Renumbered to LLCC 16-01-02)</u>
<u>LLCC 15-01-08</u>	<u>Searches and Control of Excess Property (Amended 11/15/99) (Renumbered from LLCC 11-19-01)</u>	<u>LLCG 18-01-03</u>	<u>Inmate Packages (Deleted 11/15/99) (Renumbered to LLCC 16-01-03)</u>
<u>[LLCG 15-03-01]</u>	<u>Pharmacy Procedure (Amended 6/12/97) (Deleted 11/15/99)</u>	<u>LLCG 18-02-01</u>	<u>Inmate Visiting (Deleted 11/15/99) (Renumbered to LLCC 16-02-01)</u>
<u>LLCG 15-03-02</u>	<u>Pharmacy Personnel (Deleted 11/15/99)</u>	<u>LLCG 18-02-03</u>	<u>Modification of Visitation Privileges (Deleted 11/15/99) (Renumbered to LLCC 16-02-03)</u>
<u>LLCG 15-03-03</u>	<u>Distribution, Procurement and Control (Amended 6/12/97) (Deleted 11/15/99) (Renumbered to LLCC 13-03-03)</u>	<u>LLCG 18-02-04</u>	<u>Meritorious Visits (Deleted 11/15/99) (Renumbered to LLCC 16-02-04)</u>
<u>LLCG 15-03-04</u>	<u>Inmate Self Administration of Medication (Amended 6/12/97) (Deleted 11/15/99) (Renumbered to LLCC 13-03-04)</u>	<u>LLCG 18-03-01</u>	<u>Entry and Identification of Visitors for Inmate Visitation (Deleted 11/15/99) (Renumbered to LLCC 16-03-01)</u>
<u>LLCG 15-03-05</u>	<u>Use of Psychotropic Medications (Amended 6/12/97) (Deleted 11/15/99) (Renumbered to LLCC 13-03-05)</u>	<u>LLCC 18-03-03</u>	<u>Inmate Visiting Disciplinary Segregation Administrative Segregation</u>
<u>LLCG 15-05-02</u>	<u>Licensure and Training Standards (Amended 6/12/97) (Deleted 11/15/99) (Renumbered to LLCC 13-05-02)</u>	<u>[LLCG 18-03-04]</u>	<u>Parole Hearings (Deleted 11/15/99) (Renumbered to LLCC 16-03-04)</u>
<u>LLCG 15-06-02</u>	<u>Specialized Health Services (Amended 6/12/97) (Deleted 11/15/99) (Renumbered to LLCC 13-06-02)</u>	<u>LLCC 19-01-01</u>	<u>On-the-job Training and Job Assignments (Amended 11/15/99) (Renumbered from LLCC 22-01-01)</u>
<u>LLCG 15-06-03</u>	<u>Emergency Medical and Dental Care Services (Amended 6/12/97) (Deleted 11/15/99) (Renumbered to LLCC 13-06-03)</u>	<u>LLCC 20-01-01</u>	<u>Education Programs (Added 11/15/99) [Personal Property Control (Amended 6/12/97)]</u>
<u>LLCG 15-06-04</u>	<u>First Aid/CPR Training Program (Deleted 11/15/99) (Renumbered to LLCC 13-06-04)</u>	<u>LLCC 20-04-01</u>	<u>Inmate Canteen Committee</u>
<u>LLCG 15-06-05</u>	<u>Suicide Prevention and Intervention Program (Amended 6/12/97) (Deleted 11/15/99)</u>	<u>[LLCG 20-04-02]</u>	<u>Inmate Canteen (Deleted 11/15/99)</u>
<u>LLCG 15-07-01</u>	<u>Health Records (Amended 6/12/97) (Deleted 11/15/99) (Renumbered to LLCC 13-07-01)</u>	<u>LLCC 20-04-03</u>	<u>Canteen Purchases</u>
<u>LLCG 15-08-01</u>	<u>Special Diets (Deleted 11/15/99) (Renumbered to LLCC 13-08-01)</u>	<u>[LLCG 20-05-01]</u>	<u>Inmate Control of Personal Funds (Deleted 11/15/99) (Renumbered to LLCC 02-06-01)</u>
<u>LLCG 15-10-01</u>	<u>Inmate Medical Screening and Health Evaluations (Deleted 11/15/99) (Renumbered to LLCC 13-10-01)</u>	<u>LLCG 20-05-02</u>	<u>Storage and Disposition of Monies Received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays (Deleted 11/15/99) (Renumbered to LLCC 02-06-02)</u>
<u>LLCG 15-14-01</u>	<u>Informed Consent (Deleted 11/15/99) (Renumbered to LLCC 13-14-01)</u>	<u>LLCG 20-05-03</u>	<u>Theft of Inmate Personal Property (Amended 6/12/97) (Deleted 11/15/99) (Renumbered to LLCC 17-04-01)</u>
<u>LLCG 15-15-01</u>	<u>Medical Restraints (Deleted 11/15/99) (Renumbered to LLCC 13-15-01)</u>	<u>LLCG 20-06-01</u>	<u>Procedure for Sending Appliances to Outside Dealers for Repair (Amended 6/12/97) (Deleted 11/15/99) (Renumbered to LLCC 17-05-01)</u>
<u>LLCG 15-16-01</u>	<u>Health Education/Special Health Programs (Deleted 11/15/99) (Renumbered to LLCC 13-16-01)</u>	<u>LLCG 22-01-01</u>	<u>On-the-job Training Assignment (Amended 6/12/97) (Deleted 11/15/99) (Renumbered to LLCC 19-01-01)</u>
<u>LLCG 15-17-01</u>	<u>Serious and Infectious Diseases (Deleted 11/15/99) (Renumbered to LLCC 13-17-01)</u>	<u>LLCC 23-01-01</u>	<u>Religious Services (Amended 11/15/99) (Renumbered from LLCC 26-01-01) [Educational Programs (Amended 6/12/97)]</u>
<u>LLCC 16-01-01</u>	<u>Inmate Correspondence (Amended 11/15/99) (Renumbered from LLCC 18-01-01) [Inmate Rights and Responsibilities (Amended 6/12/97)]</u>	<u>[LLCG 26-01-01]</u>	<u>Religious Services (Amended 6/12/97) (Deleted 11/15/99) (Renumbered to LLCC 23-01-01)</u>
<u>LLCC 16-01-02</u>	<u>Inmate Privileged or Legal Mail (Amended 11/15/99) (Renumbered from LLCC 18-01-02)</u>	<u>LLCG 26-01-02</u>	<u>Prayer (Amended 6/12/97) (Deleted 11/15/99)</u>
<u>LLCC 16-01-03</u>	<u>Inmate Packages (Amended 11/15/99) (Renumbered from LLCC 18-01-03)</u>	DOUG SAPP, Commissioner	
<u>LLCC 16-02-01</u>	<u>Inmate Visiting (Amended 11/15/99) (Renumbered from LLCC 18-02-01)</u>	TAMELA BIGGS, Staff Attorney	
<u>LLCC 16-02-03</u>	<u>Modification of Visitation Privileges (Amended 11/15/99) (Renumbered from LLCC 18-02-03)</u>	APPROVED BY AGENCY: November 10, 1999	
<u>LLCC 16-02-04</u>	<u>Meritorious Visitation Program (Amended 11/15/99) (Renumbered from LLCC 18-02-04)</u>	FILED WITH LRC: November 15, 1999 at 9 a.m.	
<u>LLCC 16-03-01</u>	<u>Entry and Identification of Visitors for Inmate Visitation (Amended 11/15/99) (Renumbered from LLCC 18-03-01) [Inmate Legal Services (Amended 6/12/97)]</u>	PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 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 December 15, 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.	
<u>LLCC 16-03-04</u>	<u>Parole Hearings: Media and Visitors (Amended 11/15/99) (Renumbered from LLCC 18-03-04)</u>	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.	
<u>LLCC 17-04-01</u>	<u>Personal Property Control (Amended 11/15/99) (Renumbered from LLCC 20-01-01)</u>		
<u>LLCC 17-04-02</u>	<u>Theft of Inmate Personal Property (Amended 11/15/99) (Renumbered from LLCC 20-05-03)</u>		
<u>LLCC 17-05-01</u>	<u>Procedure for Sending Appliances to Outside Dealers for Repair (Amended 11/15/99) (Renumbered from LLCC 20-06-01)</u>		

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Tamela Biggs

(1) Type and number of entities affected: 289 employees of the correctional institutions, 1,104 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 6:170. 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, November 15 [September 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:

GRCC 01-01-01	Establishment of the GRCC Institutional Operations Manual [(Added 9/14/99)]
GRCC 01-01-02	Organization of GRCC Operations Manual [(Added 9/14/99)]
GRCC 01-01-03	Formulation and Revision of GRCC Operating Procedures [(Added 9/14/99)]
GRCC 01-02-01	Organization and Assignment of Responsibility [(Added 9/14/99)]
GRCC 01-03-01	Staff Meetings, Purpose and Requirements (Added 11/15/99)
GRCC 01-04-01	Monthly Reports [(Added 9/14/99)]
GRCC 01-05-01	Procedures Officer [(Added 9/14/99)]
GRCC 01-06-01	Inmate Access to and Communication with GRCC Staff [(Added 9/14/99)]
GRCC 01-07-01	Institutional Tours of GRCC (Added 11/15/99)
GRCC 01-08-01	GRCC Cooperation with Outside Bodies Including Courts, Governmental, Legislative, Executive and Community Agencies [(Added 9/14/99)]
GRCC 01-09-01	Duty Officer Responsibilities (Added 11/15/99)
GRCC 01-10-01	Smoking: GRCC Facility [(Added 9/14/99)]
GRCC 01-11-01	Institutional Planning [(Added 9/14/99)]
GRCC 01-12-01	Public Information and Media Communication (Added 11/15/99)
GRCC 02-01-01	Fiscal Management Organization (Added 11/15/99)
GRCC 02-01-02	Fiscal Management Accounting Procedures (Added 11/15/99)
GRCC 02-01-03	Fiscal Management Agency Funds (Added 11/15/99)
GRCC 02-01-04	Fiscal Management Insurance (Added 11/15/99)
GRCC 02-02-01	Fiscal Management: Budget (Added 11/15/99)
GRCC 02-03-01	Fiscal Management: Audits (Added 11/15/99)
GRCC 02-04-01	Purchase and Supply Requisitions (Added 11/15/99)
GRCC 02-05-01	Warehouse Operation (Added 11/15/99)
GRCC 02-06-01	Inmate Canteen
GRCC 02-06-02	Inmate Canteen Committee (Added 11/15/99)
GRCC 02-07-01	Inmate Personal Funds
GRCC 02-08-01	Inventory Control (Added 11/15/99)
GRCC 03-01-01	General Guidelines for GRCC Employees (Added 11/15/99)
GRCC 03-02-01	Essential Personnel During Inclement Weather or Emergency Conditions (Added 11/15/99)
GRCC 03-03-01	Employee Recognition Program (Added 11/15/99)
GRCC 03-04-01	Employee Grievance and EEO Complaint Procedure (Added 11/15/99)
GRCC 03-05-01	Drug Free Work Place (Added 11/15/99)
GRCC 03-06-01	Organization of Payroll and Personnel Records (Added 11/15/99)
GRCC 03-07-01	Personnel Staffing Review (Added 11/15/99)

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GRCC 03-08-01	Personnel Registers (Added 11/15/99)
GRCC 03-09-01	Selection and Promotion of Employees (Added 11/15/99)
GRCC 03-10-01	Medical Examination for New Employees (Added 11/15/99)
GRCC 03-11-01	Kentucky Employee Assistance Program (Added 11/15/99)
GRCC 03-12-01	Confidentiality of Information, Roles and Services of Consultants, Contract Personnel and Volunteers (Added 11/15/99)
GRCC 03-13-01	Employee Evaluations (Added 11/15/99)
GRCC 03-14-01	Student Placement Program (Added 11/15/99)
GRCC 03-15-01	Documentation Requirement Guidelines (Added 11/15/99)
GRCC 03-16-01	New Employee Orientation (Added 11/15/99)
GRCC 03-17-01	Resignation, Transfer or Termination Clearance Procedure (Added 11/15/99)
GRCC 04-01-01	Employee Training and Staff Development (Added 11/15/99)
GRCC 05-01-01	Information System (Added 11/15/99)
GRCC 05-02-01	Outside Consultation and Research (Added 11/15/99)
GRCC 06-01-01	Offender Records (Added 11/15/99)
GRCC 06-02-01	Storage of Expunged Records (Added 11/15/99)
GRCC 07-01-01	Maintenance Requests (Added 11/15/99)
GRCC 07-02-01	Preventive Maintenance Program (Added 11/15/99)
GRCC 07-03-01	Mechanical Equipment Repair and Control of Hazardous Energy (Added 11/15/99)
GRCC 09-02-01	Drug Abuse Testing
GRCC 09-09-01	Contraband Control: Collection, Preservation and Disposition of Contraband and Identification of Physical Evidence
GRCC 10-01-01	Special Management Unit
GRCC 11-01-01	Food Service Guidelines
GRCC 11-02-01	Food Service: Security
GRCC 11-03-01	Dining Room Guidelines
GRCC 11-04-01	Food Service: Meals
GRCC 11-04-02	Food Service: Menu, Nutrition and Special Diets
GRCC 11-06-01	Health Requirements of Food Handlers
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
GRCC 22-05-01	Inmate Photo Project
GRCC 23-01-01	Religious Programs (Added 11/15/99)
GRCC 23-02-01	Death or Hospitalization of an Inmate's Family Member and Notification of Inmates
GRCC 24-01-01	Social Services and Counseling Program
GRCC 25-01-01	Prerelease Program
GRCC 25-01-02	Inmate Release Process
GRCC 25-02-01	Parole Hearing Procedure

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: November 10, 1999

FILED WITH LRC: November 15, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 1999, at 9 a.m., in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, 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
Kentucky Law Enforcement Council
(Amendment)

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

RELATES TO: KRS 15.330[(1)(e)], 15.386, 15.440(4)

STATUTORY AUTHORITY: KRS 15A.160

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

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

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

(3) To graduate from the department's [successfully complete a] basic training course, a recruit shall [trainee must]:

(a) Successfully complete [Participate in] a minimum of 640 [400] hours of council-approved training.

(b) Attain a seventy (70) percent [passing] overall score

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

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

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

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

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

a. Sixteen (16) inch vertical jump;

b. One (1) repetition maximum (RM) bench press equal to sixty-four (64) percent of the recruit's body weight;

c. Eighteen (18) sit-ups in one (1) minute;

d. 300 meter run in sixty-five (65) seconds;

e. Twenty (20) pushups;

f. One and five-tenths (1.5) mile run in seventeen (17) minutes twelve (12) seconds.

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

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

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

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

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

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

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

a. Seventeen (17) inch vertical jump;

b. One (1) repetition maximum (RM) bench press equal to seventy-three (73) percent of the recruit's body weight;

c. Eighteen (18) sit ups in one (1) minute;

d. 300 meter run in sixty-five (65) seconds;

e. Twenty-five (25) push ups;

f. One and five-tenths (1.5) mile run in sixteen (16) minutes fifteen (15) seconds.

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

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

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

than the final date of the basic training course.

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

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

d. If the recruit does not pass all previously failed events on the date of the retest, he shall be considered to have failed basic training. [Successfully complete all graded training areas covered during the course:

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

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

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

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

(3) Reexamination.

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

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

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

(5) [4:] In the event of extenuating circumstances beyond the control of the recruit including [trainee such as] injury, illness, [or] personal tragedy, or agency emergency, which occurs during a basic training course which prevents a recruit [trainee] from completing a basic training course, a recruit [trainee] shall complete the unfinished areas [or failed graded area] within 180 days after the termination of the extenuating circumstances, [return to duty] provided the duration of the extenuating circumstances [break in service] does not exceed one (1) year. This right to [repeat a failed graded training area or] complete a basic training course [which was caused by injury or illness] shall not be applicable wherein the failure to [pass or] complete is caused by a preexisting physical injury, or an existing or a preexisting physiological condition. This right to [repeat a failed graded area or] complete a basic training course shall be limited to one (1) attempt per calendar year.

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

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

(6) [(e)] If a recruit's [trainee's] employment as a police officer is terminated by [(f)]resignation or dismissal[(f)] while enrolled and prior to completion of a basic training course and later becomes reemployed as a police officer, [or if a trainee because of extenu-

ating circumstances beyond his control (illness, personal injury or personal tragedy)] is unable to complete a basic training course, he shall complete the unfinished [or failed graded] areas within one (1) year after a return to duty or reemployment as an officer, provided, however, the break in employment or duty may not exceed one (1) year. This right to complete basic training shall not be applicable when the termination is a result, directly or indirectly, of disciplinary action taken by the department against the recruit while enrolled in the basic training course.

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

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

(a) "Department of Criminal Justice Training Form 68-1 - Application for Training Credit" (02/26/96); and

(b) "Department of Criminal Justice Training Form 29 - Agency Training Authorization" (06/27/97).

(2) This material may be inspected, copied, or obtained at the Department of Criminal Justice Training, Funderburk Building, Eastern Kentucky University, 521 Lancaster Road, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT F. STEPHENS, Secretary

STEPHANIE C. BINGHAM, General Counsel

APPROVED BY AGENCY: November 12, 1999

FILED WITH LRC: November 12, 1999 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 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 December 14, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephanie C. Bingham, General Counsel, Department of Criminal Justice Training, Funderburk Building, Richmond, Kentucky 40475-3137; Telephone Number (606) 622-5897, Facsimile Number (606) 622-3162.

REGULATORY IMPACT ANALYSIS

Contact Person: Stephanie C. Bingham

(1) Type and number of entities affected: The Department of Criminal Justice Training, all peace officers in the Commonwealth

who are required or may choose to complete the Department of Criminal Justice Training basic training course, and their agencies.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the Department of Criminal Justice Training budget, including money received from the Kentucky Law Enforcement Foundation Program Fund.

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

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

(b) Kentucky: None

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Increased professionalism of law enforcement personnel resulting in a safer public environment.

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

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

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET

Kentucky Law Enforcement Foundation Program Fund (Amendment)

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

RELATES TO: KRS 15.440

STATUTORY AUTHORITY: KRS 15.450(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.440 prescribes requirements to be met by a local unit of government

in order to be eligible to receive salary supplement funds from the Law Enforcement Foundation Program Fund. This administrative regulation expands on the statutory requirements for eligibility and establishes the procedure to be followed by a local unit in applying for admission to, or withdrawing from, the fund.

Section 1. (1) Education requirements.

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

1. A copy of the high school diploma; or

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

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

(2) Basic training requirement.

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

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

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

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

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

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

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

2. If the officer has successfully completed a Department of Criminal Justice Training basic training course, or another council-approved and recognized basic training course, no additional basic training shall be required if he has:

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

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

3. If the officer has successfully completed a Department of Criminal Justice Training basic training course, or another council-approved and recognized basic training course; and has expe-

rienced a separation of employment as a police officer for more than twelve (12) months but less than thirty-six (36) months prior to his present eligibility to participate in the fund, he shall successfully complete the Department of Criminal Justice Training forty (40) hour penal code update course;

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

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

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

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

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

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

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

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

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

(ii) If the number of days of separation for a specific month is less than the maximum possible number of regular service days for that month, the month shall not be calculated as a month of separation. [Obtaining credit for basic training; valuation examination. A police officer who, as of his date of employment, has already successfully completed a law enforcement basic training course may, for the purpose of obtaining credit for some or all of the basic training requirement, apply to the fund administrator to take a basic training evaluation examination. Upon receipt of an evaluation examination request, the fund administrator or his designee shall verify that the officer has successfully completed a basic training course. The officer and his local unit shall be responsible for providing such proof as is needed for verification. Upon verification, the fund administrator or his designee shall notify the officer that he is eligible to take a basic training evaluation examination. The fund administrator or his designee shall administer and evaluate the examination. The examination shall test the officer in the areas required for successful completion of a council-approved basic training course. The fund administrator or his designee shall then decide what training, if any, the officer must successfully complete in order to meet the basic training requirement. An officer who passes less than fifty (50) percent of the examination areas shall obtain no basic training credit at all and shall be required to take and successfully complete a basic training course. An officer who passes at least fifty (50) percent of the examination areas shall obtain basic training credit for the areas which he passes. If the officer fails a graded area the officer shall take and successfully complete that portion of a basic training course that corresponds to the failed area. If the graded training area that is failed is MARC (the mechanics of arrest, restraint, and control) the repeating of the training in that area at the training facilities of the training agency is optional with the officer's agency head, but in any event the officer must pass an examination on that failed area consisting of a test and retest within one (1) year of employment. The fund administrator or his

designee shall notify the officer of his decision. If an officer is given credit for all or a part of a previously attended basic training course of less than 400 hours, the officer shall be required to make up the difference in hours by completing subject areas of a current basic training course, as determined by the fund administrator or his designee, that equal the hours deficient. The officer shall be responsible for arranging any required basic training at a council-approved school.

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

(3) In-service training requirement.

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

(b) A police officer who successfully completes a [meets the] basic training course approved and recognized by the council [requirement (or obtains credit for meeting it)] shall be considered to have fulfilled the in-service training requirement for the calendar year in which the basic training is [successfully] completed when that completion occurs in the calendar year of the present application for participation in the fund. [(or the credit is obtained). However,] An officer who demonstrates compliance with the basic training requirement by completion of a course approved and recognized by the council prior to the calendar year of the present application for participation in the fund, the [passes an entire basic evaluation examination and therefore receives full credit for a prior basic training course that] officer shall [be required to] complete a forty (40) hour in-service training course for that calendar year in order to remain eligible to participate in the fund. An officer who demonstrates compliance with the basic training re-

quirement by completion of a course approved and recognized by the council prior to the calendar year of the present application for participation in the fund, and is required to take a minimum of forty (40) hours of additional training pursuant to Section 1(2) of this administrative regulation shall be considered to have fulfilled the in-service training requirement for the calendar year in which the additional training was completed.

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

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

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

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

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

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

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

ROBERT F. STEPHENS, Secretary
STEPHANIE C. BINGHAM, General Counsel

APPROVED BY AGENCY: November 12, 1999

FILED WITH LRC: November 12, 1999 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 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 December 14, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephanie C. Bingham, General Counsel, Department of Criminal Justice Training, Funderburk Building, Richmond, Kentucky 40475-3137; Telephone Number (606) 622-5897, Facsimile Number (606) 622-3162.

REGULATORY IMPACT ANALYSIS

Contact Person: Stephanie C. Bingham

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

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

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

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

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

(b) Kentucky: None

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare

of the geographical area in which implemented and on Kentucky: More effective and efficient training which shall increase the quality of law enforcement personnel resulting in a safer public environment.

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

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

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. 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.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
(Amendment)

808 KAR 10:340. Registration exemption for certain limited offerings made exclusively to accredited investors.

RELATES TO: KRS 292.410(1)(q) [(t)], 292.420(3), 17 CFR 230.501

STATUTORY AUTHORITY: KRS 292.410(1)(q), 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.410(1)(q) authorizes the commissioner by rule or order finds registration is not necessary or appropriate in the public interest or for the protection of investors. [KRS 292.410(1)(i)5 authorizes the commissioner to deny or expand the exemption created for a limited offering made exclusively to an accredited investor.] This administrative regulation establishes the [additional] requirements for claiming the registration exemption for a limited offering made exclusively to an accredited investor and prohibits certain issues from relying on the exemption. The administrative regulation is intended to facilitate the communication of offering information to an accredited investor over electronic media such as the Internet.

Section 1. Definitions. "Accredited investor" is defined in 17 CFR 230.501(a) which is adopted without change in Section 3 of this administrative regulation.

Section 2. An offer or sale of a security by an issuer in a transaction that meets the requirements established in [KRS 292.410(1)(i) and] this administrative regulation shall be exempt from KRS 292.340 through 292.390.

(1) To qualify for this exemption, the sale of a security shall be made exclusively to a person who is an accredited investor. {

(a) ~~Is an accredited investor pursuant to KRS 292.410(1)(i)3b and 17 CFR 230.501(a); or~~

(b) ~~Is reasonably believed by the issuer to be an accredited investor pursuant to KRS 292.410(1)(i)3b and 17 CFR 230.501(a);]~~

(2) The exemption shall not be available to an issuer that:

(a) Issues interests in an oil, gas, or mineral enterprise; or

(b) In the development stage and has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or

companies, or other entity or person.

(3) The issuer shall reasonably believe that each purchaser is purchasing for investment and not with a view to or for sale in connection with a distribution of the security.

(a) A resale of a security sold in reliance on this exemption within twelve (12) months of sale, except a resale to an accredited investor or pursuant to a registration statement effective under KRS 292.340 through 292.390, shall be presumed to be with a view to distribution and not for investment.

(b) If resold, a security issued under this exemption shall be resold pursuant to registration or an exemption under KRS Chapter 292.

(4)(a) Except as provided in paragraph (b) of this subsection, this exemption shall not be available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten (10) percent or more of any class of its equity securities, any of the issuer's promoters, promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of the underwriter:

1. Within the last five (5) years, has filed a registration statement which is the subject of a currently effective registration stop order entered by a state securities administrator or the United States Securities and Exchange Commission;

2. Within the last five (5) years, has been convicted of a criminal offense in connection with the offer, purchase or sale of a security, or involving fraud or deceit;

3. Is currently subject to a state or federal administrative enforcement order or judgment, entered within the last five (5) years, finding fraud or deceit in connection with the purchase or sale of a security; or

4. Is currently subject to an order, judgment or decree of a court of competent jurisdiction, entered within the last five years, temporarily, preliminarily or permanently restraining or enjoining the party from engaging in or continuing to engage in a conduct or practice involving fraud or deceit in connection with the purchase or sale of a security.

(b) Paragraph (a) of this subsection shall not apply if:

1. The party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment or decree creating the disqualification was entered against the party; or

2. Before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification.

(5)(a) The issuer may make a general announcement of the proposed offering by any means.

(b) The general announcement may state only the following information unless the commissioner determines that additional information is in the public interest: [A general announcement of the proposed offering may:

(a) Be made in a manner selected by the issuer; and

(b) State the following information unless the commissioner determines that additional information is in the public interest:]

1. The name, address and telephone number of the issuer of the securities;

2. The name, a brief description and price (if known) of the security to be issued;

3. A brief description of the business of the issuer in twenty-five (25) words or less;

4. The type, number and aggregate amount of securities being offered;

5. The name, address and telephone number of the person to contact for additional information; and

6. A statement that:

a. A sale shall exclusively be made to an accredited investor.

b. Money or other consideration shall not be solicited or accepted; and

c. The security:

(i) Has not been registered with or approved by a state securities agency or the United States Securities and Exchange Commission; and

(ii) Is being offered and sold pursuant to an exemption from

registration.

(6) The issuer, in connection with an offer, may provide information in addition to the general announcement under subsection (5) of this section, if the information:

(a) Is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; or

(b) Is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

(7) A telephone solicitation shall not be made unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

(8) Dissemination of the general announcement of the proposed offering to a person who is not an accredited investor shall not disqualify the issuer from claiming the exemption under this administrative regulation.

(9) Within fifteen (15) days after the first sale in this state, the issuer shall file with the commissioner:

(a) A notice transaction;

(b) A consent to service of process;

(c) A copy of the general announcement; and

(d) A fee in the amount of \$250 as required by KRS 292.420(3).

Section 3. Adoption Without Change. 17 CFR 230.501(a) (April 25, 1996).

RONALD MCCLOUD, Secretary

ELLA D. ROBINSON, Deputy Commissioner

COLLEEN KEEFE, Attorney

APPROVED BY AGENCY: October 11, 1999

FILED WITH LRC: October 21, 1999 at 8 a.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation is scheduled for December 21, 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 December 14, 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 December 14, 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, (502) 573-3390 Telephone, (502) 573-8787 Fax.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe

(1) Type and number of entities affected: Issuers, generally small or start up companies, required to register offerings 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: 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: Reduction in costs associated with complying with registration requirements.

2. Second and subsequent years: Savings should continue after first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from regulated entities.

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

(a) Geographical area in which the administrative regulation will be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives 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: Designed to facilitate capital raising efforts of small businesses.

(b) State whether a detrimental effect on environment and public health would result if not implemented: None expected.

(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: The amendment corrects improper statutory citations contained in existing regulation.

(11) TIERING: Is tiering applied? Yes, this regulation only applies to offerings made to accredited investors. Tiering is justified because these type of offerings do not raise the same regulatory concerns as offerings made to the general public. In addition, it is in the public interest to ease the registration process for these offerings because registration requirements have a disproportionately adverse impact on the entities making these offerings resulting in disincentives for small businesses.

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

902 KAR 13:010. Definitions for 902 KAR Chapter 13.

RELATES TO: KRS 211.952, 211.960 to 211.968, 211.990(5)

STATUTORY AUTHORITY: KRS 211.964, 194A.030 [EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY: [EO-96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services.] KRS 211.964 requires the Cabinet for Health Services to promulgate administrative regulations relating to emergency medical technicians (EMTs). The function of this administrative regulation is to define terms that are used in administrative regulations promulgated by the cabinet relating to EMTs [emergency medical technicians].

Section 1. Definitions. (1) "Adjunct faculty" means a person other than regularly-assigned instructional faculty of an EMS educational institution who may be called upon, due to their unique qualifications, to teach a lesson in an EMT training course. ["Applicant" means a person applying for training or certification as an EMT, EMT-instructor, or EMT-first responder under this administrative regulation.]

(2) "Cabinet" means the Cabinet for Health Services.

(3) "Certificate" means the certificate issued by the cabinet to

an individual qualified to perform the duties of an EMT [~~—EMT-instructor, or EMT-first responder~~].

(4) "Certified" means a person who holds a certificate issued pursuant to this administrative regulation.

(5) "Conviction" means the result of a court hearing or criminal trial which ends in a final judgment or sentence that the accused is guilty as charged. A finding of guilty shall also include a plea of guilty, or a plea of nolo contendere. A conviction shall be considered a final judgment until it has been expunged by pardon, reversed, set aside, or otherwise rendered nugatory.

(6) "Council" means the Kentucky Emergency Medical Services Council established by KRS 211.952 [~~and appointed by the secretary of the cabinet to act in an advisory capacity~~].

(7) "Course completion date" means the date of the last classroom session and completion of the field/clinical rotation of an EMT training course.

(8) "Employee" means a person who is employed full time, part time, paid or volunteer.

(9) "EMS educational institution" means a public or private organization approved by the cabinet to conduct, supervise and coordinate an EMT training course for initial certification.

(10) "EMS testing agency" means a public or private organization approved by the cabinet to administer a Kentucky EMT certification examination.

(11) "Emergency medical technician" (EMT) means the following levels of EMT certification:

- (a) EMT-basic;
- (b) EMT-basic instructor;
- (c) EMT-instructor trainer;
- (d) EMT-first responder;
- (e) EMT-first responder instructor; and
- (f) EMT-paramedic.

(12) "EMT-basic" (EMT-B) [~~"Emergency medical technician-first responder (EMT-first responder)"~~] means an individual certified by the cabinet to perform a portion of the patient care skills of certified EMTs in order to stabilize a patient's condition until an EMT or other higher level of certified or licensed emergency medical services (EMS) personnel arrives.

(8) [~~"Emergency medical technician-first responder instructor" means a person, other than an emergency medical technician instructor or emergency medical technician instructor-trainer, who is qualified to teach EMT-first responder courses and who is approved by the cabinet to teach EMT-first responder courses.~~]

(9) "Emergency medical technician (EMT)" means an individual certified by the cabinet as an EMT-B [emergency medical technician] who is trained to provide immediate emergency medical care and intervention to stabilize a patient's condition at the scene of an emergency and en route to definitive medical care.

(13) "EMT-B graduate" means an EMT-B student who has completed a Kentucky approved EMT-B course of training and testing, but who may not have yet:

(a) Completed the clinical/field rotation that meets or exceeds the requirements in the current Department of Transportation (DOT) EMT-B National Standard Curriculum (NSC) and 902 KAR 13:150, Section 2; and

(b) Successfully passed the Kentucky EMT-B practical skills and written certification examinations.

(14) "EMT-B instructor" [(10) "Emergency medical technician instructor"] means a person certified by the cabinet to teach EMT-B [emergency medical technician] and EMT-first responder courses.

(15) "EMT-B instructor candidate" [(11) "Emergency medical technician instructor candidate"] means a certified EMT-B who has completed his initial training as an EMT-B instructor and is performing a student teaching internship [emergency medical technician undergoing approved instruction] and evaluation for eligibility to become certified as an EMT-B [emergency medical technician] instructor [while under the supervision of a certified emergency medical technician instructor].

(16) "EMT-first responder" (EMT-FR) means an individual certified by the cabinet to perform the patient care skills consistent with the authorized procedures described in 902 KAR 13:110, Section 13, in order to stabilize a patient's condition until

an EMT-B or other higher level of certified or licensed emergency medical services (EMS) personnel arrives.

(17) "EMT-first responder instructor" (EMT-FR instructor) means a person, other than an EMT-B instructor who is approved by the cabinet to teach an EMT-first responder course.

(18) "EMT instructor trainer" (EMT-IT) [(12) "Emergency medical technician instructor-trainer"] means a [person] certified EMT-B instructor appointed by the cabinet to teach EMT-B [emergency medical technician] instructor courses and evaluate EMT-B instructor candidates [emergency medical technician instructor candidates].

(19) "EMT-paramedic (EMT-P)" means an individual certified by the Kentucky Board of Medical Licensure who is trained to provide immediate emergency medical care and intervention, consistent with authorized procedures described in 902 KAR 9:161, in order to stabilize a patient's condition at the scene of an emergency and en route to definitive medical care.

(20) "Interfacility" means a situation in which a licensed ambulance is utilized to transport a person from a licensed health care facility or a physician's office to another licensed health care facility.

(21) "Lead instructor" means an instructor appointed by a program coordinator to assume primary responsibility for teaching and overseeing an EMT course.

(22) "Medical director" means a physician licensed by the Kentucky Board of Medical Licensure (KBML) or the authorized agency of a contiguous state.

(23) [(13) "Emergency situation" means an unforeseen circumstance or combination of circumstances, regardless of place of occurrence, requiring immediate and continuing medical response and intervention to safeguard the life, or physical well-being of a patient.

(14) "Implementing agency" means a public or private organization, other than an instructor, instructor-trainee, or instructor candidate, approved by the cabinet to conduct, supervise, coordinate, and operate an emergency medical technician or EMT-first responder training course.

(15) [(15)] "The National Registry of Emergency Medical Technicians" (NREMT) means the national professional organization that specializes in practical skills and written examination materials used in evaluation [and practical skills testing] of prehospital personnel [EMTs]. Their service may be utilized for implementing the EMT-B, EMT-FR, and EMT-paramedic practical skills and [certification] written examinations in the EMS personnel certification or licensing [and practical examination] process for participating states. The individual prehospital personnel who meet the NREMT minimum examination requirements are eligible for NREMT registration.

(24) "NREMT-B" means an EMT-basic established in subsections (11)(a) and (12) of this section who has met the requirements for NREMT registration established in subsection (23) of this section.

(25) "NREMT-FR" means an EMT-first responder established in subsections (11)(d) and (16) of this section who has met the requirements for NREMT registration established in subsection (23) of this section.

(26) "NREMT-P" means an EMT-paramedic established in subsections (11)(f) and (19) of this section who has met the requirements for NREMT registration established in subsection (23) of this section.

(27) "Pilot program" means a program approved by the cabinet to permit an EMS educational institution, Class I ambulance service or Class III ambulance service to educate, train and authorize selected EMT students or employees to utilize a specialized procedure, for a specified time period, that has not been previously approved by administrative regulation.

(28) "Preestablished I.V." means an intravenous solution that has been established on a person prior to the incident to which an EMT-B is responding.

(29) "Transition course" means a training program, approved by the cabinet, to prepare an EMT-B or EMT-FR who was not initially trained under the guidelines of the United States (U.S.) Department of Transportation (DOT) National Standard Curricula

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(NSC)-1994 for an EMT-B or the U.S. DOT NSC-1995 for an EMT-FR to update him to additional scope of practices that meet the 1994 EMT-B or 1995 EMT-FR DOT NSC and the additional Kentucky practice requirements pursuant to 902 KAR 13:150 and 902 KAR 13:110.

RICE C. LEACH, M.D., Commissioner
JOHN WALKER, Attorney
JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: October 22, 1999

FILED WITH LRC: October 26, 1999 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1999 at 9 a.m. in the Cabinet for Health Services Auditorium, Department for Public Health Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 1999. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments to: Kevin Devlin, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 15,500 emergency medical technicians (EMTs), EMT-instructors, and EMT-first responders; EMS educational institutions, and EMS testing agencies.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation will have no effect on the cost of living and employment in this state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation will have no effect on the cost of doing business in any geographical area of this state.

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

1. First year following implementation: None
2. Second and subsequent years: As above.

(3) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional reporting or paperwork will be required.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General Funds

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

(a) Geographical area in which administrative regulation will be implemented: It is not anticipated that this administrative regulation will have an economic impact.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were rejected because

this administrative regulation complies with the requirements of KRS Chapter 13A.

(8) Assessment of expected benefits: This administrative regulation will provide definitions for 902 KAR Chapter 13.

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

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

(c) If detrimental 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 statute, regulation, or policy will conflict, overlap, or duplicate this administrative regulation.

(a) Necessity or proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. Tiering was applied because this administrative regulation provides definitions for levels of EMT certification.

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

902 KAR 13:030. Fees.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)

STATUTORY AUTHORITY: KRS 194A.030, 211.964, 211.966[~~, HB-799 Part II of the 1990 GA~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.964 directs the Cabinet for Human Resources to adopt ~~[rules and]~~ administrative regulations relating to emergency medical technicians, ~~[and]~~ KRS 211.966 permits the Cabinet for Human Resources to prescribe a schedule of fees and charges for services to emergency medical technicians (EMTs). The function of this administrative regulation is to establish a fee schedule pursuant to KRS 211.966.

Section 1. Examination Fees. (1) The following schedule of fees shall be charged to an applicant for a Kentucky certification examination administered by the cabinet or an agency funded under a contract with the cabinet:

(a) EMT initial written: fifteen (15) dollars.

(b) EMT written retest: fifteen (15) dollars.

(c) EMT initial practical: forty (40) dollars.

(d) EMT retest per station: ten (10) dollars.

(e) EMT instructor candidate evaluation fee: \$120.

(2) The following schedule of fees shall be charged to an emergency medical services (EMS) educational institution for cabinet approval to conduct EMT education courses:

(a) Initial application fee: \$100.

(b) Renewal application fee: \$100.

(3) The following schedule of fees shall be charged to an emergency medical services (EMS) testing agency for cabinet approval to administer Kentucky EMT certification examinations:

(a) Initial application to administer an EMT practical and written examination: fifty (50) dollars.

(b) Renewal application to administer an EMT practical and written examination: fifty (50) dollars.

(c) Initial application to administer only the EMT written examination: thirty (30) dollars.

(d) Renewal application to administer only the EMT written examination: thirty (30) dollars.

(e) Initial application to administer only the EMT practical examination: forty (40) dollars.

(f) Renewal application to administer only the EMT practical examination: forty (40) dollars.

(4) The following schedule of fees shall be charged for an

EMT certificate:

- (a) EMT-first responder (EMT-FR) initial certification: fifteen (15) dollars.
- (b) EMT-FR recertification: thirteen (13) dollars.
- (c) EMT-basic (EMT-B) initial certification: twenty (20) dollars.
- (d) EMT-B recertification: nineteen (19) dollars.
- (e) EMT-FR instructor initial certification: twenty-five (25) dollars.
- (f) EMT-FR instructor recertification: twenty (20) dollars. An EMT-FR instructor shall not be required to pay the EMT-FR recertification fee.
- (g) EMT-B instructor initial certification: twenty-five (25) dollars.
- (h) EMT-B instructor recertification: twenty (20) dollars. An EMT instructor shall not be required to pay the EMT-B recertification fee.

Section 2. Service Fees. (1) Duplicate certificate or duplicate wallet card: fifteen (15) dollars.

(2) Checks returned due to nonsufficient funds, invalid account or invalid negotiable instrument: twenty-five (25) dollars.

(3) Late fee for EMT recertification applications postmarked or hand-delivered after the expiration date of the previous certificate: twenty-five (25) dollars.

Section 3 - Payment of Fees. (1) Fees shall be paid by:

- (a) Money order;
- (b) Certified check;
- (c) Cashier's check;
- (d) Institutional check;
- (e) Interagency account; or
- (f) Cash.

(2) Cash payments shall not be accepted by mail. [is-established pursuant to KRS 211.966:

- (1) EMT-certification, examination fee: nineteen (19) dollars;
- (2) EMT-recertification fee: nineteen (19) dollars;
- (3) EMT-first responder certification, examination fee: thirteen (13) dollars;
- (4) EMT-first responder recertification fee: thirteen (13) dollars.]

RICE C. LEACH, M.D., Commissioner

JOHN WALKER, Attorney

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: October 22, 1999

FILED WITH LRC: October 26, 1999 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1999 at 9 a.m. in the Cabinet for Health Services Auditorium, Department for Public Health Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 1999. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments to: Kevin Devlin, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 15,500 emergency medical technicians (EMTs), EMT-instructors, and EMT-first responders; EMS educational institutions; and EMS testing agencies.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation will have minimal effect on the cost of living and employment in this state. Certification fees for approximately 1,500 individuals seeking initial certification would increase by \$1 each. There is no increase in recertification fees for individuals currently certified under these administrative regulations.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation will have minimal effect on the cost of doing business in any geographical area of this state. Proposed fees for individuals tested under state contract will remove a barrier to development of alternative testing organizations which must now compete against a state funded organization that provides testing for which no fees are currently charged.

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

- 1. First year following implementation: None
- 2. Second and subsequent years: As above.
- (3) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

- 1. First year: None
- 2. Continuing costs or savings: None
- 3. Additional factors increasing or decreasing costs: None.

(b) Reporting and paperwork requirements: No additional reporting or paperwork will be required.

(4) Assessment of anticipated effect on state and local revenues: It is anticipated that the following additional annual fee income will result if this administrative regulation is implemented: Initial certification fees - \$9,100; training agency approval fees - \$4,500; testing agency approval fees - \$400; EMT instructor candidate evaluation fees \$3,400 only if the state agency is requested to conduct such an evaluation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General funds and fees authorized through this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: It is not anticipated that this administrative regulation will have an economic impact.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were rejected because this administrative regulation complies with the requirements of KRS Chapter 13A.

(8) Assessment of expected benefits: This administrative regulation will provide funds to administer and evaluate programs that train and test individuals desiring to become certified as EMTs, EMT-instructors, EMT-first responders, and EMT-first responder instructors.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Properly trained and certified EMS personnel can reduce the incidence of premature death and unnecessary disability due to medical emergencies and injuries.

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

(c) If detrimental 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 statute, regulation, or policy will conflict, overlap, or duplicate this administrative regulation.

(a) Necessity or proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. Tiering was applied

because this administrative regulation provides definitions for levels of EMT certification.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes. This administrative could relate to local governments that choose to apply for approval as an EMT training or testing agency or that choose to pay certification fees for EMTs.

2. State what unit, part or division of local government this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will affect a local government or a division of the local government that chooses to apply for approval as an EMT training or testing agency or that chooses to pay certification fees for EMTs.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation only affects an aspect of local government that chooses to apply for approval as an EMT training or testing agency or that chooses to pay certification fees for EMTs.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. Local governments are not required to pay certification fees for their employees or agents. Some choose to do so at their own option. Since this policy varies across the state, there is no way to determine the impact on local expenditures. Likewise, most local governments are not normally involved in the training or testing of EMTs. For those that choose to train or test EMTs, the proposed fees for approval of training or testing agencies would have minimal impact on the revenues of that local government.

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

902 KAR 13:050. Requirements for [Training;] examination, certification and recertification of the emergency medical technician-Basic.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)

STATUTORY AUTHORITY: KRS 194A.030, 211.964[; EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY: [EO-96-862; effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services;] KRS 211.964 requires the Cabinet for Health Services to promulgate administrative regulations relating to emergency medical technicians (EMTs). The function of this administrative regulation is to establish requirements for [training;] examination, certification and recertification of the basic level of emergency medical technicians.

Section 1. Applicant Requirements for Emergency Medical Technician-Basic (EMT-B) Certification. An applicant shall be eligible for initial Kentucky EMT-B certification if he:

(1) Completes the United States (U.S.) Department of Transportation (DOT), National Highway Traffic Administration, 1994 National Standard Curriculum (NSC), Emergency Medical Technician-Basic and the course requirements established in 902 KAR 13:150;

(2) Is at least eighteen (18) years of age before admission to the Kentucky EMT-B examinations;

(3) Successfully passes the Kentucky practical and written certification examination;

(4) Obtains National Registry of Emergency Medical Technicians (NREMT) registration;

(5) Becomes Kentucky certified within two (2) years after the EMT-B course completion date;

(6) Understands, reads, speaks, and writes the English language at a minimum of a Level 4 (ninth to 12th grade of education comprehension and performance). The EMS Branch or an EMS educational institution may require testing to verify this requirement;

(7) Submits a signed "Application for Emergency Medical Technician-Basic Certification", for candidates having started an EMT-B course or the certification process prior to the effective date of this administrative regulation;

(8) Holds a high school diploma or equivalent;

(9) Pays the fee as required by 902 KAR 13:030; and

(10) Is not subject to disciplinary action pursuant to 902 KAR 13:090.

Section 2. EMT-B Certification Examination. (1) The cabinet shall prescribe a practical skills and written EMT-B certification examination that shall utilize the practical and written testing requirements of:

(a) The 1994 National Registry of EMT-B Practical Examination Users Guide; and

(b) The 1994 National Registry for Emergency Medical Technicians (NREMT) EMT-B Examination Coordinators Manual.

(2) An EMS testing agency that has been approved pursuant to 902 KAR 13:140 may administer the EMT-B certification examination.

Section 3. Expiration of Certification. (1) Unless it is renewed, the initial certification period of an EMT shall expire three (3) months after the expiration of his initial NREMT registration.

(2) Upon expiration of certification, an EMT-B shall not practice as an EMT-B or perform an authorized procedure for a certified EMT-B described in 902 KAR 13:080, other than a procedure for which the individual can show proof as authorized by statute or other Kentucky administrative regulations, until the cabinet has:

(a) Received and reviewed his application for completeness and compliance with this administrative regulation;

(b) Processed the application; and

(c) Issued a new certificate to the applicant or provided other written verification of the certification of the applicant.

(3) If the certification of an EMT-B expires, before he may again be eligible for certification, within two (2) years from the certification expiration date he shall:

(a) If not registered as a National Registry of Emergency Medical Technicians (NREMT) basic, complete the eligibility requirements for NREMT-Basic registration and submit to the cabinet:

1. Written evidence of completion of current training in cardiopulmonary resuscitation (CPR) as referenced in Section 4(1)(a) of this administrative regulation;

2. Written evidence of completion of current HIV/AIDS training as required by KRS 214.610;

3. The applicable fee as required in 902 KAR 13:030;

4. A signed "Application for Emergency Medical Technician-Basic Initial Certification"; and

5. Is not subject to disciplinary action pursuant to 902 KAR 13:090; or

(b) If registered with the National Registry of Emergency Medical Technicians (NREMT) as an NREMT-Basic shall submit to the cabinet:

1. Written evidence of current NREMT-B registration; and

2. Meet other requirements as established in paragraph (a) of this subsection; or

(c) Retake an entire EMT-B course and pass the EMT-B practical skills and written certification examination, while additionally meeting the requirements established in paragraph (a) of this subsection.

Section 4. Recertification and Continuing Education Requirements. (1) Except as provided in subsection (2) of this section, an

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EMT-B who was initially certified prior to July 15, 1997 and who has not chosen to obtain NREMT registration may continue his certification period according to previous regulatory requirements and may be eligible to renew his certification if he:

(a) Submits to the cabinet:

1. A signed "Application for Emergency Medical Technician-Basic Certification Renewal";

2. Written evidence of completion of current training in cardiopulmonary resuscitation (CPR) that shall:

a. Meet the educational objectives of:

- (i) The American Heart Association;
- (ii) The American National Red Cross; or
- (iii) The National Safety Council;

b. Be taught by a person who shall be:

- (i) An American Heart Association CPR instructor;
- (ii) An American National Red Cross CPR instructor;
- (iii) A National Safety Council CPR instructor; or
- (iv) A Cabinet for Health Services-EMT-B instructor; and

c. Provide instruction and testing in:

- (i) One (1) rescuer cardiopulmonary resuscitation;
- (ii) Two (2) rescuer cardiopulmonary resuscitation;
- (iii) Techniques of changing from one (1) rescuer to two (2) rescuers during the performance of cardiopulmonary resuscitation;

(iv) Techniques of changing rescuers during the performance of two (2) rescuer cardiopulmonary resuscitation;

(v) Techniques for relief of obstruction of the airway;

(vi) Cardiopulmonary resuscitation of infants and small children;

(vii) Barrier to mouth, barrier to nose, or barrier to stoma resuscitation for adults, small children, and infants;

(viii) Use of oral and nasal airways;

(ix) Use of bag-valve-mask or other ventilatory devices; and

(x) Use of supplemental oxygen.

3. The required fee established in 902 KAR 13:030, Section 1(4)(d); and

4. A record of his continuing education, as required in paragraph (b) of this subsection, on a "Kentucky Cabinet for Health Services EMT-Basic Minimum Continuing Education Requirements, Total Contact Hours", incorporated by reference in this administrative regulation, or other form approved by the cabinet that shall be:

a. Signed by the EMT-B and the instructor; and

b. Contain a statement certifying to the truth of the information supplied;

(b) Completes, prior to the expiration date of his current certification period, at least twenty-four (24) hours of continuing education that shall:

1. Contain no less than twelve (12) hours in practical skills, conducted in a structured classroom setting. A minimum of two (2) of the contact hours shall be in Acquired Immune Deficiency Syndrome (AIDS) education required by KRS 214.610;

2. Be limited to the subjects covered in the EMT-B training course as required in Section 3 of this administrative regulation;

3. Be taught by a person who holds certification or licensing as one (1) of the following:

a. A Kentucky certified EMT-B instructor;

b. Kentucky certified paramedic;

c. A registered nurse licensed pursuant to KRS Chapter 314;

d. A physician licensed pursuant to KRS Chapter 311;

e. An instructor, certified by a state or federal agency to teach a subject that qualifies for EMT-B in-service training or continuing education; or

f. A physician, registered nurse, paramedic, or EMT-B instructor licensed or certified in another state; and

4. Not be subject to disciplinary action pursuant to 902 KAR 13:090.

(2) With the start of the next certification period following the effective date of this administrative regulation, an EMT-B, who was initially certified prior to July 15, 1997, and who has not chosen to obtain NREMT registration shall be eligible to renew his certification if he:

(a) Submits to the cabinet evidence of successful completion

of the "EMT-Basic Minimum Continuing Education Requirement" that includes:

1. Twenty-four (24) structured contact hours of continuing education that meet the equivalency of the Department of Transportation (DOT) EMT-B refresher course as established in the EMT-Basic Recertification Continuing Education Record form incorporated by reference; and

2. A minimum of two (2) contact hours shall be in AIDS education required by KRS 214.610 and which shall be taught by a person who meets the requirements of subsection (1)(b)3 of this section; and

(b) Submits to the cabinet evidence of validation of skills maintenance;

(c) Meets the requirements of subsection (1)(a) of this section; and

(d) Is not subject to disciplinary action pursuant to 902 KAR 13:090.

(3) An EMT-B who was initially certified prior to July 15, 1997 and who has chosen to obtain national registration and meets the requirement of the NREMT shall be eligible to renew his certification if he meets the requirements of subsection (4) of this section.

(4) An EMT-B who is initially certified after July 15, 1997, shall be eligible to renew his certification if he:

(a) Is not subject to disciplinary action pursuant to 902 KAR 13:090; and

(b) Submits to the cabinet:

1. A signed "Application for Emergency Medical Technician-Basic Certification Renewal";

2. Validation that he is a currently registered NREMT-B;

3. Evidence of completion of the AIDS education required by KRS 214.610; and

4. The required fee established in 902 KAR 13:030, Section 1(4)(d).

(5) An application for renewal of certification shall not be considered for renewal if:

(a) The application is postmarked to the cabinet more than thirty (30) days after the certification expiration date of the applicant; or

(b) Prior to his certification expiration date, the EMT-B applicant has not met the applicable requirements of subsection (1), (2), (3), or (4) of this section.

(6) Upon written application to the cabinet, an EMT-B who is a member of a National Guard or a military reserve unit and is called to active duty by presidential order pursuant to 10 USC 121 and 673b may be given an extension for a period up to one (1) year after his release from active duty or return to the United States, whichever occurs first, to meet the applicable requirements for recertification listed in subsections (1), (2), (3) and (4) of this section.

Section 5. Reciprocity. A person shall be eligible for direct reciprocity for initial Kentucky certification as an EMT-B if he:

(1) Submits a signed "Application for Emergency Medical Technician-Basic Initial Certification";

(2) Provides documentation that he currently meets NREMT registration or registration requirements;

(3) Provides documentation that he has completed the AIDS education required by KRS 214.610;

(4) Has paid fees as required in 902 KAR 13:030; and

(5) Is not subject to disciplinary action pursuant to 902 KAR 13:090.

Section 6. Exemptions from EMT-B Administrative Regulations. The Kentucky certification requirements for an EMT-B shall not apply to:

(1) United States military personnel or employees of the United States government while engaged in the performance of their official duties under federal laws; or

(2) An EMT-B certified in another state who comes into Kentucky to:

(a) Transport a patient into or through the state; or

(b) Return a patient to his out-of-state residence.

Section 7. Kentucky EMT-B Transition Course. (1) The EMT-B update training to the 1994 NSC, the United States Department of Transportation, National Highway Traffic Safety Administration, "1994 EMT-Basic Transitional Program", incorporated by reference in this administrative regulation, shall be referred to as the transition course (TC).

(2) An EMT-B currently certified in Kentucky who completed his EMT-B training based on a version of the 1984 or earlier NSC shall have successfully completed the TC before July 1, 1999.

(3) A person who obtained Kentucky EMT-B initial certification prior to July 15, 1996, who did not successfully complete the Kentucky EMT-B Transition Course nor completed a Kentucky Pilot Program EMT-B course based on the 1994 version of the DOT National Highway Traffic Administration EMT-Basic: National Standard Curriculum (NSC) incorporated by reference in this administrative regulation, and whose certification expiration date occurs effective June 30, 1999 or thereafter, shall not be eligible for Kentucky EMT-B certification renewal. A Kentucky certified EMT-B shall be exempt from the Kentucky TC if he is a:

(a) Kentucky certified EMT-B who completed his EMT-B training and Kentucky certification in accordance with the requirements of the 1994 version of the DOT EMT-Basic: NSC;

(b) Candidate for Kentucky EMT-B certification who holds out-of-state certification and provides evidence, prior to July 1, 1999, that he has completed training equivalent to the EMT-B TC in another state; or

(c) Kentucky certified EMT-B who is a licensed physician board-certified in emergency medicine by the American Association of Emergency Physicians.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The United States Department of Transportation, National Highway Traffic Administration, "1994 National Standard Curriculum, Emergency Medical Technician-Basic" (1994 Edition);

(b) The "1994 EMT-Basic Transitional Program";

(c) The "Application for Emergency Medical Technician-Basic Initial Certification", (8/99);

(d) The "1994 National Registry EMT-Basic", Examination Coordinator Manual, published by the NREMT, PO Box 29233, Columbus, Ohio 43229;

(e) The "1994 National Registry of EMT-Basic Practical Examination Users Guide", published by the NREMT, PO Box 29233, Columbus, Ohio 43229;

(f) The "Kentucky Cabinet for Health Services EMT-Basic Minimum Continuing Education Requirements, Total Contact Hours", (7/99)

(g) The "Application for Emergency Medical Technician Recertification Application" (7/99); and

(h) The "Emergency Medical Technician-Basic Recertification Application with NREMT Registration" (7/99).

(2) This material may be inspected, obtained, or copied, unless prohibited by copyright, at the Department for Public Health, Division of Adult and Child Health, EMS Branch, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday 8 a.m. to 4:30 p.m. [EMT Training Course Requirements. (1) The EMT training course shall follow the United States Department of Transportation (DOT) 1984 Emergency Medical Technician: National Standard Curriculum (NSC) (Third Edition);

(2) An EMT training course shall follow the DOT, National Highway Traffic Administration, 1994 NSC, EMT-Basic;

(3) Prior to the effective date of this administrative regulation, an implementing agency may:

(a) Apply to the cabinet, utilizing the "Emergency Medical Technician-Basic Course Inventory Pilot Program" form 10/95, to make application to be approved to conduct a pilot program utilizing the 1994 NSC, EMT-Basic; or

(b) Be considered to begin teaching the 1994 curriculum if:

1. The implementing agency is ready to teach the 1994 curriculum;

2. An application is submitted in writing to the cabinet;

3. The required materials are in place for the cabinet to process the application; and

4. The cabinet approves and assigns a course approval number.

(4) An implementing agency shall assume all responsibilities for conducting a 1994 EMT-Basic training course:

(5) Prior to commencing the course, the implementing agency shall substantiate that:

(a) An "Emergency Medical Technician-Basic Course Application" (EMS Branch-5/96) form has been submitted to the cabinet; and

(b) A course number has been assigned by the cabinet.

(6) During the time the course is being conducted, the implementing agency shall substantiate that:

(a) The course is at least 119 hours in duration;

(b) Lessons are taught by a lead instructor, who as a minimum is an EMT-instructor certified by the cabinet, and at least one (1) assistant to the lead instructor who shall minimally be a Kentucky certified EMT who meets the criteria of the lead instructor and the implementing agency or who is a Kentucky certified EMT-instructor;

(c) In the absence of the lead instructor, lessons shall not be conducted without the presence of an EMT-instructor certified by the cabinet;

(d) The course is limited to twenty-eight (28) students; and

(e) The course utilizes texts as chosen by the lead instructor and approved by the implementing agency:

(7) Approved texts shall be:

(a) Currently in publication;

(b) The most current edition available at the time the course begins which meets the appropriate 1984 or 1994 NSC;

(c) Maintained on file in the office of the implementing agency and at the course location; and

(d) Available upon request for public inspection during normal office hours or during course hours:

(8) The training course shall utilize equipment, audiovisuals and other materials approved by the cabinet;

(9) The training course shall have all required equipment available at the training site for the scheduled lessons and not permit sharing of equipment between courses unless the equipment is equally available to all course lessons as needed; and

(10) The training course shall not permit a student to be on call while course lessons are in session.

Section 2. Responsibilities of the Lead Instructor. (1) The EMT course lead instructor shall:

(a) Require each student to sign in, on the same date as the lesson to be presented, on an attendance sheet approved by the cabinet;

(b) Submit to the cabinet, at least two (2) weeks prior to the starting date of the class:

1. A syllabus for the course showing course lesson dates and the materials to be covered; and

2. A "Basic Course Inventory" form (12/93) verifying that all equipment, texts, audiovisuals, and other materials specified are on hand, in proper working order and available as specified in Section 1(9) of this administrative regulation;

(c) Submit to the cabinet, within two (2) weeks following the completion of each course:

1. The master "Grade Sheet", (1/96);

2. "Answer Sheets", (9/94) for each of the four (4) certification written examinations;

3. "Score Sheets for the Certification Practical Examination" for each student who completed the class;

4. "Master Attendance Sheet", (3/95);

5. "Attendance Sheet", (1/96), or cabinet approved equivalent for each lesson;

6. "Application for Emergency Medical Technician", (2/96) for each eligible student desiring EMT certification; and

7. The fee prescribed by 902 KAR 13:030, Section 1(1) for each student desiring EMT certification:

(2) The EMT course lead instructor shall:

(a) Establish, with the approval of the implementing agency, the course standards for training and examinations, including development and procurement of examination materials, and

course absenteeism;

(b) Require that remediation or makeup of missed eligible lessons be completed within the course in which the EMT is enrolled.

Section 3. EMT Certification Examination. (1) The cabinet shall prescribe the format and content of the EMT certification examination which shall consist of two (2) parts:

(a) Written:

1. The Kentucky certification written examination for eligible applicants trained according to the 1984 NSC EMT-Basic shall consist of four (4) separate examinations, the fourth to be inclusive of the entire course.

2. An absolute overall passing grade of not less than eighty (80) percent shall be required for successful completion of the written portion of the certification examination.

3. The Kentucky certification examination for eligible applicants trained according to the 1994 NSC EMT-Basic shall follow the format described in subsection (3)(a) of this section.

(b) Practical:

1. The applicant shall pass all required stations of the Kentucky certification practical examination. The practical examination shall be divided into stations in which one (1) or more skills are tested. Certain stations shall be designated as mandatory. Other stations shall be designated as wild card stations in which more than one (1) skill may be tested. The student shall randomly choose the skills from the wild card station on the date of the examination.

2. If an applicant fails to pass all required stations, he shall be permitted, within one (1) year from the date of the first testing, one (1) opportunity to retake and complete the required stations which he failed to pass.

3. If the applicant fails again to pass the required stations, he shall be required to retake the entire Kentucky EMT training course before being eligible for reexamination.

(2) An instructor who is employed by the same ambulance service, public service or industrial organization for whom an EMT course is conducted shall not evaluate in the practical examination of the students from that course.

(3) The format for the EMT two (2) part examination for Kentucky initial certification for an eligible applicant who has successfully completed a 1994 NSC EMT-Basic course shall be as follows:

(a) Written:

1. The written portion of the certification examination shall be a single examination that is comprehensive and compatible with the 1994 NSC EMT-Basic, utilizing the National Registry of EMTs (NREMT) (1/96) written examination.

2. In order to be eligible for Kentucky certification, a student who has successfully completed a Kentucky 1994 NSC EMT-Basic course and is recommended as eligible to take the NREMT written examination shall obtain an absolute score according to the following schedule:

a. Prior to the effective date of this administrative regulation, for an EMT-Basic Pilot Program, sixty-five (65) percent;

b. After the effective date of this administrative regulation, sixty-six (66) percent; and

c. Effective July 1, 1997, seventy (70) percent or whatever is equivalent to the current score required for passing the National Registry of EMTs written examination.

3. Standards and eligibility for retesting of the written examination shall be consistent with the rules and regulations of the NREMT.

(b) Practical:

1. The Kentucky practical skills portion of the initial certification examination shall be compatible with the 1994 NSC EMT-Basic, utilizing the 1994 NREMT EMT-Basic Practical Examination Users Guide for the practical examination.

2. An eligible student who passes the practical examination according to the NREMT guidelines and passes the written examination referenced in paragraph (a)2 of this subsection shall be eligible for Kentucky EMT certification.

3. Standards and eligibility for retesting of the practical skills

examination shall be consistent with the rules and regulations of the NREMT.

(4) An EMT student, who does not become Kentucky certified within two (2) years after completion of the EMT course, shall repeat the EMT course before he may become Kentucky certified.

Section 4. Expiration of Certification. (1) An EMT certificate shall expire two (2) years from the date of issuance.

(2) Upon expiration of certification, an EMT shall not perform any of the authorized procedures for certified EMTs described in 902 KAR 13:080, until he has met the conditions described in Section 9 of this administrative regulation and has been recertified by the cabinet as evidenced by having been issued a new certificate by the cabinet.

Section 5. Recertification and Continuing Education Requirements. (1) During his period of certification, an EMT shall attain at least twenty-four (24) continuing education hours, with no less than twelve (12) hours being practical skills in a structured instructional setting. A minimum of two (2) of the twenty-four (24) contact hours shall be in Acquired Immune Deficiency Syndrome (AIDS) education as required by KRS 214.610.

(2) An EMT shall:

(a) Maintain evidence in the form of a certificate of completion of current training in cardiopulmonary resuscitation (CPR) as required by:

1. The American Heart Association; or
2. The American National Red Cross; or
3. The National Safety Council; and

(b) Submit evidence of continuing education and a current certificate of completion in CPR training to the cabinet prior to the expiration of his EMT certification.

(3) An applicant for EMT recertification shall receive credit for completion of continuing education on a subject:

(a) Covered by the United States Department of Transportation basic emergency medical technician curriculum, outlined in Section 1 of this administrative regulation; or

(b) For which instruction is:

1. Preapproved; and
2. Authorized by the cabinet.

(4) Each subject or training course claimed shall be countersigned by the instructor of the subject or course.

(5) Training received as a requirement for continuing education as a physician, registered nurse, paramedic, or as an EMT in a coal mining situation required by KRS 351.127 shall be eligible for continuing education credit if it meets the criteria of subsection (3) of this section.

(6) The applicant for recertification shall submit evidence of successful completion of instruction in at least six (6) different subject areas, with a maximum of four (4) hours per subject area; of emergency medical technician course lecture subject matter or practice of skills.

(7) Hours earned in a transition course, as described in Section 12(1) of this administrative regulation, may be applied toward renewal of certification for an EMT who either:

(a) Attends the entire minimum twenty-five (25) hour transition course, but does not successfully pass the accompanying practical skills examination. These hours may be utilized hour for hour toward the required twenty-four (24) continuing education hours described in subsection (1) of this section, except that these hours shall not apply toward the required two (2) hours of cabinet approved AIDS education. Additionally, these hours shall not apply as credit for update training to the 1994 NSC referenced in Section 12(1) of this administrative regulation; or

(b) Attends the entire minimum twenty-five (25) hour transition course and successfully passes the accompanying practical skills examination. The EMT may utilize the hours earned in the transition course as described in paragraph (a) of this subsection, and may additionally receive credit for the required update training to the 1994 NSC; or

(c) Attends the minimally required first two (2) modules, "Introduction" and "Patient Assessment", of the minimum twenty-five (25) hour transition course, successfully completes the eleven

(11) psychomotor competency objectives, and successfully passes the accompanying practical skills examination. The EMT may:

1. Apply the hours hour-for-hour for the first two (2) modules; and any additional modules attended when the total hours attended are less than twenty-five (25) hours; and

2. Receive credit for update training referenced in paragraph (b) of this subsection.

(8) An EMT shall be issued a certificate of completion, signed by the lead instructor, which specifies the hours earned as outlined in subsection (7)(a), (b), or (c) of this section.

(9) An EMT shall submit to the cabinet:

(a) A signed "Application for Emergency Medical Technician and EMT-Instructor Certification Renewal"; and

(b) A signed record of his continuing education on an "EMT Official Record of Continuing Education/In-service" (EMT/R-90) form which:

1. Has been signed by the EMT;

2. Contains a certification as to the truth of the information supplied; and

3. Includes a statement that misrepresentation of the information may be cause for suspension or loss of certification.

(10) The following shall not be eligible for credit as continuing education:

(a) Ambulance runs, rescues, firefighting, emergency responses, or similar actual emergency activities.

(b) Instruction in material, techniques, or procedures not authorized to be performed by emergency medical technicians.

(11) Upon the effective date of this administrative regulation, an EMT applicant for Kentucky certification renewal shall be deemed as meeting the Kentucky certification requirements addressed in subsections (1) and (6) of this section if he:

(a) Is able to validate that he has currently met the renewal requirements for the NREMT;

(b) Meets the Acquired Immune Deficiency Syndrome (AIDS) education required by KRS 214.610 and subsection (1) of this section; and

(c) Meets the requirements outlined in Section 12 of this administrative regulation.

Section 6. EMT Instructors for Continuing Education. (1) The following persons shall be qualified to conduct continuing education courses for emergency medical technicians:

(a) A physician licensed pursuant to KRS Chapter 311;

(b) A registered nurse licensed pursuant to KRS Chapter 314;

(c) A paramedic certified by the State Board of Medical Licensure;

(d) An emergency medical technician instructor or instructor trainer certified by the cabinet;

(e) An instructor who:

1. Is certified by a state or federal agency to teach a subject; and

2. Teaches a course which qualifies for emergency medical technician in-service training or continuing education; or

(f) Other presenters who are preapproved by the cabinet as persons who are uniquely qualified by experience or education.

(2) As applicable, a physician, registered nurse, paramedic or emergency medical technician instructor currently licensed or certified by another state of the United States of America shall be considered as meeting the requirements of subsection (1)(a) through (e) of this section.

Section 7. Cardiopulmonary Resuscitation Requirement. (1) During the two (2) year certification period, the EMT shall maintain current training in cardiopulmonary resuscitation and related techniques as follows:

(a) The course shall be conducted by, or under the authority of:

1. The American Heart Association;

2. The American National Red Cross; or

3. The National Safety Council; or

4. By an instructor certified by the American Heart Association or the American National Red Cross; or

5. By an instructor certified by the National Safety Council;

(b) The course shall be:

1. Taught for record; and

2. Certified by the instructor as meeting all applicable standards of the organization to:

a. The American Heart Association; or

b. The American National Red Cross; or

c. The National Safety Council.

(c) The course shall provide instruction and testing in:

1. One (1) rescuer cardiopulmonary resuscitation;

2. Two (2) rescuer cardiopulmonary resuscitation;

3. Techniques of changing from one (1) rescuer to two (2) rescuers during the performance of cardiopulmonary resuscitation;

4. Techniques of changing rescuers during the performance of two (2) rescuer cardiopulmonary resuscitation;

5. Techniques for relief of obstruction of the airway;

6. Cardiopulmonary resuscitation of infants and small children; and

7. Barrier to mouth, barrier to nose or barrier to stoma resuscitation for adults, small children, and infants.

(d) The course shall provide for individual skill testing of all adult and infant related skills in subsection (1)(c) of this section.

(2) The applicant for renewal of certification shall forward to the cabinet a copy of both sides of the certificate of completion issued to him indicating successful completion of the CPR course as required in Section 5(2)(b) of this administrative regulation.

Section 8. Continuing Education Requirements for Emergency Medical Technician Instructors and Instructor Trainers. (1) An EMT instructor and an EMT instructor trainer shall attain twenty-four (24) continuing education hours during his certification period.

(2) An emergency medical technician instructor or instructor trainer may meet the continuing education requirements for recertification by:

(a) Conducting an emergency medical technician course;

(b) Teaching one (1) or more lessons of an emergency medical technician course;

(c) Teaching one (1) or more lessons of an in-service training or continuing education course;

(d) Evaluating an EMT certification practical examination; or

(e) Conducting an EMT instructor training course.

(3) During his two (2) year certification period an emergency medical technician instructor or instructor trainer shall attend:

(a) At least one (1) annual emergency medical technician instructor conference; or

(b) At least one (1) annual training session for newly appointed instructors.

(4) Continuing education hours obtained at these conferences may be used as credit toward the time required in subsection (2) of this section.

(5) An emergency medical technician instructor or instructor trainer shall meet the CPR requirement in one (1) of the following ways:

(a) Meet the cardiopulmonary resuscitation requirement outlined in Section 7(1) of this administrative regulation;

(b) Teach a cardiopulmonary resuscitation course for record; or

(c) Teach the cardiopulmonary resuscitation portion of the emergency medical technician course to emergency medical technician students.

Section 9. Certification Renewal. (1) All requirements of certification renewal, including continuing education hours, shall be obtained prior to the certification expiration date.

(2) Effective January 1, 1997, if all requirements were met prior to the certification expiration date of the applicant, a recertification application postmarked to the cabinet or received by the cabinet within three (3) months after the certification expiration date of the applicant may be considered for renewal.

(3) Effective January 1, 1997, an application for recertification postmarked to the cabinet or received by the cabinet more than

three (3) months after the certification expiration date of the applicant shall not be considered for renewal and shall be returned to the applicant.

(4) Upon written application to the cabinet, an EMT or EMT instructor who is a member of a National Guard or military reserve unit and who is called to active duty by presidential order under sections 121 and 673b of Title 10 U.S. Code, may be given an extension for a period up to one (1) year after the individual's release from active duty or return to the United States, whichever occurs first.

(5) An EMT who has not renewed his EMT certification within the time limitations specified in subsection (1) or (2) of this section may be eligible for certification by:

(a) Successfully completing the reentry challenge examination as outlined in Section 10 of this administrative regulation; or

(b) By retaking and successfully completing the entire EMT training course.

Section 10. Challenge Examination Procedure. (1) For those persons specified in subsection (3) of this section, a challenge examination may be taken in order to qualify or requalify the person as an EMT. This challenge examination shall be in lieu of the requirement for completion of the Kentucky EMT course and the passing of the Kentucky EMT examinations. The provisions of this section shall not prohibit a person listed in subsection (3) of this section from taking and successfully completing the Kentucky EMT course and the Kentucky EMT examinations.

(2) The cabinet shall prescribe the format and content of the EMT challenge certification examination which shall consist of two (2) parts:

(a) Written:

1. The Kentucky challenge written certification examination shall consist of one (1) examination inclusive of the entire EMT-Basic course curriculum content.

2. An absolute overall passing grade of not less than eighty (80) percent, shall be required for successful completion of the written portion of the challenge certification examination. The challenge candidate shall successfully complete the written certification examination before being eligible to take the certification practical examination.

3. If an applicant fails to pass the written examination, the applicant may be allowed one (1) retest, which shall be completed within thirty (30) days from the completion of the first testing.

4. The initial EMT certification written examination for a challenge candidate shall utilize the NREMT written examination as referenced in Section 3(3)(a) of this administrative regulation.

(b) Practical:

1. The applicant shall pass all required stations of the Kentucky challenge practical certification examination. The practical examination shall be divided into stations in which one (1) or more skills are tested. Certain stations shall be designated as mandatory. Other stations shall be designated as wild card stations in which more than one (1) skill may be tested. The student shall randomly choose the skills from the wild card station on the date of the examination.

2. If an applicant fails to pass all required stations, he shall be permitted, within one (1) year from the date of the first testing, one (1) opportunity to retake and complete the required stations which he failed to pass.

3. If the applicant fails again to pass the required stations, he shall be required to retake the entire Kentucky EMT training course before being eligible for reexamination.

4. The initial EMT certification challenge practical skills examination shall utilize the NREMT skills examination as referenced in Section 3(3)(b) of this administrative regulation.

(3) The following shall be eligible to take the Kentucky Challenge Examination:

(a) U.S. military personnel on active duty, or within a period of one (1) year from the date of discharge, who submit:

1. Proof of having successfully completed training equivalent to the Department of Transportation EMT curriculum outlined in Section 4 of this administrative regulation; and

2. Proof of current CPR certification.

(b) An EMT certified or licensed in another state or country, who submits proof of current EMT certification, or foreign equivalent, and CPR certification. An out-of-state or foreign license or certification shall be maintained current until the date of the first attempt to pass the practical skills examination.

(c) An EMT whose Kentucky certification has not been expired for more than five (5) years and who was in good standing when his certification expired.

(d) A challenge applicant, who does not become Kentucky certified within two (2) years from the date the cabinet receives his application to challenge, shall repeat the EMT course before he may become Kentucky certified.

(e) An applicant shall be exempt from the challenge examination requirements and shall be eligible for direct reciprocity for initial Kentucky certification if he:

1. Meets the eligibility requirements in this subsection;

2. Submits evidence of current NREMT registration; and

3. Meets the requirements of subsection (6)(b) of this section related to AIDS education required by KRS 214.610;

(f) An applicant who is not eligible for the exemption outlined in Section 12(3) of this administrative regulation shall have until July 1, 1999 to complete the requirements of Section 12 of this administrative regulation.

(4) An applicant for the Kentucky Challenge Examination shall submit:

(a) A letter of request to take the examination;

(b) The fee prescribed by 902 KAR 13:030, Section 1(2); and

(c) A completed "Application for Emergency Medical Technician Challenge Only", (1992).

(5) An applicant whose Kentucky emergency medical technician certification has not been expired for more than five (5) years and who was in good standing when his certification expired, shall submit the following additional documentation at the time of application:

(a) Proof of previous Kentucky emergency medical technician certification; and

(b) Proof of current CPR certification which meets the requirements of Section 7(1)(a) and (b) of this administrative regulation; and

(c) Proof of having completed four (4) hours of MAST Trouser training, taught by an instructor who meets the criteria in Section 6 of this administrative regulation; and

(d) Proof of completion of at least twenty-four (24) hours of continuing education taught by an instructor who meets criteria in Section 6 of this administrative regulation.

(6) Continuing education hours shall include:

(a) A minimum of one (1) hour in each of the following areas:

1. Airway management;

2. Diabetic emergencies;

3. Cardiovascular emergencies;

4. Multiple trauma;

5. Overdose and poisoning;

6. EMS related legal issues; and

7. Patient assessment.

(b) No less than two (2) continuing education hours in Acquired Immune Deficiency Syndrome (AIDS) education equivalent to the requirement specified in Section 5(1)(b) of this administrative regulation.

Section 11. Exemptions from EMT Administrative Regulations. The Kentucky certification requirements for an EMT shall not apply to:

(1) United States military personnel or employees of the United States government while engaged in the performance of their official duties under federal laws; or

(2) An EMT certified in another state who comes into Kentucky:

(a) To transport patients into or through the state; or

(b) For the purpose of returning a patient to his out-of-state residence.

Section 12. Kentucky EMT Transition Course. (1) The EMT

update training to the 1994 NSC, the United States Department of Transportation, National Highway Traffic Safety Administration; "1994 EMT-Basic Transitional Program", shall be referred to as the Transition Course (TC);

(2) The TC shall be completed by July 1, 1999 by EMTs currently certified in Kentucky who completed their EMT-Basic training in a course initiated prior to the effective date of this administrative regulation.

(3) If a Kentucky certified EMT who also holds out-of-state certification can provide evidence that he has completed equivalent training in another state prior to July 1, 1999, he may be exempt from the Kentucky TC in part, or in its entirety based upon the equivalency training he has received.

(4) The TC shall not be required of EMTs currently certified in Kentucky who completed their EMT-Basic training in a Kentucky 1994 NSC EMT-Basic Pilot Program course prior to the effective date of this administrative regulation.

(5) The TC shall be coordinated by a sponsoring agency or organization such as a Kentucky EMT training implementing agency, licensed ambulance service, acute care facility, or other agency or organization approved by the cabinet.

(6) A sponsoring agency shall have filed an application, "For Approval as an Agency to Sponsor 1994 NSC EMT-Basic Transition Courses for Kentucky Certified Emergency Medical Technicians" (10/95) if it has not been already approved.

(7) If an agency has already been approved to sponsor a TC, the agency shall have filed a "Cabinet Approved Agency/Organization Application to Sponsor a 1994 NSC EMT-Basic Transition Course for Kentucky Certified Emergency Medical Technicians", (10/95).

(8) An agency shall:

(a) File an application to sponsor a TC at least two (2) weeks prior to the planned starting date of the course; and

(b) Have received approval from the cabinet for coordinating the training.

(9) An approved sponsoring agency shall assume all responsibilities for conducting the TC.

(10) The TC course shall:

(a) Have, prior to the commencement of the course, a course number assigned by the cabinet;

(b) Be at least twenty-five (25) hours in duration except for the alternatives outlined in Section 5(7)(c) of this administrative regulation. This shall not include time for the course practical examination;

(c) Be limited to twenty-eight (28) certified EMT students;

(d) Utilize texts as outlined in Section 1(7) of this administrative regulation, which are compatible with the 1994 NSC;

(e) Meet cabinet requirements regarding supplies, equipment and other materials, which shall be available when needed during course lessons and as needed for skills practice and examination by the enrolled EMTs;

(f) Not permit an enrolled EMT to be on call while classes are in session;

(g) Not permit an enrolled EMT to take the course practical skills examination if the EMT has not completed the eleven (11) course psychomotor skills and objectives before the scheduled examination;

(h) Have a designated lead instructor for lectures who:

1. Is an EMT-Instructor certified by the cabinet; and

2. Has completed a Kentucky EMT-Instructor roll-out training program on the 1994 NSC;

(i) Have a minimum ratio of one (1) faculty, including lead instructor and assistants, to seven (7) enrolled EMTs for skills practice sessions; and

(j) Have assistants to the lead instructor who shall:

1. Assist the lead instructor in the skills practice sessions of the course; and

2. Assist as an evaluator for the course practical examination.

(11) The assistants to the lead instructor shall meet at least one (1) of the following requirements:

(a) Be an EMT-instructor certified by the cabinet who has completed the requirements outlined in 902 KAR 13:070, Section 4;

(b) Be a physician licensed by the Kentucky Board of Medical Licensure (KBML);

(c) Be a Kentucky certified paramedic who has successfully completed a TC who:

1. Holds current instructor credentials in either the American Heart Association Advanced Cardiac Life Support or Pediatric Advanced Life Support;

2. Is a level I fire service instructor; or

3. Has earned a bachelor's or higher degree; or

(d) Be a Kentucky licensed registered nurse who has completed a TC and is a certified emergency nurse or has evidence of three (3) consecutive years experience in an acute medical facility emergency department who:

1. Holds current instructor credentials in either the American Heart Association Advanced Cardiac Life Support or Pediatric Advanced Life Support;

2. Is a level I fire service instructor; or

3. Has earned a bachelor's or higher degree.

(12) The lead instructor shall be required to:

(a) Assist the sponsoring agency in filing an application for cabinet approval to conduct each TC;

(b) Maintain the following records for each enrolled EMT. These records shall remain as property of the sponsoring agency for a period of at least five (5) years or until July 1, 2004, whichever comes first:

1. Lesson attendance;

2. Required remediation;

3. Validation of competency for eleven (11) psychomotor skill objectives before an EMT is allowed to take the accompanying course practical skills examination;

4. A copy of the cabinet TC master attendance form. The original shall be submitted to the cabinet;

5. A copy of the cabinet master grade sheet. The original shall be submitted to the cabinet; and

6. The results of the course skills station examination. The original completed score sheets shall be submitted to the cabinet.

(c) Provide a certificate of completion to each EMT which specifies the hours earned toward certification renewal and if the TC was successfully completed by passing the accompanying skill examination;

(d) Assure that the accompanying course skill examination shall be administered as follows:

1. With at least two (2) evaluators assigned per station, the enrolled EMT shall pass one (1) skill station featuring patient assessment and intervention.

2. The skill station shall be designed to test one (1) or more skills. On the date of the examination, the EMT shall randomly choose whether the station to be tested shall feature a medical or trauma patient condition, and at the same time the EMT shall randomly choose the scenario which shall be tested.

3. At the completion of the skill examination, the EMT shall not be informed of his pass or fail status. After all enrolled EMTs who are eligible to test have completed the testing process, all participating evaluators shall meet to review all skill testing results and shall determine the pass or fail status of each EMT as a consensus from all evaluators.

(13) If an EMT fails to pass the required station, the EMT shall be permitted one (1) opportunity to retest the same medical or trauma patient condition station which he failed, but he shall randomly choose the scenario on the date of the retest. The retest shall be administered by the same agency that sponsored the TC in which the EMT was enrolled, but the two (2) evaluators shall not be the same two (2) evaluators who evaluated the EMT during the first examination.

(14) If an EMT again fails to pass the required skill station examination, he shall be required to retake the entire TC before being eligible for reexamination.

(15) Until July 1, 1999, an EMT may be allowed a maximum of two (2) attempts, with a maximum of one (1) retest on each attempt, to pass the accompanying practical skills examination.

(16) An EMT who has not been successful in passing the skill examination retest on the second attempt by July 1, 1999, shall not be eligible for Kentucky EMT certification renewal.

Section 13. Material Incorporated by Reference. The following material is incorporated by reference and may be inspected, obtained, or copied, unless prohibited by copyright, at the Office of the Commissioner, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. until 4:30 p.m., Monday through Friday:

(1) The United States Department of Transportation "1984 Emergency Medical Technician: National Standard Curriculum", (Third Edition).

(2) The United States Department of Transportation, National Highway Traffic Administration, "1994 National Standard Curriculum, Emergency Medical Technician-Basic".

(3) The "Emergency Medical Technician-Basic Course Inventory Pilot Program" form (10/95).

(4) The "Emergency Medical Technician-Basic Course Application (EMS Branch-5/96).

(5) The master "Grade Sheet" (1/96).

(6) "Kentucky EMT Examination Answer Sheet", number one (1), two (2), three (3), and four (4) (9/94).

(7) The "Master Attendance Sheet" (3/95).

(8) The "Attendance Sheet" (EMS Branch-01/96).

(9) The "Application for Emergency Medical Technician", (2/96).

(10) The "National Registration, Registered EMT-Basic", (1/96), published by the NREMT, P.O. Box 29233, Columbus, Ohio 43229.

(11) The "1994 National Registry of EMT-Basic Practical Examination Users Guide" published by the NREMT, P.O. Box 29233, Columbus, Ohio 43229.

(12) The "EMT Official Record of Continuing Education/In-service" (EMT/R-92).

(13) The "Application for Emergency Medical Technician/Emergency Medical Technician-Instructor Certification Renewal" (2/96).

(14) The "Application for Emergency Medical Technician Challenge Only" (EMS Branch-2/96).

(15) The United States Department of Transportation, National Highway Traffic Safety Administration, "1994 EMT-Basic Transitional Program".

(16) The application "For Approval as an Agency to Sponsor 1994 NSC EMT-Basic Transition Courses for Kentucky Certified Emergency Medical Technicians" (10/95).

(17) The "Cabinet Approved Agency/Organization Application to Sponsor a 1994 NSC EMT-Basic Transition Course for Kentucky Certified Emergency Medical Technicians" (10/95).

(18) The "1994 EMT-Basic Transition Course Equipment Requirements" (10/95).

(19) The "Participant Competency Record Kentucky EMT-Basic Transition Course" (10/95).

(20) The "Master Attendance Sheet EMT-Basic Transition Course" (10/95).

(21) The "Emergency Medical Technician Transition Course Master Grade Sheet", (10/95).]

RICE C. LEACH, M.D., Commissioner

JOHN WALKER, Attorney

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: October 22, 1999

FILED WITH LRC: October 26, 1999 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1999 at 9 a.m. in the Cabinet for Health Services Auditorium, Department for Public Health Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 1999. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written

comments to: Kevin Devlin, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 12,500 emergency medical technicians-basic (EMT-B).

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. This administrative regulation will have no effect on the cost of living and employment in this state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation will have no effect on the cost of doing business in any geographical area of this state.

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

1. First year following implementation: None

2. Second and subsequent years: As above.

(3) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional reporting or paperwork will be required.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General Funds

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

(a) Geographical area in which administrative regulation will be implemented: It is not anticipated that this administrative regulation will have an economic impact.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Based on comments received through the Notice of Intent hearing, the cabinet rejected a proposed requirement that all EMTs currently certified that are not required to be nationally registered through the NREMT meet continuing education requirements equivalent to the NREMT. The rejection of this proposal will result in no increase in the number of continuing education hours for currently certified EMTs and should not affect the quality of care provided by EMTs in Kentucky.

(8) Assessment of expected benefits: This administrative regulation will maintain uniform requirements for certification and recertification of EMTs based on national standards.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will have a positive effect on public health by maintaining uniform requirements for certification and recertification of EMTs based on national standards.

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

(c) If detrimental effect would result, explain detrimental effect: This administrative regulation, if not implemented will have a detrimental effect on public health in that uniform requirements for certification and recertification of EMTs based on national standards would not be established or maintained.

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

(a) Necessity or proposed regulation if in conflict: None

- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
 (10) Any additional information or comments: None
 (11) TIERING: Is tiering applied? No. Tiering was not applied because this administrative regulation provides uniform certification and recertification requirements only for the EMT-B.

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

902 KAR 13:070. EMT- instructors and [EMT-]instructor trainers.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)
 STATUTORY AUTHORITY: KRS 194A.030, 211.964[-EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: [EO 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services.] KRS 211.964 requires the Cabinet for Health Services to promulgate administrative regulations relating to emergency medical technicians (EMTs). The function of this administrative regulation is to establish requirements for attaining certification as an emergency medical technician-basic instructor (EMT-B instructor) or appointment as an EMT instructor trainer [EMT-instructor and EMT-instructor trainer].

Section 1. Eligibility for Training. A person applying to become a Kentucky certified EMT-B instructor shall be eligible for training if he:

- (1) Has current credentials with the National Registry of Emergency Medical Technicians (NREMT) as an NREMT-basic (EMT-B) or an NREMT-paramedic;
- (2) Is currently certified in Kentucky as an:
 - (a) EMT-B; or
 - (b) Paramedic;
- (3) Provides documented proof of having at least two (2) years of experience in the active delivery of prehospital patient care or transportation as a part of an organized emergency medical service system; and
- (4) Provides verification from the director or chief officer of the organization for whom the experience was provided that the experience was obtained within the last five (5) years prior to application for training.

Section 2. EMT-B Instructor Training. (1) Except as provided in subsection (2) of this section and Section 3(6) of this administrative regulation, a person training to become a Kentucky certified EMT-B instructor shall complete a:

- (a) United States (U.S.) Department of Transportation (DOT) EMT-B instructor method of instruction (MOI) educational course conducted by a Cabinet for Health Services approved emergency medical services educational institution; and
- (b) Student teaching internship and evaluation for certification as required in Section 3 of this administrative regulation.
- (2) A person shall not be required to meet the requirements of subsection (1)(a) of this section if he holds:
 - (a) A bachelor's degree in education; and
 - (b) A valid Kentucky teaching certificate; or
 - (c) Documentation of successful completion of a cabinet approved instructor level methods of instruction (MOI) course that consists of a minimum of forty (40) contact hours that shall include:
 1. Adult learning techniques;
 2. How to develop a lesson plan;
 3. Use of audio visuals;
 4. Small group dynamics; and
 5. Evaluation techniques.

Section 3. EMT-B Instructor Candidate Student Teaching Internship and Evaluation for Certification. (1) An EMT-B instructor candidate shall be eligible for and complete a student teaching and evaluation internship in which he has:

- (a) Met the training requirements referenced in Sections 1 and 2 of this administrative regulation;
- (b) Attended a minimum of seventy-five (75) percent of scheduled class sessions of an EMT-B course conducted by a cabinet-approved EMS educational institution;
- (c) Served in various capacities under the direct supervision of a lead instructor for the EMT-B course for which the lead instructor:
 1. Is a Kentucky certified EMT-B instructor who has been certified for at least three (3) years; and
 2. Has taught at least two (2) complete EMT-B training courses prior to serving as an EMT-B instructor candidate supervising instructor; and
 - (d) While under the direction of the supervising lead instructor, assumed total classroom responsibility on separate topics within the same EMT-B course for a minimum of ten (10) complete classroom lessons consisting of at least:
 1. Five (5) lectures; and
 2. Five (5) skill instruction sessions.
- (2) The ten (10) lesson student teaching component described in subsection (1)(d) of this section shall be evaluated as an eligibility requirement for certification by an EMT-B instructor internship evaluation committee in accordance with the review process requirements of the 1999 EMT-B Instructor Candidate Evaluation Manual incorporated by reference.

(3) An EMT-B instructor teaching internship and evaluation committee shall:

- (a) Consist of three (3) members as specified in the 1999 EMT-B Instructor Candidate Evaluation Manual incorporated by reference; and
- (b) Be authorized to terminate the evaluation process:
 1. At any point for a reason established by the cabinet-approved EMS educational institution; and
 2. Providing written notice to the instructor candidate including supporting documentation regarding the reason for termination.
- (4) An EMS educational institution shall be responsible for the costs associated with the preparation and evaluation of an accepted EMT-B instructor candidate.
- (5) An EMS educational institution may charge an EMT-B instructor candidate an evaluation fee.

(6) A person who was notified in writing by the cabinet when the last EMT-B instructor candidate evaluation was conducted in 1996, and between 1996 and the effective date of this administrative regulation, that he has been placed on a waiting list for EMT-B instructor candidate evaluation may be exempt from the requirements of Sections 1(1), (3), and (4) and 2(1)(a) of this administrative regulation if he provides to the cabinet documentation that he:

- (a) Has completed an EMT-B transition course (TC) pursuant to 902 KAR 13:050, Section 7; and
- (b) Has completed a cabinet approved MOI educational course such as a:
 1. Cabinet sponsored EMT-B instructor MOI taught by an EMT-B instructor trainer;
 2. Level II fire service instructor; or
 3. Cabinet-approved instructor course as established in Section 2(2)(c) of this administrative regulation; or
 - (c) Holds a:
 1. Bachelor's degree in education; or
 2. A valid Kentucky teaching certificate.

(7) A person who is notified in writing by the cabinet that he has met the requirements of subsection (6) of this section, may apply to a cabinet-approved EMS educational institution for acceptance into an EMT-B instructor candidate teaching internship and evaluation program.

(8) If an EMT-B instructor candidate fails the evaluation process he may, within two (2) years of the course completion date of the MOI as required in Section 2(1)(a) of this administrative

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regulation, repeat the teaching internship and evaluation until he successfully passes.

(9) If an EMT-B instructor candidate does not successfully pass the teaching internship and evaluation within two (2) years of the MOI course completion date, he shall repeat the entire EMT-B instructor training course before he may be reevaluated.

(10) If a person who meets the requirements of subsection (6) and (7) of this section fails as an EMT-B instructor candidate to pass the evaluation process he may, within two (2) years from the effective date of this administrative regulation, repeat the teaching internship and evaluation until he successfully passes.

(11) If a person who meets the requirements of subsections (6) and (7) of this section fails to successfully pass the teaching internship and evaluation within two (2) years from the effective date of this administrative regulation, he shall:

(a) Apply as a new EMT-B instructor candidate;

(b) Meet the requirements of Sections 1 and 2 of this administrative regulation; and

(c) Repeat the entire EMT-B instructor training course before he may be reevaluated.

(12) At the conclusion of the evaluation, the lead instructor shall submit verification of attendance and performance evaluations to the cabinet for each EMT-B instructor candidate in accordance with the EMT-B Instructor Candidate Evaluation Manual specifications.

Section 4. EMT-B Instructor Certification. A person shall be eligible for initial certification as an EMT-B instructor if he:

(1) Meets the requirements of Sections 1, 2, and 3(1), (2), (6) and (7) of this administrative regulation;

(2) Has obtained a recommendation for certification in accordance with the review process requirements of the 1999 EMT-B Instructor Candidate Evaluation Manual;

(3) Is not subject to disciplinary action pursuant to 902 KAR 13:090; and

(4) Within two (2) years of the completion of the MOI course as required in Section 2(1)(a) of this administrative regulation, or within two (2) years of the effective date of applying and acceptance for his first teaching internship if the candidate is exempt from Section 2(1)(a) of this administrative regulation, submits:

(a) An "Application for EMT-B Instructor Initial Certification", incorporated by reference; and

(b) The fee required in 902 KAR 13:030, Section 1(4)(g).

Section 5. Renewal of EMT-B Instructor Certification. (1) A person who obtained initial certification from the cabinet as an EMT-B instructor prior to the effective date of this administrative regulation shall be eligible to renew his EMT-B instructor certification if he:

(a) Maintains evidence of current training in cardiopulmonary resuscitation (CPR) that meets the minimum requirements referenced in 902 KAR 13:050, Section 4(1)(a)2;

(b) Obtains a minimum of twenty-four (24) contact hours of continuing education in the following categories:

1. Evidence of completion of the AIDS education required by KRS 214.610;

2. Evidence of completion of a minimum of three (3) contact hours on topics related to methods of instruction (MOI); and

3. Elective topics related to the training requirements and the scope of practice for a Kentucky certified EMT-B for the remaining continuing education hours totaling a minimum of twenty-four (24) contact hours;

(c) Has evidence of having conducted, during the preceding two (2) years, a minimum of twenty-four (24) hours of instruction on at least three (3) different topics that are within the training requirements and the scope of practice for a Kentucky certified EMT-B as described in 902 KAR 13:150, Section 1;

(d) Has evidence of participant involvement, during the preceding two (2) years, a minimum of twenty-four (24) hours in the delivery of pre-hospital patient care or transportation as part of an organized emergency medical services system;

(e) Completes an application for EMT-B instructor recertification that shall be:

1. Signed by the EMT-B instructor; and

2. Inclusive of a statement certifying to the truth of the information supplied;

(f) Is not subject to disciplinary action pursuant to 902 KAR 13:090; and

(g) Pays the fee required by 902 KAR 13:030, Section 1(4)(h).

(2) A person who obtains initial certification from the cabinet as an EMT-B instructor after the effective date of this administrative regulation, shall be eligible to renew his EMT-B instructor certification if he:

(a) Meets the requirements established in subsection (1) of this section; and

(b) Documents that he has current credentials with the NREMT as a:

1. NREMT-B; or

2. NREMT-paramedic.

(3) An application for renewal of certification shall not be considered if:

(a) The application is postmarked to the cabinet more than thirty (30) days after the certification expiration date of the applicant; or

(b) Prior to his certification expiration date, the EMT-B instructor applicant has not met the requirements of subsection (1) of this section.

Section 6. An Instructor Certified in Another State. A person certified in another state as an EMT-B instructor shall be eligible for Kentucky certification as an EMT-B instructor if he:

(1) Meets the reciprocity requirements established in 902 KAR 13:050, Section 5; and

(2) Meets the requirements of Sections 2(1)(b), 3, and 4 of this administrative regulation.

Section 7. Expiration of EMT-B Instructor Certification. (1) Unless it is renewed:

(a) The certification period of an EMT-B instructor who does not hold current registration with the National Registry of Emergency Medical Technicians as an NREMT-B or NREMT-paramedic shall expire two (2) years from the initial certification date and shall follow the same pattern for each certification renewal period thereafter; or

(b) The certification period for an EMT-B instructor who is also registered as an NREMT-B or NREMT-paramedic shall expire three (3) months after the expiration of his initial NREMT registration and shall follow the same pattern for each certification renewal period thereafter.

(2) Upon expiration of an EMT-B instructor certification, the person may not perform an authorized function of a Kentucky EMT-B instructor established in 902 KAR 13:025, 902 KAR 13:050, 902 KAR 13:080, 902 KAR 13:110, 902 KAR 13:120, 902 KAR 13:140 and 902 KAR 13:150.

(3) If the certification has expired for a Kentucky EMT-B instructor initially certified prior to the effective date of these administrative regulations, and he is a Kentucky certified, non-NREMT-B or non-NREMT-paramedic, whose EMT-B instructor certification expiration date was less than two (2) years prior to the effective date of these administrative regulations, he may again be eligible for certification, if within two (2) years from the effective date of this administrative regulation, he:

(a) Completes the requirements referenced in 902 KAR 13:050, Section 3(3)(a) and (b) in order to document current credentials as a:

1. NREMT-B; or

2. NREMT-paramedic; and

(b) Completes the requirements established in Section 5(1) of this administrative regulation; or

(c) Retakes all requirements established in Sections 1 through 4 of this administrative regulation.

(4) If the certification has expired for a Kentucky EMT-B instructor initially certified after the effective date of this administrative regulation and he is additionally a Kentucky certified, NREMT-B or NREMT-paramedic, he may again be eligible for certification if, within two (2) years from his EMT-B instructor cer-

tification expiration date, he:

- (a) Completes the requirements referenced in Section 5(1) of this administrative regulation; or
- (b) If a Kentucky certified non-NREMT-B or NREMT-paramedic, complete the requirements established in subsection (3)(a) and (b) of this section; or
- (c) Retakes all requirements established in Sections 1 through 4 of this administrative regulation.

Section 8. EMT-B Instructor Trainer. (1) An EMT-B instructor shall be eligible for appointment as an EMT instructor trainer for a period of two (2) years if he:

- (a) Has current credentials with the NREMT as a:
 - 1. NREMT-B; or
 - 2. NREMT-paramedic;
 - (b) Is currently a Kentucky-certified EMT-B or paramedic;
 - (c) Provides documented proof of five (5) years experience in the active delivery of prehospital patient care or transportation as a part of an organized emergency medical services system;
 - (d) Has been certified in Kentucky an EMT-B instructor for five (5) consecutive years;
 - (e) Has served as the lead instructor for at least five (5) complete EMT-B courses;
 - (f) Files, with the cabinet, a letter of request for appointment;
 - (g) Does not have an active pending investigation by the cabinet relating to his EMT certification; and
 - (h) Has not had a negative action relating to his EMT certification within the past five (5) years.
- (2) A person who was certified as an EMT-instructor trainer prior to the effective date of this administrative regulation shall not be required to meet the requirements of subsection (1)(a), (c), and (e) of this section for initial appointment as an EMT-instructor trainer.

(3) A person who was certified as an EMT-instructor trainer prior to the effective date of this administrative regulation shall meet the requirements of subsection (4) of this section for reappointment as an EMT-instructor trainer.

(4) A person shall be eligible for reappointment as an EMT-B instructor trainer if he:

- (a) Documents that he has current credentials with the NREMT as an:
 - 1. NREMT-B; or
 - 2. NREMT-paramedic;
 - (b) Meets the requirements of 902 KAR 13:050 relating to EMT-B certification;
 - (c) Is a currently certified EMT-B instructor;
 - (d) Documents annual attendance at no less than one (1):
 - 1. Kentucky EMS Council Training Committee; and
 - 2. Kentucky EMS Council meeting;
 - (e) Documents attendance and participation at one (1) conference at which continuing education hours for an EMT-B instructor or EMT-FR instructor is offered; and
 - (f) Is recommended for reappointment by the cabinet.
- (5) An EMT-B instructor trainer shall function at the request and direction of the cabinet.

(6) An EMT-B instructor trainer may serve as:

- (a) An instructor liaison to assist an EMS educational institution lead instructor with questions that may arise during a training program;
- (b) A representative of the cabinet who may monitor or evaluate:
 - 1. An EMT-B or EMT-first responder (EMT-FR) training program;
 - 2. EMS educational institutions; or
 - 3. Faculty performance in an EMT-B or EMT-FR training program;

(c) An examination representative as established in 902 KAR 13:140, Section 4 for a Kentucky EMT-B or NREMT-FR practical skills certification examination;

(d) A member of an EMT-B instructor teaching internship and evaluation committee as required in Section 3(3) of this administrative regulation;

(e) A liaison to an EMS regional advisor who may:

1. Assist in an investigation relating to an EMT-B training program; or

2. Provide information and assistance to cabinet staff relating to an EMT-B training issue; and

(f) A continuing education instructor at a time or location approved by the cabinet such as at an instructor conference.

(7) An EMT-B instructor trainer may be utilized to:

(a) Provide advice and direction for the cabinet through the Kentucky EMS Advisory Council on an issue relating to the development and implementation of a standard relating to the EMT-B and EMT-B instructor training processes; and

(b) Assume other responsibilities as requested by the cabinet.

(8) An EMT-B instructor trainer shall have the authority to act as a representative of the cabinet for the purposes to which they are assigned and as such shall have all rights as would normally be afforded a cabinet representative.

(9) An action recommended by an EMT-B instructor trainer shall be reviewed for approval by the cabinet.

(10) An EMT-B instructor trainer shall be eligible for travel reimbursement for an assignment made by the cabinet.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The United States Department of Transportation, National Highway Traffic Administration, 1994 National Standard Curriculum, EMT Instructor Training Program, Method of Instruction;

(b) The 1999 EMT-B Instructor Candidate Evaluation Manual (8/99);

(c) The Application for EMT-B Instructor Initial Certification (7/99);

(d) The Application for EMT-B Instructor Recertification (7/99);

(e) The Emergency Medical Technician-Basic Instructor Official Record of Continuing Education In-service (8/99).

(2) This material may be inspected, copied, or obtained at the Department for Public Health, Division of Adult and Child Health, EMS Branch, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [Emergency Medical Technician-Instructor. A person shall be certified as an EMT-instructor if he has:

- (1) Been certified as an EMT by the cabinet;
- (2) Assisted a Kentucky EMT-instructor for a minimum of one (1) complete EMT-basic training course in which he:
 - (a) Participated in the conduct of each lesson;
 - (b) Conducted, under supervision of the course lead EMT-instructor, at least one (1) complete lesson during the course;
 - (c) Served as a small-group assistant to the course lead EMT-instructor during practical skill exercises;
 - (d) Conducted class demonstrations of manipulative skills;
 - (e) Performed other related duties as directed by the course lead EMT-instructor;
- (f) Was recommended for final evaluation, in writing to the cabinet, by the lead EMT-instructor whom the candidate assisted in teaching the complete EMT-basic training course; and
- (g) Assisted throughout an EMT-basic course that was completed no more than one (1) year prior to the date of the written recommendation submitted by the EMT-instructor.
- (3) Been evaluated by a panel of EMT-instructor trainers;
- (4) Received an evaluation score of no less than an absolute eighty (80) percent;
- (5) Attended a later scheduled annual training session for EMT-instructor candidates who have successfully completed the requirements outlined in subsections (1) through (4) of this section; and
- (6) Completed an application for EMT-instructor certification.

Section 2. Reevaluation of EMT Instructor Candidates by Panel. (1) If an EMT-instructor candidate fails to score at least eighty (80) percent on his initial evaluation, he shall be given another opportunity, upon application, to be reevaluated.

(2) An EMT-instructor candidate who fails to score at least eighty (80) percent on the second attempt shall, upon application, be given another opportunity to be reevaluated if he:

(a) Drops out for a year, or one (1) evaluation course, if more than one (1) is held in a given year;

(b) Reapplies by having a current recommendation for evaluation submitted in writing by the lead EMT-instructor for whom the EMT-instructor candidate has assisted throughout an entire EMT-basic course; and

(c) Assisted throughout an EMT-basic course that was completed no more than two (2) years previous to the date of the updated written recommendation submitted by the lead EMT-instructor;

(3) A candidate who is not successful on two (2) attempts, but reapplies after meeting the requirements of subsection (2)(a), (b), and (c) of this section shall be allowed two (2) additional attempts to successfully complete the EMT-instructor evaluation course.

Section 3. Certification of an EMT-instructor-trainers. A person shall not be certified as an EMT-instructor-trainer unless he has:

(1) Complied with all requirements of Section 1 of this administrative regulation; and

(2) Been evaluated by the Kentucky EMS Council and recommended to the cabinet for certification as an EMT-instructor-trainer.

Section 4. Renewal of EMT-instructor Certification. (1) If the certification of an EMT-instructor is not renewed, it shall become invalid two (2) years from the date of issue. In order to obtain renewal, the EMT-instructor shall meet all requirements of 902 KAR 13:050, Section 8.

(2) A Kentucky EMT-instructor who was certified before the effective date of this administrative regulation shall have completed a 1995 Kentucky EMT-Instructor Roll-Out Training Program on the 1994 National Standard Curriculum (NSC) EMT-Basic. A Kentucky certified EMT-instructor who has not completed a 1995 Kentucky EMT-instructor Roll-out Training Program on the 1994 NSC EMT-basic shall not:

(a) Teach an EMT-basic course;

(b) Teach an EMT-continuing education class;

(c) Serve as an EMT certification practical skills advisor;

(d) Serve as a lead instructor or assistant to the lead instructor;

(e) Evaluate the accompanying practical skills examination for an EMT transition course as outlined in 902 KAR 13:050, Section 12; or

(f) Be eligible for renewal of the EMT-instructor certification.

(3) After the last scheduled Kentucky EMT-Instructor Roll-Out Training Program, a candidate accepted for evaluation shall not be eligible for EMT-instructor certification until he has:

(a) Successfully completed a Kentucky EMT-transition course as outlined in 902 KAR 13:050, Section 12; and

(b) Completed the requirements of Sections 1 and 2 of this administrative regulation. The conference referenced in Section 1(5) of this administrative regulation shall include the methods of instruction related to the 1994 NSC.

(4) Effective January 1, 1997, future candidates eligible for evaluation shall have:

(a) Met the requirements in Section 1(2) of this administrative regulation by participating in an EMT-basic course conducted according to the 1994 NSC; and

(b) Completed the requirements in subsection (3)(a) of this section.

(5) An instructor who obtained Kentucky EMT-instructor certification and whose certification is not eligible for renewal due to the conditions outlined in subsection (2)(a) of this section, may regain certification status if:

(a) He repeats the requirements of Section 1 and 2 of this administrative regulation; and

(b) The EMT course in which he assisted was in accordance with the 1994 NSC EMT-Basic.

(6) A Kentucky EMT-instructor who is denied renewal of his certification for not meeting the requirements in subsection (2)(a) of this section, may request an administrative hearing in accordance with the guidelines specified in 902 KAR 13:090, Section 5.

Section 5. Instructors Certified in Other States. A person who is certified in another state as an EMT-instructor and who wishes to become certified in Kentucky as an EMT-instructor, shall:

(1) Comply with the challenge examination procedures outlined in 902 KAR 13:050, Section 10; and

(2) Comply with the requirements of Sections 1 and 2 of this administrative regulation.]

RICE C. LEACH, M.D., Commissioner

JOHN WALKER, Attorney

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: October 22, 1999

FILED WITH LRC: October 26, 1999 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1999 at 9 a.m. in the Cabinet for Health Services Auditorium, Department for Public Health Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 1999. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments to: Kevin Devlin, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 250 emergency medical technician instructors (EMT-Is).

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. This administrative regulation will have no effect on the cost of living and employment in this state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation will have no effect on the cost of doing business in any geographical area of this state.

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

1. First year following implementation: None

2. Second and subsequent years: As above.

(3) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional reporting or paperwork will be required.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General Funds

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

(a) Geographical area in which administrative regulation will be implemented: It is not anticipated that this administrative regulation will have an economic impact.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were rejected because

this administrative regulation establishes uniform requirements for certification of EMT instructors and a student teaching internship and evaluation process.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: EMT instructors certified in Kentucky will be better prepared to teach EMT classes because they will have completed a national standard curriculum, a student internship, and a standard evaluation to prepare them for teaching.

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

(c) If detrimental effect would result, explain detrimental effect: The certification process for EMT-B instructors would be less accountable and less responsive to local needs.

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

(a) Necessity or proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. Tiering was applied in that although a new process is established to prepare and certify individuals as EMT-B instructors, the administrative regulation provides certain accommodations to individuals who had previously entered the process described in the current administrative regulations.

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

902 KAR 13:080. Emergency medical technician-basic authorized procedures.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)

STATUTORY AUTHORITY: KRS 194A.030 211.964[-EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY: [EO-96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services.] KRS 211.964 requires the Cabinet for Health Services to promulgate administrative regulations relating to emergency medical technicians (EMTs). The function of this administrative regulation is to establish procedures which an emergency medical technician-basic (EMT-B) shall be [EMTs are] authorized to perform.

Section 1. Authorized [Certified] EMT-B Procedures. [(+) Except for the procedures authorized in Sections 2 and 3 of this administrative regulation, a Kentucky certified EMT-B shall be authorized to:

(1) Perform any of the procedures not requiring physician medical direction established in the core curriculum of the "United States Department of Transportation, National Highway Traffic Administration, 1994 National Standard Curriculum, Emergency Medical Technician-Basic," incorporated by reference in 902 KAR 13:050, or Kentucky required supplemental curricula that have been approved by the cabinet following review and recommendation by the Kentucky EMS Council established pursuant to KRS 211.952.

(2) Of current Kentucky required supplemental training and procedures not requiring physician medical direction that have been approved by the cabinet established in 902 KAR 13:150 for statewide use, an EMT basic shall be authorized to:

(a) Assess patient body temperature following training according to Kentucky supplemental curriculum "Application of Noninvasive Temperature Monitoring";

(b) Transport a patient with an intravenous (I.V.) infusion entry

point maintained patent by a heparin or saline lock placement, to which no I.V. infusion fluid is attached;

(c) Transport a patient encountered in a prehospital setting who has a preestablished I.V. infusion to the nearest appropriate medical facility based on local medical protocol. The preestablished I.V. infusion solution may be established on any location of the body and may contain an additive that is monitored in accordance with training in the cabinet approved curriculum "Kentucky Initial Training Curriculum for the Emergency Medical Technician-Basic (EMT-B) in the Monitoring of Preestablished Patient Intravenous Infusions" incorporated by reference in 902 KAR 13:150; and

(d) During a prehospital to an appropriate medical facility transport:

1. Discontinue a preestablished infusion by closing the flow valve; or

2. Under orders from direct on-line medical control, discontinue the preestablished infusion by removing the infusion line from the patient and proceeding with infection and bleeding control in accordance with the training curriculum identified in paragraph (c) of this subsection; or

(3) For future consideration, an EMT-B may be authorized to perform another procedure not requiring physician medical direction for which the training curriculum objectives and associated scope of practice by an EMT-B has been approved by the cabinet, following review and recommendation for approval by the Kentucky EMS Council, for use in a pilot program as established in Section 3 of this administrative regulation, or for statewide implementation.

Section 2. Procedures, as established in the 1994 DOT EMT: Basic National Standard Curriculum, incorporated by reference in 902 KAR 13:050 or Kentucky required supplemental curricula approved by the cabinet pursuant to 902 KAR 13:150 following the Kentucky EMS Council review process identified in Section 1 of this administrative regulation, which an EMT-B may perform under the authorization of a physician medical director.

(1) Of current Kentucky required training and procedures requiring physician medical direction that have been adopted by the cabinet for statewide use, an EMT-B who is employed by an employer that has a contract or other agreement with a physician medical director shall, if approved by their physician medical director, be authorized to:

(a) Utilize an automated external defibrillator (AED) as referenced in the 1994 DOT EMT: Basic National Standard Curriculum, incorporated by reference in 902 KAR 13:050 and in accordance with the requirements of 902 KAR 13:120;

(b) Test the blood glucose level of a person using an automated testing device pursuant to laboratory licensing requirements established by the Department of Health and Human Services, Health Care Financing Administration, as identified in the cabinet approved curriculum "Kentucky Initial Training Curriculum for the Emergency Medical Technician-Basic (EMT-B) in Blood Glucose Analysis", incorporated by reference in 902 KAR 13:150;

(c) Assist, if employed as a basic life support partner with advanced life support personnel for a cabinet licensed advanced life support provider, in the preparation of intravenous fluids for administration by an advanced life support person authorized to establish intravenous access in accordance with training in the cabinet approved supplemental curriculum "Kentucky Initial Training Curriculum for the Emergency Medical Technician-Basic (EMT-B) in the Monitoring of Preestablished Patient Intravenous Infusions", incorporated by reference in 902 KAR 13:150;

(d) Assist in the ventilation and care of a patient who has an endotracheal tube in place in accordance with training in the cabinet approved supplemental curriculum "Kentucky Emergency Medical Technician-Basic (EMT-B) Initial Training in Advanced Airway Management", incorporated by reference in 902 KAR 13:150;

(e) Utilize noninvasive patient monitoring devices in accordance with training in the cabinet approved supplemental curricula "Kentucky Emergency Medical Technician-Basic (EMT-B)

Initial Training with Noninvasive Monitoring Devices, incorporated by reference in 902 KAR 13:150, to perform:

1. "Application of Electrocardiogram Electrodes and Monitor";
2. "Application of Pulse Oximetry"; and
3. "Application of End Tidal CO₂ Monitoring".

(f) According to training in the 1994 DOT EMT Basic: NSC;

1. Administer patient-prescribed epinephrine via use of an epinephrine auto-injecting device;
2. Administer patient prescribed nitroglycerin;
3. Administer activated charcoal;
4. Administer glucose containing substances via the oral route; and
5. Administer patient prescribed bronchodilators via the use of a metered dose inhaler.

(g) In accordance with training in the cabinet approved supplemental curriculum "Kentucky Emergency Medical Technician-Basic (EMT-B) Initial Training Curriculum in the Monitoring of Preestablished Patient Intravenous Infusions", incorporated by reference in 902 KAR 13:150, an EMT-B may:

1. Transport a discharged, stable patient who has a preestablished peripheral I.V. infusion from a health care facility to his place of residence. The I.V. infusion may be discontinued in accordance with the requirements of Section 1(2)(c) of this administrative regulation;

2. Provide interfacility transport for a stable patient who has a preestablished peripheral I.V. infusion and who does not otherwise require care by advanced-level personnel. The preestablished I.V. infusion solution for interfacility transport shall be limited to contain:

- a. Ringers solution;
- b. Lactated ringers;
- c. Normal saline;
- d. Five (5) percent dextrose in water; or
- e. A combination of items identified in clauses a through d of this subparagraph, but without another additive.

(h) According to the following described conditions and limited to solutions identified in paragraph (g)2 of this subsection:

1. Change the flow rate of a preestablished I.V. infusion during a prehospital to medical facility or during an interfacility transport; or

2. Add additional infusion solution, identical to that of the preestablished I.V. infusion solution, during a prehospital to medical facility or interfacility transport; or

(2) For future consideration, may perform another procedure requiring performance of an EMT-B under authorization of a physician medical director for which the training curriculum and associated scope of practice by an EMT-B has undergone the Kentucky EMS Council review process established in Section 2(1) of this administrative regulation and has been adopted by the cabinet for use in a pilot program as established in Section 3 of this administrative regulation, or for statewide implementation.

Section 3. Pilot Programs. (1) The cabinet shall authorize an EMS educational institution, Class I ground ambulance provider, Class III ground ambulance provider, or specialized Class I ground ambulance provider to pilot test and utilize a specialized training and associated procedure that has not been previously approved in this administrative regulation, if the EMS educational institution or ambulance provider:

(a) Submits a written request to the cabinet for approval before initiating a pilot program;

(b) Provides a written description of:

1. How the procedure shall be implemented and monitored;
2. The proposed training curriculum;
3. A list of instructors and their qualifications;
4. The beginning and ending dates of the field pilot testing program;

5. How the procedure, if used by an EMT-B, shall benefit or improve the quality of patient care; and

6. The methods to be used to evaluate the training and the authorized procedure.

(2) An EMS educational institution, Class I ground ambulance provider, Class III ground ambulance provider, or specialized

Class I ground ambulance provider approved by the cabinet to conduct a pilot program shall agree, in writing:

(a) To submit periodic reports as required by the cabinet related to the progress of the pilot program; and

(b) To abide by the requirements established by the cabinet for the pilot program.

(3) An EMT-B who successfully completes an approved pilot program may perform the procedures relevant to the training received in the pilot program.

(4) The cabinet may establish pilot program limitations on:

(a) The geographic area or service location where the procedure may be performed;

(b) The performance of the procedure related to:

1. Specific events;
2. Disasters; or
3. Directives; or

(c) The performance of an invasive or medication administered procedure related to:

1. Physician medical director oversight; or

2. Protocols established and supervised by the medical director of the ground ambulance provider, (as otherwise provided in subsections (2) and (3) of this section, certified EMTs may perform any of the procedures as set forth in the "Basic Emergency Medical Technician: National Standard Curriculum (NSC)," Third Edition, 1984, published by the United States Cabinet of Transportation, National Highway and Traffic Safety Administration, Washington, D. C. 20590, incorporated by reference in 902 KAR 13:050, and in the accompanying texts which have been chosen by the lead instructor and approved by the implementing agency. Texts utilized shall be:

(a) Currently in publication;

(b) The most current edition available at the time the course begins. Courses initiated prior to the effective date of this administrative regulation shall utilize a text which meets the 1984 NSG standards. Pilot programs of the 1994 NSG and statewide courses initiated on or after the effective date of this administrative regulation shall utilize a text which meets the 1994 NSG standards;

(c) Maintained on file in the office of the implementing agency; and

(d) Available, upon request, for public inspection during normal office hours or during course hours.

(2) An EMT may:

(a) Transport a stable patient with an IV infusion entry point maintained patent by a heparin lock placement, to which no IV infusion fluid is attached;

(b) Transport interfacility or facility to home a stable patient who has a preestablished peripheral IV infusion; and as authorized by local medical control may perform procedures for the maintenance and, if needed, discontinuation of the preestablished peripheral IV infusion if he has completed the training requirements specified in 902 KAR 13:130;

(c) Transport a patient having a preestablished IV infusion who is encountered in a prehospital setting to the nearest appropriate medical facility based on local protocol; and

(d) Discontinue the preestablished IV infusion by closing the flow valve;

(3) An EMT shall not:

(a) Perform the initiation of intravenous (IV) fluid infusion;

(b) Remove a preestablished IV needle or catheter from a patient;

(c) Perform a cricothyrotomy;

(d) Relieve a tension pneumothorax through the use of needles;

(e) Insert an endotracheal airway, an esophageal obturator airway, or an esophageal gastric tube airway;

(f) Perform external cardiac defibrillation except by use of automatic or semiautomatic defibrillation equipment authorized according to the requirements specified in 902 KAR 13:120; or

(g) Use medical antishock trousers unless:

1. The EMT has completed a Kentucky emergency medical technician course during which the use of medical antishock trousers was taught; or

2. The EMT is currently certified as an emergency medical technician and has completed training on the medical antishock trousers and successfully passes an examination administered by the cabinet consisting of both written and practical application examinations. The training and examination shall be conducted by an EMT instructor or instructor trainer in accordance with the criteria set forth in the "Basic Emergency Medical Technician: National Standard Curriculum," Third Edition, 1984, on or after the effective date of this administrative regulation, the 1994 National Standard Curriculum EMT-Basic, which is incorporated by reference in 902 KAR 13:050, and the standards and protocols of the cabinet; or

3. The EMT has completed an emergency medical technician course in another state or country which included the use of medical antishock trousers and has taken and passed an examination in the use of medical antishock trousers; and

4. The EMT uses medical antishock trousers in accordance with the standards and the protocol of the cabinet.

(4) An EMT who successfully completes a transition course and passes the accompanying practical skills examination, as outlined in 902 KAR 13:050, Section 12(11)(d), may perform the procedures requiring physician medical oversight (e.g. assistance in the administration of certain prescribed medications or automatic defibrillation) if:

(a) The EMT works with a basic life support (BLS) ambulance service that:

1. Chooses to provide the procedures and has a written contract with a physician medical director, licensed to practice in Kentucky; or

2. Has an alternate method for ambulance service physician medical oversight that has been approved by the cabinet.

(b) These procedures may also be performed by an EMT who:

1. Meets the transition course requirements; and

2. Works with a public safety organization that is affiliated with a BLS ambulance service which meets the physician medical oversight requirements.

Section 2. 1994 National Standard Curriculum (NSC) EMT-Basic Pilot Program. (1) As outlined in 902 KAR 13:050, Section 1, prior to the statewide implementation of the 1994 NSC EMT-Basic, a cabinet approved implementing agency may participate in a pilot program to conduct and evaluate the 1994 NSC EMT-Basic.

(2) Each approved pilot program shall agree to abide by the requirements of the cabinet, outlined in 902 KAR 13:050, for EMT training and certification.

(3) In addition to the requirements of the cabinet, outlined in 902 KAR 13:050, an implementing agency conducting a 1994 NSC EMT-Basic Pilot Program shall be responsible for:

(a) Establishing applicant requirements;

(b) Establishing EMT student training and examination standards; and

(c) Submitting summary reports to the cabinet as requested, but minimally at the midpoint and at the completion of the 1994 NSC Pilot Program.

(4) A student successfully completing a pilot program shall be eligible to apply for the Kentucky certification examination utilizing the National Registry of EMTs written and practical examination in lieu of the Kentucky four (4) part written examination and practical examination outlined in 902 KAR 13:050, Section 3. Scoring standards for the examination shall be consistent with the policy of the National Registry of EMTs.

(5) For a candidate who has successfully completed a Kentucky 1994 NSC EMT-Basic Pilot Program, the passing score for the Kentucky written examination utilizing the National Registry of EMTs written examination shall be sixty-five (65) percent. Scoring standards and eligibility for retesting of the National Registry of EMTs written and practical examinations shall be consistent with the policy of the National Registry of EMTs.

(6) An EMT student who completes a cabinet approved 1994 NSC EMT-Basic Pilot Program and is Kentucky certified by utilization of the National Registry examination shall be subject to the

standards for disciplinary actions specified in 902 KAR 13:090.

(7) A cabinet approved 1994 NSC EMT-Basic Kentucky Pilot Program shall not be initiated after the effective date of this administrative regulation.

Section 3. Other Requested Pilot Programs. (1) A cabinet approved Kentucky EMT training implementing agency or Kentucky licensed ambulance service desiring to pilot test an EMT procedure not previously authorized in this administrative regulation shall:

(a) Apply to the cabinet for approval before initiating a pilot program; and

(b) Provide a written description of how the procedure shall be implemented and monitored, and how the procedure, if used by an EMT, shall benefit patient care.

(2) An agency approved by the cabinet to conduct a pilot program shall agree, in writing, to submit periodic reports to the cabinet related to the progress of the pilot program and to abide by the requirements of the cabinet.

(3) An EMT who completes a cabinet approved pilot program may perform the procedures relevant to the training received in the pilot program in accordance with requirements established by the cabinet including limitations on:

(a) The geographic area or service location where the procedure may be performed;

(b) The performance of the procedure to specific events, disasters, or directives;

(c) The performance of the procedure under a physician medical director oversight and protocol directed authority; or

(d) Other limited or broad scope practice as approved by the cabinet.]

RICE C. LEACH, M.D., Commissioner

JOHN WALKER, Attorney

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: October 22, 1999

FILED WITH LRC: October 26, 1999 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1999 at 9 a.m. in the Cabinet for Health Services Auditorium, Department for Public Health Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 1999. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments to: Kevin Devlin, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 12,500 emergency medical technicians (EMTs).

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. This administrative regulation will have no effect on the cost of living and employment in this state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation will have no effect on the cost of doing business in any geographical area of this state.

(c) Compliance, reporting, and paperwork requirements, in-

cluding factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None
2. Second and subsequent years: As above.
- (3) Effects on the promulgating administrative body: None
 - (a) Direct and indirect costs or savings:
 1. First year: None
 2. Continuing costs or savings: None
 3. Additional factors increasing or decreasing costs: None
 - (b) Reporting and paperwork requirements: No additional reporting or paperwork will be required.
- (4) Assessment of anticipated effect on state and local revenues: None
- (5) Source of revenue to be used for implementation and enforcement of administrative regulation: General Funds
- (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:
 - (a) Geographical area in which administrative regulation will be implemented: It is not anticipated that this administrative regulation will have an economic impact.
 - (b) Kentucky: Same as above.
- (7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were rejected because this administrative regulation permits EMT-Bs to perform additional life saving skills in the prehospital setting.
- (8) Assessment of expected benefits:
 - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation would have a positive effect on public health because it permits EMT-Bs to perform additional life saving skills in the prehospital setting.
 - (b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes.
 - (c) If detrimental effect would result, explain detrimental effect: EMT-Bs in Kentucky would be unable to perform certain life saving skills in the prehospital setting.
 - (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy will conflict, overlap, or duplicate this administrative regulation.
 - (a) Necessity or proposed regulation if in conflict: None
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
 - (10) Any additional information or comments: None
 - (11) TIERING: Is tiering applied? No. Tiering was not applied because this administrative regulations establishes uniform authorized procedures for all EMT-Bs.

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

902 KAR 13:090. Disciplinary actions.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)

STATUTORY AUTHORITY: KRS Chapter 13B, 194A.030, 194.050, 211.964[~~EO-96-862~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.964 directs the Cabinet for Health Services to adopt administrative regulations relating to emergency medical technicians (EMTs). The function of [:] this administrative regulation is to establish grounds and [establishes] procedures for taking disciplinary action against an applicant for certification or a certified EMT [emergency medical technician (EMT), EMT-first responder, EMT-first responder-instructor, EMT-instructor, or EMT-instructor-trainer. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services].

Section 1. Denial, Revocation, Suspension, Probation, and Restriction of Certificates. The cabinet may deny, revoke, suspend, probate, or restrict the certificate of a person who:

- (1) Has engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public;
- (2) Uses drugs or controlled substances to the extent it affects [may-affect] his ability to perform the duties of an EMT, or becomes a drug dependent person or drug abuser as defined in KRS 222.011(8);
- (3) Uses alcohol to the extent that it affects [may-affect] his ability to perform the duties of an EMT or becomes an alcoholic person who suffers from alcoholism as defined in KRS 222.011(3);
- (4) Has or develops a physical or mental disability or other condition that continued practice or performance of his duties is [may-be] dangerous to patients or the public;
- (5) Fails to:
 - (a) Follow the appropriate standards of care or established patient care protocols in the management of a patient;
 - (b) Administer medicine or treatment in a responsible manner in accordance with:
 1. His level of certification;
 2. The legal order [Orders] of a physician who is the medical director of the EMT; [or]
 3. Locally approved medical protocols; or
 4. The legal order of a physician who is not the medical director of the EMT if the physician:
 - a. Is physically present with the patient;
 - b. Can be identified as a licensed physician in the United States of America;
 - c. Agrees to assume responsibility for the patient; and
 - d. Agrees to accompany the patient to the receiving medical facility;
 - (c) [Maintain patient confidentiality;
 - (d) Meet the applicable requirements for certification or recertification pursuant to:
 1. 902 KAR 13:050 for an EMT-B; [; EMT-instructor or EMT-instructor-trainer; or]
 2. 902 KAR 13:110 for an EMT first responder or EMT first responder instructor; or
 3. [(e) Meet the requirements for an applicant for certification pursuant to 902 KAR 13:020; or
 - (f) Meet the requirements for an EMT-instructor or EMT-instructor-trainer pursuant to] 902 KAR 13:070 for an EMT-B instructor;
 - (6) Unlawfully breaches patient confidentiality;
 - (7) [(a)] Reproduces or reconstructs, or attempts to reproduce or reconstruct, a portion of a training or certification [an emergency medical technician] examination for the purpose of assisting another to cheat on the examination; or
 - (8) [(b)] Disseminates information for purposes of reproduction or reconstruction of a portion of a training or certification [an emergency medical technician] examination in order to assist another to cheat on the examination;
 - (9) [(7)] Cheats, or assists another to cheat, on an examination for certification[; recertification; challenge; or reentry];
 - (10) [(8)] Does not meet the qualifications, minimum requirements, special requirements, and basic competency areas established [outlined] in the:
 - (a) "Emergency Medical Technician/Basic Functional Position Description"; or
 - (b) The "Emergency Medical Technician First Responder Functional Position Description" [; The "Emergency Medical Technician/Basic Functional Position Description", April 1993, is incorporated by reference, and may be inspected, copied, or obtained from the Office of the Commissioner for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. until 4:30 p.m., Monday through Friday];
 - (11) [(9)] Issues a check for a certificate or is certified as a result of a check being issued on an invalid account or an account which does not have sufficient funds to pay the fee for the certificate required by 902 KAR 13:030;

(12) [(10)] Discriminates in the provision of services on the basis of race, sex, age, religion, color, creed, or national origin;

(13) [(11)] Practices outside or beyond the scope of his level of certification, or represents he is qualified at a level other than his current certification;

(14) [(12)] Takes or possesses, without authorization, for personal use or gain, medicines, supplies, equipment, or personal items of a patient;

(15) [(13)] Materially alters a certificate, or uses or possesses an altered certificate;

(16) [(14)] Obtains or attempts to obtain a certificate by fraud, forgery, deception, misrepresentation, or subterfuge; or assists another to obtain a certificate by fraud, forgery, deception, misrepresentation, or subterfuge.

(17) [(15)] Falsifies an application for certification or recertification;

(18) [(16)] Falsifies a patient record;

(19) [(17)] Has had an EMT, paramedic [EMT-first responder, EMT-first responder instructor, EMT-instructor, EMT-instructor trainer], or equivalent certificate denied, suspended, revoked, or restricted in another state while holding a Kentucky certificate;

(20) [(18)] Uses or attempts to use his certificate to obtain or attempts to obtain a [any] benefit to which he is not entitled by duress, coercion, fraud, or misrepresentation;

(21) [(19)] Is not at least eighteen (18) years of age at the time of application for certification;

(22) [(20)(a)] Has been convicted of a felony or misdemeanor described in KRS 335B.010(4); or

(23) [(b)] Has been convicted of another relevant crime as established in Section 2 of this administrative regulation [other crimes] directly related to the ability of a person to perform the duties of an EMT.

Section 2. Relevant Crimes. In determining if a crime directly relates to the ability of a person to perform the duties of an EMT, the cabinet shall apply the test established in KRS 335B.020(2) to the following crimes:

(1) Offenses under KRS Chapter 189 (traffic regulations punishable by fine or imprisonment or both);

(2) Offenses under KRS Chapter 189A (driving under the influence); and

(3) Offenses under:

(a) KRS Chapter 218A (controlled substances);

(b) KRS Chapter 507 (criminal homicide);

(c) KRS Chapter 508 (assault and related offenses);

(d) KRS Chapter 509 (kidnapping and related offenses);

(e) KRS Chapter 510 (sexual offenses);

(f) KRS Chapter 511 (burglary and related offenses);

(g) KRS Chapter 512 (criminal damage to property);

(h) KRS Chapter 513 (arson and related offenses);

(i) KRS Chapter 514 (theft and related offenses);

(j) KRS Chapter 515 (robbery);

(k) KRS Chapter 521 (bribery and corrupt influences);

(l) KRS Chapter 523 (perjury and related offenses);

(m) KRS Chapter 525 (riot, disorderly conduct and related offenses);

(n) KRS Chapter 527 (offenses relating to firearms and weapons);

(o) KRS Chapter 528 (gambling);

(p) KRS Chapter 529 (prostitution offenses); and

(q) KRS Chapter 506 (Inchoate offenses).

Section 3. Presumptive Denial of Certification for Conviction of a Relevant Crime. Convictions for the following crimes shall be grounds for presumptive denial or revocation of an EMT certification:

(1) Capital offenses;

(2) Class A, Class B, and Class C felonies;

(3) Class D felonies, if the conviction occurred within the last five (5) years;

(4) Crimes involving sexual misconduct including forcible rape;

(5) Sexual or physical abuse of:

(a) Children;

(b) The elderly; or

(c) The infirm;

(6) Child pornography;

(7) Incest involving a minor;

(8) Assault on an elderly or infirm person;

(9) Crimes in which the victim is a patient or otherwise under the care and protection of the EMT or applicant including:

(a) Abuse;

(b) Theft; or

(c) Financial exploitation;

(10) Crimes involving the use of alcohol or illegal drugs, while on duty as an EMT;

(11) Traffic offenses defined as:

(a) Three (3) or more convictions for driving under the influence (DUI) within the last five (5) years; or

(b) A DUI conviction or more than two (2) separate moving violations incurred while operating an emergency vehicle; or

(12) Four (4) or more misdemeanor convictions within the last five (5) years.

Section 4. Restricted Certification for Conviction of a Relevant Crime. A person convicted of a relevant crime may be eligible for a restricted EMT certificate with a particular employer or a particular type of employment if:

(1) He has not been convicted of a Class D felony within five (5) years prior to the request for certification;

(2) He has not been convicted of another felony;

(3) He:

(a) Has completed the terms of his sentencing; or

(b) Is on unsupervised probation;

(4) The crime does not fall under the conditions for presumptive denial or revocation established in Section 3 of this administrative regulation;

(5) He has not been convicted of traffic offenses defined as:

(a) Two (2) convictions for driving under the influence (DUI) within the last five (5) years; or

(b) A moving violation incurred while operating an emergency vehicle; or

(6) He has not been convicted of more than three (3) misdemeanors within the last five (5) years.

Section 5. Probationary Certification for Conviction of a Relevant crime. A person convicted of a relevant crime may be eligible for a probationary EMT certificate if:

(1) The crime does not fall under the conditions for presumptive denial or revocation established in Section 3 of this administrative regulation;

(2) The crime does not meet the conditions for a restricted certificate established in Section 4 of this administrative regulation;

(3) He has not been convicted of traffic offenses defined as one (1) conviction for driving under the influence (DUI) within the last five (5) years; or

(4) He has not been convicted of more than two (2) misdemeanors within the last three (3) years.

Section 6. Persons Certified While Incarcerated. (1) [Restricted-Certificate:] The cabinet may issue a restricted [restrict the] certificate to [of] a person who is certified or obtains certification as an EMT-B, or EMT first responder while incarcerated in a prison, correctional facility, reformatory, or jail to function as an EMT-B, or EMT first responder only within the scope of an ambulance service operated by that facility during the period of his incarceration.

(2) If a restricted certificate is issued to a person who is incarcerated in a prison, correctional facility, reformatory, or jail, the certificate shall automatically expire upon release of the person from incarceration.

Section 7. [3-] Cease and Desist Order. If the cabinet has reasonable cause to believe that a person may cause harm or create an imminent danger to the public if his certificate is not

denied, suspended, revoked, probated, or restricted, the cabinet may issue an order directing a person to immediately cease and desist functioning as an EMT-B, EMT first responder, EMT first responder instructor, or EMT instructor, ~~or EMT instructor-trainer if the cabinet has reasonable cause to believe that the person may cause harm or create an imminent danger to the public if his certificate is not denied, suspended, revoked, or restricted~~].

Section 8. [4-] Notice Procedures. (1) The cabinet shall notify a person by certified mail sent to his last known address of record of an action to deny, revoke, suspend, or restrict his certificate, and of his right to request a hearing.

(2) The written notice of the cabinet shall comply with KRS 13B.050.

(3) Failure of an EMT to notify the cabinet of a change of address or to accept or claim the certified notice at his last known address of record shall not:

- (a) Delay or negate the disciplinary action;
- (b) Change the effective date of the action; or
- (c) Suspend, alter, or negate the time period allowed to respond to the action or request a hearing.

(4) [(2)] The written notice shall state the substance of each offense charged with sufficient detail to reasonably apprise him of the nature, time, and place of the violation.

Section 9. [5-] Hearings. (1) An administrative hearing [hearings] shall be conducted in accordance with 902 KAR 1:400.

(2) The hearing shall be conducted by a hearing officer appointed by the cabinet in accordance with 902 KAR 1:400.

(3) If an applicant or certificate holder does not request a hearing within twenty (20) days of the written notice of intended action, the action shall be final.

(4) If a person receives a certificate and his check for the certification fee is later returned unpaid due to an invalid account or insufficient funds, the certificate shall be automatically suspended until:

- (a) The fee is paid in full by cash, certified check, or money order; or
- (b) The person requests a hearing on the suspension.

Section 10. Disclosure and Publication of Disciplinary Actions. (1) [(5)] The cabinet may disclose to the public and publish in the EMS newsletter, or similar publication:

- (a) The name of a person whose certificate has been denied, suspended, revoked, or restricted and the time period involved;
- (b) The administrative regulation violated; and
- (c) The nature of the violation.

(2) [(6)] If a person is employed as an EMT, EMT first responder, EMT first responder instructor, EMT instructor, or EMT instructor trainer at the time a final decision is made by the cabinet to deny, suspend, revoke, or restrict a certificate, the cabinet may notify the employer of the action taken.

(3) [(7)] If a person fails to abide by a decision of the cabinet to deny, suspend, revoke, or restrict his certificate, the person shall be in violation of KRS 211.962 and may be charged with a Class A misdemeanor under KRS 211.990(5).

RICE C. LEACH, M.D., Commissioner

JOHN WALKER, Attorney

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: October 22, 1999

FILED WITH LRC: October 26, 1999 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1999 at 9 a.m. in the Cabinet for Health Services Auditorium, Department for Public Health Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 1999. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do

not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments to: Kevin Devlin, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 15,500 emergency medical technicians (EMTs), EMT-instructors, and EMT-first responders.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. This administrative regulation will have no effect on the cost of living and employment in this state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation will have no effect on the cost of doing business in any geographical area of this state.

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

1. First year following implementation: None

2. Second and subsequent years: As above.

(3) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional reporting or paperwork will be required.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General Funds

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

(a) Geographical area in which administrative regulation will be implemented: It is not anticipated that this administrative regulation will have an economic impact.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were rejected because this administrative regulation complies with the requirements of KRS Chapter 13A.

(3) Assessment of expected benefits: This administrative regulation will establish, in administrative regulation, uniform policies for taking disciplinary action against the certification of an emergency medical technician.

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

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

(c) If detrimental 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 statute, regulation, or policy will conflict, overlap, or duplicate this administrative regulation.

(a) Necessity or proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied because this administrative regulation applies to all levels of

Emergency Medical Technician (EMT) certification.

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

902 KAR 13:110. Emergency medical technician-first responder [EMT-first responder] training, examination, and certification.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)

STATUTORY AUTHORITY: KRS 194A.030, 211.964

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.964 directs the Cabinet for Human Resources to adopt [rules and] administrative regulations relating to emergency medical technicians (EMTs). The function of this administrative regulation is to establish [a new classification of emergency medical technician; the emergency medical technician-first responder (EMT-first responder); and to establish] requirements for emergency medical technician-first responder (EMT-FR) and EMT-FR instructor training, examinations, and certifications.

Section 1. Training Course Requirements. (1) The emergency medical technician-first responder training course shall:

(a) Be conducted by a cabinet approved emergency medical services (EMS) educational institution that meets the requirements of 902 KAR 13:140;

(b) Not commence until the sponsoring agency has been certified by the cabinet as an EMS educational institution;

(c) Be a minimum of forty-seven and one-half (47 1/2) hours in duration;

(d) Follow the United States (U.S.) Department of Transportation, (DOT), National Highway Traffic Safety Administration, 1995 EMT-First Responder-National Standard Curriculum (1995 EMT-FR NSC); and

(e) Include training in:

1. Acquired Immune Deficiency Syndrome (AIDS) as required by KRS 214.610;

2. Proper use of automated external defibrillators (AEDs);

3. Proper use of oxygen therapy delivery devices including bag-valve-mask;

4. Proper use of a cervical collar and long spine board immobilization;

5. Proper use of the sphygmomanometer and stethoscope for obtaining blood pressure; and

6. Cardiopulmonary resuscitation (CPR) that meets the educational objectives of:

a. The American Heart Association;

b. The American National Red Cross; or

c. The National Safety Council.

(2) The CPR course shall:

(a) Be taught by a person who is:

1. An American Heart Association CPR instructor;

2. An American National Red Cross CPR instructor;

3. A National Safety Council CPR instructor;

4. An EMT-B instructor; or

5. An EMT-FR instructor; and

(b) Include instruction and testing in:

1. One (1) rescuer CPR;

2. Two (2) rescuer CPR;

3. Techniques of changing from one (1) rescuer to two (2) rescuers during the performance of CPR;

4. Techniques of changing rescuers during the performance of two (2) rescuer CPR;

5. Techniques for relief of obstruction of the airway;

6. CPR for infants and small children; and

7. Barrier to mouth, barrier to nose and barrier to stoma resuscitation for adults, small children and infants. [EMT-first responder training course shall:

(1)(a) Include the curriculum of the "Emergency Medical Services: First Responder Training Course", (March 1979); U.S.

Department of Transportation, National Highway Traffic Safety Administration, Washington, D.C. 20590, and the accompanying text "First Responder" (Third Edition), (1991) The Brady Company, Prentice-Hall, Inc., Englewood Cliffs, N.J. 07632.

(b) A copy of these publications is incorporated by reference. They shall be on file in the office of the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40601, and shall be available for public inspection and copying Monday through Friday from 8 a.m. until 4:30 p.m.;

(2) Be at least forty (40) hours in duration;

(3) Utilize equipment, texts, and other materials approved by the cabinet;

(4) Not begin until all equipment, texts, and other materials specified are available, in proper quantities, in proper working condition, and placed in secure storage;

(5) Share equipment between courses if it is available equally to all EMT-first responder classes;

(6) Be taught by an instructor approved by the cabinet pursuant to Section 2 of this administrative regulation;

(7) Have one (1) assistant instructor for every ten (10) students during a practice session.

(b) A certified emergency medical technician or paramedic may be used as an assistant for practice sessions;

(8) Have a class certification number assigned by the cabinet;

(9) Be limited to a maximum of thirty (30) students;

(10) Permit more than one (1) lesson absence per student if the absence is made up:

(a) With the approval of the instructor; or

(b) In a subsequent EMT-first responder course;

(11) Require each student to sign in for each lesson on attendance sheets provided by the cabinet; and

(12) Require the instructor at the end of each course, to provide the cabinet with the:

(a) "Final Course Records Form";

(b) "Answer Sheet";

(c) "Final Practical Exams";

(d) "Application for Certification";

(e) The fee prescribed by 902 KAR 13:030, Section 1(3);

(f) Two (2) "Master Student Attendance Sheets"; and

(g) "Attendance sheets" for each lesson.

(13)(a) The following forms are incorporated by reference:

1. "Final Course Records Form" (11/87);

2. "Kentucky First Responder Examination Answer Sheet" (88-89);

3. "Application for Certification" (7/90);

4. "Master Student Attendance Sheet" (11/87); and

5. "Attendance Sheet" (11/87);

(b) They may be inspected, copied or obtained from the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. through 4:30 p.m., Monday through Friday.]

Section 2. EMT-First Responder Instructors. [(1)] A person shall be eligible for certification as an EMT-FR instructor [not hold himself out as an EMT-first responder instructor] if he:

(1) Submits to the cabinet:

(a) An application for EMT-FR Instructor certification; and

(b) Pays the fee as required in 902 KAR 13:030;

(2) Is a Kentucky certified:

(a) EMT-FR trained in the 1995 EMT-FR NSC;

(b) EMT-B trained in the 1994 EMT-B National Standard Curriculum; or

(c) EMT-paramedic trained in the 1994 EMT-B National Standard Curriculum.

(3) Meets the requirements of Section 1(1)(d) of this administrative regulation;

(4) Has completed a cabinet approved basic instructional methodology course that consists of a minimum of sixteen (16) contact hours that shall include:

(a) Adult learning techniques;

(b) Use of audio visuals;

- (c) Small group dynamics; and
 - (d) Evaluation techniques;
 - (5) Provides documentation that he has had at least two (2) years experience teaching or providing emergency medical services;
 - (6) Has completed instructor orientation on the 1995 EMT-FR NSC;
 - (7) Has completed a cabinet approved HIV and AIDS train the trainer course; and
 - (8) Is not subject to disciplinary action pursuant to 902 KAR 13:090.
- [(a) Is not an EMT-instructor certified by the cabinet; or
 - (b) Has not been approved by the cabinet to teach the EMT-first responder course:
 - (2) Upon submission of appropriate documentation to the cabinet, the following shall be eligible for approval:
 - (a) An individual certified by the:
 - 1. Kentucky Law Enforcement council to teach the first responder course; and
 - 2. Cabinet as an EMT or EMT-first responder.
 - (b) An individual certified by the:
 - 1. Commission on Fire Protection Personnel Standards and Education as a fire protection instructor; and
 - 2. Cabinet as an EMT or EMT-first responder.
 - (c) A physician, registered nurse, paramedic, or emergency medical technician who has:
 - 1. Completed a basic instructional methodology course approved by the cabinet; and
 - 2. Experience, or is active in teaching or providing emergency medical services;]

Section 3. Requirements for Applicants for Initial Kentucky EMT-FR Certification. An [Each] applicant for initial EMT-FR certification shall be eligible for certification if he:

- (1) Submits to the cabinet a signed Kentucky Application for EMT First Responder Certification;
- (2) Provides evidence of current registration as an EMT-FR by the National Registry of Emergency Medical Technicians (NREMT);
- (3) Meets the Acquired Immune Deficiency Syndrome (AIDS) education requirements of KRS 214.610;
- (4) Pays the fees as required in 902 KAR 13:030; and
- (5) Is not subject to disciplinary action pursuant to 902 KAR 13:090.
- (6) A person applying for certification or recertification pursuant to 902 KAR 13:070, Section 6, shall not be required to hold current registration through the NREMT but shall provide evidence that they have received a passing score on the written examination and practical skills examination required for NREMT registration. [Be eighteen (18) years of age or older;
- (2) Not be habitually addicted to or an abuser of alcoholic beverages, drugs, or controlled substances; and
- (3) Understand and be able to read, speak, and write the English language.]

Section 4. EMT-First Responder Certification Examination. (1) The cabinet shall prescribe the format and content of the EMT-FR [s] certification examination, which shall include, the practical and written testing requirements of the NREMT-FR Examination Coordinators Manual.

- (2) A person shall not evaluate or proctor an EMT-FR certification examination if he:
 - (a) Served as lead instructor or assistant instructor for the student;
 - (b) Supervises or is supervised by the applicant for certification;
 - (c) Is a family member; or
 - (d) Has a conflict of interest that could potentially bias the evaluator or proctor toward or against the student in the performance of his duties.
- (3) An EMT-FR student who does not become Kentucky certified within two (2) years after the EMT-FR course completion date shall repeat the EMT-FR course before he may become certified.

(4) The EMS educational institution or EMS testing agency shall:

- (a) Secure skill examination evaluators who shall meet requirements of 902 KAR 13:140, Section 4(3);

(b) Verify the eligibility of the student to test or initially retest for the Kentucky EMT-FR certification skills examination. Eligibility for subsequent testing or retesting shall be verified in conjunction with the EMS Branch. [consist of two (2) parts:

(1) Written:

(a) A passing grade of seventy-five (75) percent shall be required:

(b) If an applicant's grade average is seventy (70) percent or more, the applicant may, upon proper application, retake the written examination:

(c) If the applicant fails again, he shall be required to retake the entire EMT-first responder course before being eligible for reexamination:

(2) Practical:

(a) The applicant shall pass all parts of the final practical examination:

(b) If he fails to pass all portions of the final practical examination, he shall be permitted one (1) opportunity to retake the part which he failed to pass:

(c) If the applicant fails again to pass that particular part of the examination, he shall be required to retake the entire EMT-first responder training course before being eligible for reexamination:

(3) Examiners:

(a) Except as provided in paragraph (b) of this subsection, examiners for EMT-first responder course practical examinations shall be:

1. EMT-instructors certified by the cabinet; or

2. EMT-first responder instructors approved by the cabinet pursuant to Section 2 of this administrative regulation:

(b) An instructor who is employed by the organization for whom the EMT-first responder course is conducted shall not be used as an examiner in the practical examination of that course.]

Section 5. Expiration of Certification. (1) An EMT-first responder (EMT-FR) certificate shall expire two (2) [three (3)] years from the date of issuance.

(2) Upon expiration of his certification, an EMT-FR shall not perform a procedure authorized for a certified EMT-FR pursuant to Section 9 of this administrative regulation, unless he is certified to do so under other credentials.

(3) If the certification of an EMT-FR expires, he may obtain EMT-FR certification if he:

(a) Successfully repeats the entire EMT-FR training course including the certification examinations; and

(b) Meets the requirements of Section 3 of this administrative regulation.

Section 6. Renewal of EMT-FR Certification and Continuing Education Requirements. (1) Effective July 1, 2002, an EMT-FR who was initially certified by the cabinet prior to the effective date of this administrative regulation, shall:

(a) Attain continuing education, taught by an EMT-FR instructor or a person who meets the requirements of 902 KAR 13:050, Section 4(2), prior to the expiration date of his certification that:

1. Meets or exceeds the requirements of the NREMT; and

2. Includes at least seventeen (17) contact hours, of which, two (2) shall be in AIDS education as required by KRS 214.610;

(b) Provide written evidence to the cabinet of completion of current training in CPR which meets the requirements of Section 1(1)(e)6 of this administrative regulation;

(c) Submit to the cabinet, prior to the expiration date of his certificate:

1. A signed Application for EMT-FR Certification Renewal; and

2. A record of his continuing education hours on a form that:

a. Has been signed by the instructor;

b. Has been signed by the EMT-FR; and

c. Contains a certification as to the truth of the information supplied.

3. Pays the fees as required in 902 KAR 13:030.

(2) An EMT-FR, who applies for renewal as an EMT-FR, who is initially certified by the cabinet after the effective date of this administrative regulation, shall be eligible for Kentucky EMT-FR certification if he:

(a) Provides documentation that he has during his two-year certification period completed a minimum of seventeen (17) contact hours of continuing education that includes:

1. Thirteen (13) hours equivalent to the United States (U.S.) Department of Transportation (DOT) Refresher Course;

2. Two (2) hours of continuing education that meets the AIDS education required by KRS 214.610;

(b) Provides documentation that he has met, prior to his certification expiration date, the requirements of certification renewal, including having obtained continuing education hours as required in subsection (1) of this section;

(c) Submits to the cabinet, prior to the expiration date of his certificate:

1. A signed Application for EMT-FR certification renewal; and

2. A record of his continuing education hours on a form which:

a. Has been signed by the instructor;

b. Has been signed by the EMT-FR; and

c. Contains a certification as to the truth of the information supplied;

(d) Provides written documentation from a CPR instructor, EMS educational institution instructor or chief administrative officer, or organization training officer verifying completion of the CPR requirements as outlined in Section 1(1)(e)6 of this administrative regulation;

(e) Is not subject to a disciplinary action identified in 902 KAR 13:090; and

(f) Pays the required fee established in 902 KAR 13:030, Section 1(3)(f).

(3) An EMT-FR shall submit a completed application for recertification postmarked to the cabinet no later than thirty (30) days after the expiration date of the certificate.

(4) If the application for renewal is not postmarked to the cabinet within thirty (30) days of the certification expiration date, the applicant shall not be considered for renewal.

(5) An EMT-FR who is a member of the National Guard or a military reserve unit and who is called to active duty by presidential order under 10 USC 121 and 673b, shall, upon written request to the cabinet, be given an extension for a period up to one (1) year after the release of the EMT-FR from active duty or return to the United States, whichever occurs first.

(6) An EMT-FR who attends the entire minimum twenty (20) hour EMT-FR transition course (TC) as described in Section 8 of this administrative regulation and does not successfully pass the accompanying practical skills examination may apply the hours earned in the EMT-FR TC hour-for-hour toward the required seventeen (17) continuing education hours described in subsection (1) of this section, except that the hours earned in the TC shall not:

(a) Apply toward the required two (2) hours of AIDS education required by KRS 214.610; or

(b) Apply as credit for update training to the 1995 EMT-FR NSC referenced in Section 1(1)(d) of this administrative regulation.

(7) An EMT-FR who attends the entire minimum twenty (20) hour EMT-FR TC and successfully passes the accompanying practical skills examination, may:

(a) Utilize the hours earned in the TC in accordance with the requirements of subsection (6) of this section; and

(b) Receive credit for completing the required update training to the 1995 EMT-FR NSC. [In-service Training or Continuing Education Requirements. (1) Prior to the renewal of an EMT-first responder certificate, an EMT-first responder shall complete the training or continuing education requirements of this section:

(2) During his certification period, he shall:

(a) Complete:

1. Twelve (12) hours of in-service training, or continuing edu-

cation; or

2. A combination thereof;

(b) Be certified in cardiopulmonary resuscitation (CPR) as required by the:

1. American Heart Association; or

2. American National Red Cross; and

(c) Submit evidence of the training and certification required by this subsection to the cabinet not less than thirty (30) days prior to the expiration of his EMT-first responder certificate.

(3) An applicant for recertification shall receive credit for completion of in-service training or continuing education on a subject:

(a) Covered by the U.S. Department of Transportation EMT-First Responder curriculum; or

(b) For which instruction is authorized by the cabinet.

(4) Each subject or training course claimed shall be countersigned by the instructor of the subject or course.

(5) Training received as a requirement for continuing education in medicine, nursing, paramedic, or as an EMT in a coal mining situation required by KRS 351.127 shall be eligible for in-service training or continuing education credit if it meets the criteria of subsection (2) of this section.

(6)(a) The EMT-first responder shall submit to the cabinet a "First Responder Official Record of Continuing Education or In-service" (9-30-91) record of his in-service training or continuing education on a form:

(b) The form shall be:

1. Signed by the EMT-first responder;

2. Contain a certification as to the truth of the information supplied; and

3. A statement that misrepresentation of the information may be cause for suspension or revocation of a certificate.

(c) "First Responder Official Record of Continuing Education/In-service" (9-30-91), is incorporated by reference and may be obtained from the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, between 8 a.m. and 4:30 p.m., Monday through Friday.

(7) The following shall not be eligible for credit as in-service training or continuing education:

(a) Ambulance runs, rescues, firefighting, emergency responses, or similar actual emergency activities; and

(b) Instruction in material, techniques or procedures not authorized to be performed by EMT-first responders.]

Section 7. Renewal of EMT-FR Instructor Certification. (1) Unless it is renewed, the certification of an EMT-FR instructor shall expire two (2) years from the date of issuance.

(2) An applicant for EMT-FR instructor renewal shall:

(a) Submit to the cabinet a signed and completed application for EMT-FR instructor renewal;

(b) Provide documentation that he has obtained continuing education that meets the AIDS education required by KRS 214.610;

(c) Provide documentation of current CPR instructor certification;

(d) Provide documentation of current EMT-basic or EMT-first responder certification;

(e) Provide documentation of having provided a minimum of twelve (12) hours of active teaching of EMT-first responders or EMT-FR candidates during the previous two (2) years;

(f) Provide documentation of at least twelve (12) hours of active involvement with the delivery of prehospital patient care or transportation services within an EMS system during the previous two (2) years; and

(g) Pays the fees as required in 902 KAR 13:030.

(3) A Kentucky certified EMT-B instructor who has not renewed his certification, shall not:

(a) Teach an EMT-FR course;

(b) Teach an EMT-FR continuing education class;

(c) Serve as a lead instructor or assistant to the lead instructor; or

(d) Be eligible for renewal of the EMT-FR instructor certification;

tion.

(4) If the certification of an EMT-FR instructor expires, he shall meet the requirement of Section 2 of this administrative regulation before he may be eligible for certification. [Instructor Requirements for EMT-first Responder In-service Training and Continuing Education. The following persons shall be considered qualified to conduct in-service training and continuing education courses for EMT-first responders:

- (a) A physician licensed pursuant to KRS Chapter 311;
- (b) A registered nurse licensed pursuant to KRS Chapter 314;
- (c) A paramedic certified by the State Board of Medical Licensure;
- (d) An emergency medical technician instructor or instructor trainer certified by the Cabinet for Human Resources; or
- (e) An instructor who:
 1. Is certified by a state or federal agency to teach a subject; and

2. Teaches a course which qualifies for EMT-first responder in-service training or continuing education.

(2) As applicable, a physician, registered nurse, paramedic or emergency medical technician instructor currently licensed or certified by another state of the United States of America shall be considered as meeting the requirements of subsection (1)(a) through (e) of this section.]

Section 8. Kentucky EMT-FR Transition Course. (1) An EMT-FR currently certified in Kentucky who completed his EMT-FR training based on a version other than the 1995 EMT-FR NSC shall, by December 31, 2002:

(a) Successfully complete the 1995 EMT-FR transition course (TC) based on the first responder refresher, NSC medical and trauma skills examination within two (2) attempts; or

(b) If unsuccessful in completing the course identified in paragraph (a) of this subsection, attend a complete twenty (20) hour EMT-FR TC and pass the skills examination within two (2) attempts.

(2) A Kentucky certified EMT-FR who holds out-of-state certification shall not be required to take the Kentucky EMT-FR TC if he provides documentation that he has completed equivalent training in another state prior to December 31, 2002.

(3) An EMT-FR, currently certified in Kentucky, who completed his EMT-FR training in a Kentucky 1995 NSC EMT-FR Pilot Program or a 1995 NSC EMT-FR course shall not be required to complete the EMT-FR TC.

(4) An EMT-FR, currently certified in Kentucky, who completed his EMT-FR training in a Kentucky 1995 NSC EMT-FR Pilot Program or a 1995 NSC EMT-FR course may complete the EMT-FR TC in order to obtain continuing education hours to meet the requirements of Section 6 of this administrative regulation for EMT-FR recertification.

(5) An EMT-FR TC shall be coordinated by an agency or organization approved by the cabinet such as:

- (a) An EMS educational institution;
 - (b) A licensed class I ambulance service; or
 - (c) An acute care facility.
- (6) An agency or organization sponsoring a 1995 NSC EMT-FR TC shall:

(a) File with the cabinet, a written notice of intent to sponsor an EMT-FR TC at least two (2) weeks prior to the planned starting date of the course;

(b) Assume the responsibility for conducting the EMT-FR TC;

(c) Ensure that the course is at least twenty (20) hours in duration. This shall not include time for the course practical examination; and

- (d) Utilize texts that shall:
 1. Meet the requirements of the 1995 EMT-FR NSC;
 2. Be currently in publication;
 3. Be the most current edition available when the course begins;
 4. Be maintained on file in the office of the sponsoring agency; and
 5. Be available upon request during normal office hours or during course hours.

(e) Have available supplies and equipment, if needed, during course lessons, skills practice sessions, and examinations;

(f) Not permit a student to be on call while classes are in session; and

(g) Provide a designated lead instructor for lectures who:

1. Is an EMT-first responder instructor certified by the cabinet; and

2. Has completed a Kentucky EMT-FR Instructor orientation training program on the 1995 EMT-FR NSC.

(7) If there are more than ten (10) students enrolled in an EMT-FR TC, there shall be a minimum ratio of one (1) assistant instructor for each ten (10) enrolled students during skill practice sessions.

(8) An assistant instructor shall be available to assist as an evaluator for the course practical examination.

(9) An assistant instructor shall be Kentucky certified or licensed as one (1) of the following:

- (a) An EMT-B or EMT-FR instructor;
- (b) A physician licensed by the Kentucky Board of Medical Licensure (KBML);

(c) A Kentucky certified paramedic who:

1. Holds current instructor credentials in the American Heart Association Advanced Cardiac Life Support or Pediatric Advanced Life Support; or

2. Is a Level 1 fire service instructor;

(d) A Kentucky licensed registered nurse who:

1. Has completed a EMT-FR TC; and

2. Is a certified emergency nurse; or

3. Has evidence of three (3) consecutive years experience in an acute medical facility emergency department who:

a. Holds current instructor credentials in the American Heart Association Advanced Cardiac Life Support or Pediatric Advanced Life Support; or

b. Is a Level 1 fire service instructor; or

(e) A Kentucky certified EMT-B or EMT-FR who:

1. Holds current instructor credentials as:

- a. An American Heart Association instructor;
 - b. An American National Red Cross instructor; or
 - c. A National Safety Council instructor; and
2. Holds current certification by:

a. The Commission on Fire Protection Personnel Standards and Education as a Level 1 or higher fire protection instructor; or

b. The Kentucky Law Enforcement Council as an instructor; or

3. Has completed a cabinet approved basic instructional methodology course that consists of a minimum of sixteen (16) contact hours to include:

- a. Adult learning techniques;
- b. Use of audio visuals;
- c. Small group dynamics; and
- d. Evaluation techniques.

(10) The sponsoring agency or organization shall:

(a) Submit to the cabinet an application for approval to conduct an EMT-FR TC;

(b) Submit to the cabinet the original copy of the:

- 1. Results of the course skill station examination; and
 - 2. Master Grade Sheet;
- (c) Maintain for a minimum of five (5) years or until December

31, 2006, whichever comes first, the original copy of the:

- 1. Lesson attendance;
- 2. Required remediation;
- 3. Validation that a student has demonstrated competency in the eleven (11) psychomotor skill objectives which are required in order to take the accompanying course practical skills examination; and

4. Master attendance sheet.

(d) Provide a certificate of completion which specifies:

- 1. The hours earned toward certification renewal; and
- 2. An indication if the student was successful in completing the EMT-FR TC by passing the accompanying skill examination.

(e) Assure that the accompanying course skill examination shall be administered with at least one (1) evaluator per station.

(11) The skill station shall be designed to test one (1) or more

skills. On the date of the examination, the EMT-FR candidate shall randomly choose if the station to be tested shall feature a medical or trauma patient condition, and at the same time the EMT-FR candidate shall randomly choose a scenario which shall be tested.

(12) At the completion of the skills examination, an EMT-FR TC student shall be informed of his pass or fail status.

(13) If an EMT-FR TC student fails to pass the required stations, he shall be permitted one (1) opportunity to retest the same station or stations which he failed, except that on the date of the retest, he shall randomly choose the scenario for the station he is testing.

(14) The retest may be administered by the same sponsoring agency or organization, that sponsored the EMT-FR TC in which the EMT-FR was enrolled, except that the evaluator shall not be the same evaluator who evaluated the EMT-FR during his first examination.

(15) If an EMT-FR again fails to pass the required skill station examination, he shall be required to retake the entire EMT-FR TC before he may be eligible for reexamination.

(16) Until December 31, 2002, an EMT-FR may be allowed a maximum of two (2) attempts, with a maximum of one (1) retest on each attempt, to pass the accompanying practical skills examination.

(17) An EMT-FR who has not been successful in passing the skill examination retest on the second attempt by December 31, 2002, shall not be eligible for Kentucky EMT-FR certification unless he retakes and successfully completes the entire EMT-FR course. [Cardiopulmonary Resuscitation Requirement. (1) During the second year of the certification period, the EMT-first responder shall obtain or renew certification in cardiopulmonary resuscitation and related techniques as follows:

(a) The course shall be conducted:

1. By, or under the authority of, the American Heart Association or the American National Red Cross; or
2. Under its authority, by an instructor certified by the American Heart Association or the American National Red Cross;

(b) The course shall be:

1. Taught for record; and
2. Certified by the instructor to the American Heart Association or the American National Red Cross as meeting all applicable standards of the organization;

(c) The course shall provide instruction and testing in:

1. One (1) rescuer cardiopulmonary resuscitation;
2. Two (2) rescuer cardiopulmonary resuscitation;
3. Techniques of changing from one (1) rescuer to two (2) rescuers during the performance of cardiopulmonary resuscitation;
4. Techniques of changing rescuers during the performance of two (2) rescuer cardiopulmonary resuscitation;
5. Techniques for relief of obstruction of the airway;
6. Cardiopulmonary resuscitation of infants and small children; and
7. Mouth to mouth or mouth to nose resuscitation for adults, small children, and infants;

(d) The course shall provide for individual skill testing of all adult and infant related skills in subsection (1) of this section.

(2) The applicant for renewal of certification shall forward to the cabinet a copy of both sides of the CPR card issued to him indicating successful completion of the CPR course as required in Section 6(1) of this administrative regulation.]

Section 9. Authorized Procedures. A Kentucky certified EMT-FR shall be authorized to:

(1) [first responders may] Perform any of the procedures established [set forth] in the U.S. DOT 1995 EMT-FR NSC [:

- (a) U.S. Department of Transportation] Curriculum;
- (2) Possess and administer medical oxygen;
- (3) Utilize an automated external defibrillator (AED) in accordance with 902 KAR 13:120 for an EMT-FR;
- (4) Apply a cervical collar and perform long spine board immobilization; and
- (5) Utilize a sphygmomanometer and stethoscope for obtain-

ing blood pressure.

Section 10. Reciprocity. A person shall be eligible for direct reciprocity for Kentucky certification as an EMT-FR if he meets the requirements of Section 3 of this administrative regulation.

Section 11. Exemptions from EMT-FR Administrative Regulations. The Kentucky certification requirements for an EMT-FR shall not apply to:

(1) United States military personnel or employees of the United States government while engaged in the performance of their official duties under federal laws; or

(2) An EMT-FR who is certified in another state who comes into Kentucky:

- (a) To transport a patient into or through the state; or
- (b) For the purpose of returning a patient to:
 1. His out-of-state residence; or
 2. To a medical facility in his out-of-state residence.

Section 12. Conversion of EMT Certification to EMT-FR Certification. (1) If a Kentucky or out-of-state currently certified EMT-B requests to convert his certification status to EMT-FR, he shall:

(a) Submit a written request to the cabinet to have his EMT-B certification converted to EMT-FR;

(b) Have successfully completed an EMT-B TC or EMT-FR TC; and

(c) Have successfully completed, within the past two (2) years, the continuing education requirements listed in Section 6(1)(a) of this administrative regulation.

(2) If an EMT-B converts his certification to an EMT-FR, he shall not be allowed to convert back to EMT-B status, unless he meets the EMT-B certification requirements of 902 KAR 13:050, Section 1.

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

(a) The United States Department of Transportation, National Highway Traffic Safety Administration, 1995 First Responder-National Standard Curriculum;

(b) The United States Department of Transportation, National Highway Traffic Safety Administration, 1995 First Responder-National Standard Curriculum Refresher Course;

(c) The Kentucky EMT-First Responder Curriculum Supplemental, (8/98);

(d) The "Application for Emergency Medical Technician-First Responder Certification" form (EMS Branch-FR-101), revised (02/98);

(e) First Responder Official Record of Continuing Education In-service form (FR-102) (old curriculum), revised 09/96;

(f) First Responder Official Record of Continuing Education Inservice form (FR-102A), revised (new curriculum) 11/98;

(g) (FR-103) FR HIV AIDS Affidavit, (06/98);

(h) (FR-104) FR Implementing Agency Agreement, revised 06/98;

(i) (FR-105) The EMT-First Responder Course Syllabus (6/98);

(j) FR-107 FR Final Course Records Form, revised 03/98;

(k) FR-108 FR Course Master Grade Sheet, revised 04/98;

(l) FR-110 FR Certification Renewal Application, revised 02/98;

(m) FR-112 FR Transition Course Syllabus, revised 04/98;

(n) FR-113 FR TC Participant Competency Record, revised 04/98;

(o) FR-114, FR Transition Course Application, revised 04/98;

(p) FR-115 FR Transition Course Approved Document, revised 05/98;

(q) FR-116 FR Transition Course Supplies and Equipment, revised 05/98;

(r) FR-118 FR Transition Course Agency Application, revised 05/98;

(s) FR-119 FR Implementing Agency Agreement, Renewal, revised 06/98;

(t) FR-120 FR Certification Application Return Form, revised 05/98;

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(u) FR-121 FR Challenge Grade Form, revised 05/98;
(v) FR-122 FR Challenge Attendance Sign-in Sheet, revised 06/98;

(w) FR-124 FR Challenge Certification Application, revised 02/98; and

(x) Fr-125 Transition Course Master Grade Sheet.

(2) This material may be inspected, copied or obtained at the Department for Public Health, Division of Adult and Child Health, EMS Branch, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday 8 a.m. to 4:30 p.m. ["Emergency Medical Services: First Responder Training Course" (March 1979); and

(b) Accompanying text entitled "First Responder," (Third Edition); (1991) The Brady Company, Prentice-Hall, Inc.}]

RICE C. LEACH, M.D., Commissioner

JOHN WALKER, Attorney

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: October 22, 1999

FILED WITH LRC: October 26, 1999 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1999 at 9 a.m. in the Cabinet for Health Services Auditorium, Department for Public Health Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 1999. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments to: Kevin Devlin, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 2,000 EMT-first responders.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. This administrative regulation will have no effect on the cost of living and employment in this state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation will have no effect on the cost of doing business in any geographical area of this state.

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

1. First year following implementation: None

2. Second and subsequent years: As above.

(3) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional reporting or paperwork will be required.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General Funds

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

(a) Geographical area in which administrative regulation will be implemented: It is not anticipated that this administrative regulation will have an economic impact.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were rejected because this administrative regulation establishes minimum requirements for training, examination, and certification of EMT-first responders that are consistent with national standards and the National Standard Curriculum.

(8) Assessment of expected benefits: This administrative regulation will establish new EMT-first responder training, examination, and certification requirements to meet the training and testing requirements of the revised 1995 National Standard Curriculum, allow EMT-first responders to perform additional prehospital skills, require EMT-first responders to obtain registration from the National Registry of Emergency Medical Technician so that the skill level of EMT-first responders in Kentucky will be comparable to the skill level of EMT-first responders in other states, establish EMT-first responder training in approved emergency medical institutions, and provide certification for EMT-first responder instructors.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will have a positive effect on public health in Kentucky because EMT-first responders will be required to obtain training based on the revised 1995 National Standard Curriculum and permit EMT-first responders to provide additional prehospital medical care.

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

(c) If detrimental 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 statute, regulation, or policy will conflict, overlap, or duplicate this administrative regulation.

(a) Necessity or proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied because this administrative regulation applies only to the EMT-first responder and EMT-first responder instructor certification of emergency medical technician (EMT).

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes, if a local government pays for training and recertification of emergency medical technician-first responders.

2. State what unit, part or division of local government this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will affect the part or division of a local government that provides prehospital emergency medical services.

3. State the aspect or service of local government to which this administrative regulation relates. Prehospital emergency medical services.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. This administrative regulation may affect a local government if the local government chooses to pay for training and recertification of emergency medical technician-first responders. Since this policy varies across the state, there is no way to determine the impact on local expenditures.

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

902 KAR 55:020. 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

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 or [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 Phenylclidine;
- (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); and
- (3) 1-Piperidinocyclohexanecarbonitrile, immediate precursor to Phenylclidine.

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 any [and] 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 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; and
- (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, 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.

RICE C. LEACH, M.D., Commissioner

JOHN H. WALKER, Attorney

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: November 1, 1999

FILED WITH LRC: November 12, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held December 21, 1999, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by December 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

Agency Contact: Danna Droz

(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: 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 compli-

ance, 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 amendments merely amends 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 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 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 create confusion and excessive recordkeeping 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. Tiering was not applied because the provisions apply to all persons 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 III 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.

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

902 KAR 55:025. 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

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] designates 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; and

(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, flupyzapon.

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 Sub-

stances^[2], in addition to those listed in KRS 218.090(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.

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

APPROVED BY AGENCY: November 1, 1999

FILED WITH LRC: November 12, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held December 21, 1999, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by December 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

Agency Contact: Danna Droz

(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: 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 amendments merely add 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 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 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 create confusion and excessive recordkeeping 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. 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 III 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.

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Member and Provider Services (Amendment)

907 KAR 1:011. Technical eligibility requirements.

RELATES TO: KRS 205.520, 341.360, 42 CFR 435, 403, 45 CFR 233.100, 8 USC 1101, 1153(a)(7), 1157, 1158, 1182(d)(5), 1231(b)(3), 1253(h), 1522, 1612, 1613, 1622, 1641, 38 USC 101, 107, 1101, 1301, 1304, 5303A, 42 USC 402, 416, 423, 1382c, 1383c, 1395i, 1396a

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 205.520, 205.6481-205.6497, 42 USC 1397aa [1998-Ky-Acts-ch-426, sec. 4(3)]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520

authorizes the cabinet, by administrative regulation to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the technical eligibility requirements of the Medicaid Program.

Section 1. Definitions. (1) "Child" means a [dependent] person who:

- (a) 1. Is under the age of eighteen (18); or
2. Is under age nineteen (19) if the person is:
 - a. A full-time student in a secondary school or the equivalent level of vocational or technical training; and
 - b. Expected to complete the program before age nineteen (19);

- (b) Is not self-supporting;
- (c) Is not a member of the Armed Forces of the United States; and

(d) If previously emancipated by marriage, has returned to the home of his parents, or to the home of another relative; or

(e) Has not attained nineteen (19) years of age as specified in 42 USC 1396(l)(1).

(2) "Kentucky Transitional Assistance Program (K-TAP)" means Kentucky's version of the federal block grant program of Temporary Assistance for Needy Families (TANF) Program, a money payment program for children who are deprived of parental support or care due to:

- (a) Death;
- (b) Continued voluntary or involuntary absence;
- (c) Physical or mental incapacity of one (1) parent or step-parent if two (2) parents are in the home; or
- (d) Unemployment of one (1) parent if both parents are in the home.

(3) "Minor teenage parent" means an individual who:

- (a) Has not attained eighteen (18) years of age;
- (b) Is not married; and
- (c) Has a minor child in his care.

(4) "Qualified alien" means an alien who, at the time the alien applies for or receives Medicaid, is:

(a) Lawfully admitted for permanent residence pursuant to 8 USC 1101;

(b) Granted asylum pursuant to 8 USC 1158;

(c) A refugee admitted to the United States pursuant to 8 USC 1157;

(d) Paroled into the United States pursuant to 8 USC 1182(d)(5) for a period of at least one (1) year;

(e) An alien whose deportation is being withheld pursuant to:

1. 8 USC 1253(h), as in effect prior to April 1, 1997; or
2. 8 USC 1231(b)(3);

(f) Granted conditional entry pursuant to 8 USC 1153(a)(7) as in effect prior to April 1, 1980;

(g) An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 USC 1522;

(h) A battered alien pursuant to 8 USC 1641(c);

(i) A veteran pursuant to 38 USC 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

(j) On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 USC 5303A(d);

(k) The spouse or unmarried dependent child of an individual described in subsection (4)(i) or (j) of this section or the unmarried surviving spouse of an individual described in subsection (4)(i) or (j) of this section if the marriage fulfills the requirements established in 38 USC 1304; or

(l) An Amerasian immigrant pursuant to 8 USC 1101, [is defined in 8 USC 1641(a) through (c).]

(5) "Veteran" is defined in [by] 38 USC 101(2).

Section 2. The Categorically Needy. An individual receiving Title IV-E benefits, Supplemental Security Income, Optional or Mandatory State Supplementation shall be eligible for Medicaid

as a categorically needy individual. In addition, the following classifications of needy persons shall be included in the program as categorically needy and thus eligible for Medicaid participation.

(1) A child in a foster family care or private nonprofit child caring institution dependent in whole or in part on a governmental or private agency;

(2) A child in a psychiatric hospital, psychiatric residential treatment facility, or medical institution for the mentally retarded;

(3) A pregnant woman;

(4) A child of unemployed parents;

(5) A child in a subsidized adoption dependent in whole or in part on a governmental agency;

(6) A family which correctly received Medicaid for three (3) of the last six (6) calendar months and would have been terminated from receipt of AFDC using AFDC methodologies in effect on July 16, 1996 as a result of new or increased collection of child or spousal support shall be eligible for extended Medicaid coverage for four (4) consecutive calendar months beginning with the first month the family would have been ineligible for AFDC;

(7) A family which would have been terminated from AFDC assistance using the AFDC methodologies in effect on July 16, 1996 because of increased earnings, hours of employment or loss of earnings disregards;

(8) A child (but not his parents) who:

(a) Would have been financially eligible for Aid to Families with Dependent Children benefits using the AFDC methodologies in effect on July 16, 1996; and

(b) Meets the definition of Section 1(1) of this administrative regulation;

(9) A child born to a woman eligible for and receiving Medicaid shall be eligible for Medicaid as of the date of his birth if:

(a) The child:

1. Has not reached his first birthday; and
2. Resides in the household of the woman; and

(b) The woman remains (or would remain if pregnant) eligible for the assistance;

(10)(a) Except as provided in paragraph (c) of this subsection, an individual in an institution meeting appropriate patient status criteria who (if not institutionalized) would not be eligible for supplemental security income (SSI) or optional state supplementation benefits due to income shall be eligible under a special income level which is set at 300 percent of the SSI benefit amount payable for an individual with no income.

(b) Except as provided in paragraph (c) of this subsection, eligibility for a similar hospice participant or similar participant in a waiver project of home and community based services for the mentally retarded or the aged, blind or disabled shall be determined using the method established in paragraph (a) of this subsection.

(c) Eligibility of an institutionalized individual meeting appropriate patient status criteria whose gross income exceeds 300 percent of the [previously specified] SSI benefit amount shall [not] be determined by comparing the cost of the individual's care to the individual's income [in accordance with this subsection];

(11) A qualified severely impaired individual as specified in 42 USC 1396a(a)(10)(A)(i)(II) and 1396d (to the extent the coverage is mandatory in this state);

(12) An individual who loses SSI eligibility but would be eligible for SSI benefits except for entitlement to or an increase in child's insurance benefits based on disability as specified in 42 USC 1383c;

(13) An individual specified in 42 USC 1383c who:

(a) Loses SSI or state supplementation payments as a result of receipt of benefits pursuant to [under] 42 USC 402(e) or (f);

(b) Would be eligible for SSI or SSP except for these benefits; and

(c) Is not entitled to hospital insurance benefits under the Medicare program;

(14) A woman during pregnancy (and as though pregnant through the end of the month containing the 60th day of a period beginning on the last day of pregnancy) or a child under six (6) years of age, as specified in 42 USC 1396a(l)(1), shall [be required to] meet the income requirements for this eligibility group

as specified in 907 KAR 1:640;

(15) If an eligible child is receiving covered inpatient services on a birthday which will make him ineligible due to age, the child shall remain eligible until the end of the stay for which the covered inpatient services are furnished if the child remains otherwise eligible except for age;

(16) Applicable with regard to a determination of eligibility for a period beginning on or after July 1, 1991, a child born after September 30, 1983, who has attained six (6) years of age but has not attained nineteen (19) years of age as specified in 42 USC 1396a(l)(1) shall meet income requirements established in 907 KAR 1:640, Section 2(2)(c);

(17) Applicable with regard to a determination of eligibility for a period beginning on or after July 1, 1998, if federal Medicaid matching funds are available to cover the costs of the program, a child born on or before September 30, 1983 who has not attained the age of nineteen (19) years as specified in 42 USC 1396a(l)(1) shall meet the income requirements established in 907 KAR 1:640, Section 2(2)(f);

(18) Applicable with regard to a determination of eligibility for a period beginning on or after July 1, 1999, if federal Medicaid matching funds are available to cover the costs of the program, an optional targeted low-income child as established in 907 KAR 4:020, Section 2(1) who has not attained the age of nineteen (19) years as specified in 42 USC 1396a(l)(1) shall meet the income requirements established in 907 KAR 1:640, Section 2(2)(g);

(19) Applicable with regard to a determination of eligibility for a period beginning on or after January 1, 1991, a disabled widow, widower or disabled surviving divorced spouse, who would be eligible for SSI except for entitlement to an old-age, survivors, or disability insurance (OASDI) benefit resulting from a change in the definition of disability;

(20) [(19)] A child who:

(a) Was receiving supplemental security income on August 22, 1996; and

(b) Except for the change in definition of childhood disability would continue to receive supplemental security income; or

(21) [(20)] A person with hemophilia who would be eligible for supplemental security income except he received a settlement in a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation".

Section 3. The Medically Needy. (1) An individual [(including a child pursuant to Section 2(8) of this administrative regulation)] or a pregnant woman who has sufficient income to meet his basic maintenance needs may apply for Medicaid with need determined in accordance with the income and resource standards established in 907 KAR 1:640 through 1:665 if he meets:

(a) [meeting] The income and resource standards of the medically needy program established in 907 KAR 1:640 and 907 KAR 1:645; and

(b) The [meeting] technical requirements of the appropriate [comparable to the] categorically needy group identified in Section 2 of this administrative regulation. [who has sufficient income to meet his basic maintenance needs may apply for Medicaid with need determined in accordance with the income and resource standards established in 907 KAR 1:640 through 907 KAR 1:665.]

(2) The medically needy eligible groups shall include:

(a) [(1)] A pregnant woman during the course of her pregnancy; and

(b) [(2)] A woman who, while pregnant, is eligible for, has applied for, and has received medical assistance, shall continue to be eligible as though she were pregnant until the end of the month containing the 60th day of a period beginning on the last day of her pregnancy (i.e., the day on which her child is born or the pregnancy is otherwise terminated).

Section 4. Qualified Medicare Beneficiaries, Qualified Disabled Working Individuals, Specified Low-Income Medicare Beneficiaries and Medicare Qualified Individuals (QI). (1) Coverage shall be extended to a qualified Medicare beneficiary as specified in 42 USC 1396a(a)(10)(E), subject to the income as shown in 907 KAR 1:640, and resource limitations shown in 907

KAR 1:645, and for the scope of benefits specified in 907 KAR 1:006. A qualified Medicare beneficiary shall:

(a) Be eligible for and receiving Medicare Part A benefits;

(b) Be determined eligible for benefits as a qualified Medicare beneficiary eligible individual effective for the month after the month in which the determination is made; and

(c) Not be eligible for benefits as a qualified Medicare beneficiary eligible individual:

1. Retroactively; or

2. For the month in which the determination was made.

(2) A qualified disabled working individual as defined in 42 USC 1396d(s) shall be eligible under Medicaid for payment of his Medicare Part A premiums as established [shown] in 907 KAR 1:006.

(3) A specified low-income Medicare beneficiary as defined in 42 USC 1396a(a)(10)(E)(iii) shall be eligible under Medicaid for payment of the Medicare Part B premiums.

(4) A Medicare qualified individual group 1 (QI-1) as established in 42 USC 1396a(a)(10)(E)(iv)(I) shall be eligible for payment of all of the Medicare Part B premium.

(5) A Medicare qualified individual group 2 (QI-2) as established in 42 USC 1396a(a)(10)(e)(iv)(II) shall be eligible for payment of that portion of the Medicare Part B premium attributable to home health costs.

Section 5. Technical Eligibility Requirements. The technical eligibility factors for a family or individual included as categorically needy under Section 2 of this administrative regulation or as medically needy under Section 3 of this administrative regulation shall be:

(1) A child in foster care, a private institution, psychiatric hospital, psychiatric residential treatment facility, or mental retardation institution shall meet the definition in [of] Section 1(1) of this administrative regulation;

(2) Except as provided by Section 2 of this administrative regulation, a pregnant woman shall be eligible upon medical proof of pregnancy;

(3) At the time of application unemployment relating to eligibility of both parents and children shall be determined using the following criteria [include]:

(a) Employment of less than 100 hours per month, except that the hours may exceed that standard for a particular month if:

1. The work is intermittent; and

2. The excess is of a temporary nature as evidenced by the fact that the individual:

a. Was under the 100 hour standard for the prior two (2) months; and

b. Is expected to be under the standard during the next month; or

(b) [The individual:

1. Has prior labor market attachment consisting of earned income of at least fifty (50) dollars during six (6) or more calendar quarters ending on March 31, June 30, September 30, or December 31, within any thirteen (13) calendar quarter period ending within one (1) year of application; or

2. Within twelve (12) months prior to application a parent received unemployment compensation; or

(c) A parent [The individual] is [currently] receiving or has been found ineligible for unemployment compensation; and

(d) A [The individual is currently registered for employment at the state employment office, and available for full-time employment;

(e) The unemployed parent shall not have refused suitable employment without good cause as determined in accordance with 45 CFR 233.100(a)(3)(ii);

(4) Subsection (3)(a) of this section shall not apply when a change is made in a Medicaid case or when a case is recertified; [Pursuant to subsection (3) of this section, a parent shall not be considered as unemployed if he is:

(a) Temporarily unemployed due to weather conditions or lack of work if it is anticipated he shall return to work within thirty (30) days;

(b) On strike, or unemployed as a result of involvement in a

labor dispute if the involvement would disqualify the individual from eligibility for unemployment insurance in accordance with KRS 341.360;

(c) Unemployed because he voluntarily quit his most recent work for the purpose of attending school;

(d) A farm owner or tenant farmer, unless he has previously habitually required and secured outside employment and currently is unable to secure outside employment; or

(e) Self-employed and not available for full-time employment;]

(5) An aged individual shall be at least sixty-five (65) years of age;

(6) A blind individual shall meet the definition of blindness as contained in 42 USC 416 and 42 USC 1382c relating to retirement, survivors, and disability insurance (RSDI) or supplemental security income (SSI);

(7) A disabled individual shall meet the definition of permanent and total disability as contained in 42 USC 423(d) and 42 USC 1382c(a)(3) relating to RSDI and SSI;

(8) Using AFDC methodologies in effect on July 16, 1996, a family who loses Medicaid eligibility solely because of increased earnings or hours of employment of the caretaker relative or loss of earnings disregards may receive up to twelve (12) months of extended medical assistance for family members included in the medical assistance unit prior to losing Medicaid eligibility. The extended medical assistance shall be divided into two (2) transitional six (6) month benefit periods. The family shall meet the eligibility and reporting requirements for each transitional benefit period established in this subsection.

(a) The first transitional six (6) month benefit period begins [shall begin] with the month the family would have become ineligible for AFDC using AFDC methodologies in effect on July 16, 1996.

1. To be eligible for this transitional benefit period, the family shall:

a. Have correctly received Medicaid assistance in three (3) of the six (6) months immediately preceding the month the family would have become ineligible for AFDC using AFDC methodologies in effect on July 16, 1996;

b. Have a dependent child living in the home; and

c. Meet the reporting requirements relating to earnings and child care costs no later than the 21st day of the fourth month.

2. If the family no longer has a dependent child living in the home, medical assistance shall be terminated the last day of the month the family no longer includes a dependent child.

3. If the reporting requirements are not met, the Medicaid benefits shall be denied for the second transitional six (6) month benefit period.

(b)1. To continue to receive Medicaid for the optional second transitional six (6) month benefit period, the family shall meet the following conditions:

a. Received medical assistance for the entire first transitional six (6) month period and met the reporting requirements;

b. Have a dependent child living in the home;

c. Gross income minus child care cost shall be less than 185 percent of the federal poverty income level;

d. The reporting requirements shall have been met no later than the 21st day of the fourth month, the seventh month, and the tenth month; and

e. During the immediately preceding three (3) months, the caretaker relative shall have been:

(i) Employed; or

(ii) If unemployed in one (1) or more months, unemployed due to involuntary loss of employment, illness or other good cause established to the satisfaction of the Medicaid program.

2. If a family no longer has a dependent child living in the home, Medicaid shall be terminated the last day of the month the family no longer includes a dependent child.

3. If the family's income exceeds the income standard or the family does not meet the reporting requirements, except for good cause established to the satisfaction of the Medicaid program, the medical assistance shall be terminated the last day of the appropriate reporting month.

(c) Good cause shall exist under the following circumstances:

1. The specified relative was out-of-town for the reporting month;

2. An immediate family member living in the home was institutionalized or died during the reporting month;

3. The assistance group was the victim of a natural disaster including a flood, storm, earthquake or serious fire; or

4. The assistance group moved and reported the move timely, but the move resulted in a delay in receiving or failure to receive the transitional medical assistance report form;

(9) A parent, including a natural or adoptive parent, may be included for assistance in the case of a family with a child.

(a) If a parent is not included in the case, one (1) other caretaker relative may be included to the same extent he would have been eligible in the Aid to Families with Dependent Children Program using the AFDC methodology in effect on July 16, 1996.

(b) A caretaker relative shall include:

1. Grandfather;

2. Grandmother;

3. Brother;

4. Sister;

5. Uncle;

6. Aunt;

7. Nephew;

8. Niece;

9. First cousin;

10. First cousin once removed;

11. A relative of the half-blood;

12. A preceding generation denoted by a prefix of:

a. Grand;

b. Great;

c. Great-great; [or]

d. Great-great-great; or

13. A stepfather, stepmother, stepbrother, stepsister; step-grandmother, or stepgrandfather;

(10) An applicant who is deceased shall have eligibility determined in the same manner as if he were alive, in order to pay medical bills during the terminal illness;

(11) Children of the same parent, i.e., a "common" parent, residing in the same household shall be included in the same case unless this acts to preclude eligibility of an otherwise eligible household member. If a family member is pregnant, the unborn child shall be considered as a family member for budgeting purposes;

(12) The following citizenship and residency requirements shall be applicable:

(a) To be eligible for Medicaid, an applicant or recipient shall be:

1.a. A citizen of the United States; or

b. Except as provided in paragraph (b) of this subsection, a qualified alien as defined in Section 1(4) of this administrative regulation who entered the United States before August 22, 1996; or

c. A qualified alien who entered the United States on or after August 22, 1996 and is:

(i) Granted asylum pursuant to 8 USC 1158;

(ii) A refugee admitted to the United States pursuant to 8 USC 1157;

(iii) An alien whose deportation is being withheld pursuant to 8 USC 1253(h) as in effect prior to April 1, 1997 or 8 USC 1231(b)(3);

(iv) An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 USC 1522;

(v) A veteran pursuant to 38 USC 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

(vi) On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 USC 5303A(d);

(vii) The spouse or unmarried dependent child of an individual described in subclause (v) or (vi) of this clause or the unmarried surviving spouse of an individual described in subclause (v) or (vi) of this clause if the marriage fulfills the requirements estab-

lished in 38 USC 1304;

(viii) An Amerasian immigrant pursuant to 8 USC 1101; or

(ix) An individual lawfully admitted for permanent residence pursuant to 8 USC 1101 who has earned forty (40) quarters of Social Security coverage [admitted for permanent residence]; and

2. A resident of Kentucky meeting the conditions for determining state residency under 42 CFR 435.403.

(b) A qualified or nonqualified alien shall be eligible for medical assistance under the following circumstances and conditions:

1. ~~The alien shall [Except as provided in subparagraph 2 of this paragraph, an alien shall meet all requirements for receipt of Medicaid:~~

~~2. An alien who does not receive a K-TAP or federal supplemental security income (SSI) cash payment shall:~~

~~a.] be qualified as a categorically needy recipient; [and]~~

~~2. The alien shall [b.] meet the income, resource and categorical requirements of the Medicaid [applicable cash assistance] Program;~~

3. The alien shall have (or have had within at least one (1) of the three (3) months prior to the month of application) an emergency medical condition not related to an organ transplant procedure, defined as a medical condition (including severe pain) in which the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part;

4. Approval of eligibility shall be for a time limited period, with that period to include the month in which the medical emergency began and the next following month, with the added provision that the eligibility period shall be extended for an appropriate period of time upon presentation to the department written documentation from the medical provider that the medical emergency will exist for a more extended period of time than is allowed for in the time limited eligibility period; and

5. The Medicaid benefits to which the alien shall be entitled is limited to the medical care and services (including limited follow-up) necessary for the treatment of the emergency medical condition of the alien;

(13) An individual shall be determined eligible for Medicaid for up to three (3) months prior to the month of application if all conditions of eligibility are met and the applicant is not participating in a managed care partnership.

(a) Except as provided in paragraphs (b) and [;] (c) [; and (d)] of this subsection, the effective date of Medicaid shall be the first day of the month of eligibility.

(b) ~~[For an individual eligible on the basis of unemployment, eligibility shall:~~

~~1. Not exist for the thirty (30) day period following the starting date of the unemployment; and~~

~~2. Be the first day following the end of the thirty (30) day period if all other conditions of eligibility are met.~~

(c) ~~[For an individual eligible on the basis of desertion, a period of desertion shall have existed for thirty (30) days, and the effective date of eligibility shall not precede the first day of the month of application [in which the thirty (30) day period ends].~~

(c) ~~[(d)]~~ For an individual eligible on the basis of utilizing his excess income for incurred medical expenses, the effective date of eligibility shall be the day the spend-down liability is met;

(14) Benefits shall be denied to a family for a month in which a parent with whom the child is living is, on the last day of the month, participating in a strike, and the individual's needs shall not be considered in determining eligibility for Medicaid for the family if, on the last day of the month, the individual is participating in a strike. A strike shall include a ~~[strike or other]~~ concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees;

(15) A caretaker relative (but not a child) removed from a family related Medicaid only case due to failure to meet a technical eligibility requirement shall not be eligible for Medicaid as a medically needy individual unless the individual is separately eligible for medical assistance without regard to eligibility as a

member of the group from which the individual has been removed.

Section 6. Institutional Status. An individual shall not be eligible for Medicaid if the individual is a:

(1) Resident or inmate of a nonmedical public institution;

(2) Patient in a state tuberculosis hospital unless he has reached age sixty-five (65);

(3) Patient in a mental hospital or psychiatric facility unless the individual is:

(a) Under age twenty-one (21);

(b) Under age twenty-two (22) if he was receiving inpatient services on his 21st birthday;

(c) Sixty-five (65) years of age or over; or

(d) Participating in Kentucky Medicaid's managed behavioral health care organization; or

(4) Patient in a nursing facility classified by the Medicaid program as an institution for mental diseases, unless the individual:

(a) Has reached age sixty-five (65); or

(b) Is participating in Kentucky Medicaid's managed behavioral healthcare organization.

Section 7. Emergency Shelters. An individual ~~[(for family group)]~~ who is in an emergency shelter for a temporary period of time shall be eligible for medical assistance even though the shelter is considered a public institution under certain conditions. These conditions shall be as follows:

(1) The individual or family group shall:

(a) Be a resident of an emergency shelter no more than six (6) months in any nine (9) month period; and

(b) Not be in the facility serving a sentence imposed by the court, or awaiting trial; and

(2) Eligibility for Medicaid shall have existed immediately prior to admittance to the shelter, or it shall exist immediately after leaving the shelter.

Section 8. Application for Other Benefits. (1) As a condition of eligibility for Medicaid, an applicant or recipient shall apply for each annuity, pension, retirement and disability benefit to which he is entitled, unless he can show good cause for not doing so.

(a) Good cause shall be considered to exist if other ~~[the]~~ benefits have previously been denied with no change of circumstances, or the individual does not meet all eligibility conditions.

(b) Annuities, pensions, retirement and disability benefits shall include:

1. Veterans' compensations and pensions;

2. Retirement and survivors disability insurance benefits;

3. Railroad retirement benefits; and

4. Unemployment compensation.

(2) An applicant or recipient shall not be required to apply for federal benefits if:

(a) The federal law governing that benefit specifies that the benefit is optional; and

(b) A potential applicant or recipient is not required to apply for the benefit if the applicant or recipient believes that applying for the benefit would be to his disadvantage.

(3) An individual who would be eligible for supplemental security income (SSI) but has not made application shall not be eligible for Medicaid.

Section 9. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient shall be deemed to have made an assignment to the Cabinet for Health Services of any medical support owed for the child not to exceed the amount of Medicaid payments made on behalf of the recipient.

Section 10. Third Party Liability as a Condition of Eligibility.

(1) Except as provided in subsection (3) of this section, an individual applying for or receiving Medicaid shall be required as a condition of eligibility to cooperate with the Cabinet for Health Services in identifying, and providing information to assist the cabinet in pursuing, any third party who may be liable to pay for

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care or services available under the Medicaid Program unless the individual has good cause for refusing to cooperate as determined by the cabinet taking into consideration the best interests of the individuals involved.

(2) A failure of the individual to cooperate without good cause shall result in ineligibility of the individual.

(3) A pregnant woman eligible under poverty level standards shall not be required to cooperate in establishing paternity or securing support for her unborn child.

Section 11. Provision of Social Security Numbers. (1) Except as provided in subsections (2) and (3) of this section, an [each] applicant [for] or recipient of Medicaid shall provide a social security number as a condition of eligibility.

(2) An individual shall not be denied eligibility or discontinued from eligibility due to a delay in receipt of a social security number from the Social Security Administration if appropriate application for the number has been made.

(3) If the parent or caretaker relative refuses to cooperate with obtaining a social security number for the newborn child or other dependent child, the parent or caretaker relative shall be ineligible due to failure to meet technical requirements. The newborn child or other dependent child shall be eligible for Medicaid if financial eligibility requirements are met.

DENNIS BOYD, Commissioner

JOHN H. WALKER, Attorney

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: November 8, 1999

FILED WITH LRC: November 12, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 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 December 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: Karen Doyle or Neville Wise

(1) Type and number of entities affected: 35,000 KCHIP children and 26,184 TANF related cases.

(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: Public comments are scheduled to be received during a public hearing scheduled on December 21, 1999. No public comments were received during the NOI process.

(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: Public comments are scheduled to be received during a public hearing scheduled on December 21, 1999. No public comments were received during the NOI process.

(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 requirements.

2. Second and subsequent years: No additional requirements.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The cost associated with the KCHIP Medicaid expansion were specified in the Regulatory Impact Analysis for 907 KAR 4:020.

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: No additional requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 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 during the NOI process.

(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 specifies the technical eligibility requirements for TANF related cases, KCHIP cases and aliens. Technical eligibility requirements set criteria to determine when and if an individual is eligible to receive Medicaid benefits.

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Neither

3. State the aspect or service of local government to which this administrative regulation relates. None

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Long-term Care
(Amendment)

907 KAR 1:023. Review and approval of [oxygen-and] selected therapies as ancillary services in nursing facilities.

RELATES TO: 42 CFR 430, 431, 432, 433, 435, 440, 442, 447, 455, 456, 42 USC 1396a, b, d [KRS 205.520]

STATUTORY AUTHORITY: KRS 194A.030, 194A.050 [194.050], 205.520[, 44 CFR 430, 431, 432, 433, 435, 440, 442, 447, 455, 456, 42 USC 1396a, b, d]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, [Human Resources] has responsibility to administer the Medicaid Program. KRS 205.520 authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of Medical Assistance to Kentucky's indigent citizenry. This administration regulation establishes the [sets-forth] provisions relating to the review and approval of [oxygen-and] selected therapies as ancillary services for Medicaid recipients in nursing facilities.

Section 1. Definitions. (1) "Adult recipient" means an individual who is:

(a) Eligible to participate in Kentucky's Medicaid Program; and

(b) Age twenty-one (21) or over.

(2) "Ancillary service" means a direct therapy service for which a separate charge is customarily made pursuant to Section 2 of this administrative regulation.

(3) "Attending physician" means the physician of record identified in the recipient's nursing facility medical record.

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

(5) "Nursing facility (NF)" means a facility as defined in 907 KAR 1:022, Section 1(7).

(6) "Pediatric recipient" means an individual who is:

(a) Eligible to participate in Kentucky's Medicaid Program; and

(b) Under twenty-one (21) years of age.

Section 2. Covered Ancillary Services. (1) Oxygen therapy shall be a covered ancillary service if the department determines that the therapy:

(a) Is medically necessary; and

(b) Meets criteria pursuant to Section 3 of this administrative regulation.

(2) The following therapies shall be covered ancillary services if the department determines that the therapies meet the criteria established in Section 3 of this administrative regulation:

(a) Physical therapy;

(b) Occupational therapy;

(c) Speech therapy; and

(d) Respiratory therapy.

Section 3. On-site Review Approval and Denial Criteria. (1) The department shall approve a therapy as an ancillary service if through an on-site review the department determines that:

(a) The nature and extent of functional deficiency requires a qualified therapist, as determined through chart evaluation and resident contact;

(b) The care setting is appropriate for treatment planned;

(c) The therapy frequency, duration and intensity is reasonable and necessary;

(d) The following documentation is complete:

1. Referral request;

2. Therapy assessment;

3. Action plan;

4. Progress report; and

5. Service discontinuance;

(e) The progress of a resident can be verified against baseline and stated goals and time frames;

(f) A therapy is not duplicative of other services that a resident is receiving;

(g) The condition of resident requires a registered therapist to:

1. Evaluate a resident's active daily intervention program;

2. Supervise trained staff to carry out a therapy regimen;

3. Use assistive or adaptive equipment;

4. Train staff to use assistive or adaptive equipment;

5. Train the resident to use assistive or adaptive equipment during goal setting;

6. Supervise and certify a therapy assistant who is participating in a treatment program;

7. Establish a nursing care plan program to be performed by:

a. Nursing staff;

b. Restorative aide; or

c. A resident; and

8. Be responsible for the timely discharge of a service level; and

(h) A therapist has a:

1. Specific diagnosis;

2. Specific treatment plan that relates to a condition of a resident;

3. Specific modality for intervention that relates to a condition of a resident; and

4. Reasonable expectation for gain based on reasonable goals and time frames; and

(i) A resident is:

1. An adult recipient who meets the approval criteria of the "Technical Criteria for Reviewing Ancillary Services for Adults", incorporated into this administrative regulation by reference; or

2. A pediatric recipient who meets the "Technical Criteria for Reviewing Ancillary Services for Pediatrics", incorporated into this administrative regulation by reference.

(2) The department shall deny a request for a therapy as an ancillary service pursuant to Section 2 of this administrative regulation if through an on-site review the department determines that:

(a) Services of a registered therapist is not needed on a daily basis because:

1. Lack of progress of a patient;

2. Goals have been met;

3. A patient is unable to participate;

4. Lack of ability of nursing staff or resident to conduct or perform care;

5. Nursing care plan program has been designed and will be performed by staff other than a therapist;

6. Nursing staff or the resident is able to safely:

a. Perform the following:

(i) Repetitious exercise;

(ii) Nonrestorative exercise;

(iii) Drills; and

- b. Use equipment or devices;
- 7. The frequency or intensity of the services exceeds the benefits;
- 8. No further gains are achievable;
- 9. A resident is:
 - a. Independent; or
 - b. Needs only minimal assistance for performance.
- (b) The resident is:
 - 1. An adult recipient who meets the "Indication for Denial" criteria contained in the "Technical Criteria for Reviewing Ancillary Services for Adults"; or
 - 2. A pediatric recipient who meets the "Indication for Denial" criteria contained in the "Technical Criteria for Reviewing Ancillary Services for Pediatrics"; and
- (c) Oxygen therapy is not medically necessary to sustain the life of the resident.

Section 4. Certification and Recertification Process for a Therapy as an Ancillary Service. (1) Within two (2) workdays of the date that a recipient's attending physician orders administration of a therapy pursuant to Section 2 of this administrative regulation, the NF shall:

- (a) Notify the department by telephone; and
- (b) Request an on-site review of a therapy.
- (2) Within five (5) workdays of receipt of notification pursuant to subsection (1) of this section, the department shall:
 - (a) Perform an on-site review pursuant to Section 3 of this administrative regulation; and
 - (b) Render a certification decision.
- (3) The department shall issue a written notice of approval or denial relating to:
 - (a) A request for oxygen therapy to the:
 - 1. Resident; or
 - 2. Guardian; and
 - 3. NF; and
 - 4. Attending physician; or
 - (b) A request for a therapy pursuant to Section 2(2) of this administrative regulation to the NF.

(4) A therapy pursuant to Section 2(2) of this administrative regulation is approved as an ancillary service, the department shall establish a certification period that includes:

- (a) A start date of up to two (2) workdays prior to the date of notification by a NF pursuant to subsection (1) of this section; and
- (b) An end date that the department determines to be a reasonable time period for an individual to meet goals established by an individualized therapy program.

(5) Prior to the last day of a certification period for an approved therapy as an ancillary service, the department shall:

- (a) Recertify a therapy as an ancillary service for an extended period of time, if an individual continues to meet criteria pursuant to Sections 2 and 3 of this administrative regulation; and
- (b) Issue a written notice pursuant to subsection (3) of this section.

(6) If the department denies the request for certification or recertification of a therapy as an ancillary service, the NF may request that the department reconsider a request pursuant to Section 5 of this administrative regulation.

Section 5. Reconsideration and Appeal of a Denial of a Therapy as an Ancillary Service. (1) The department shall reconsider its decision to deny a request for oxygen therapy as an ancillary service if within thirty (30) days of the date on a notice of adverse action, a written request for reconsideration is submitted to the department by a:

- (a) Resident; or
- (b) Resident's legal guardian.
- (2) If the department receives a request for reconsideration pursuant to subsection (1) of this section, the department shall:
 - (a) Conduct a reconsideration on-site review within three (3) workdays from the receipt of a request;
 - (b) Employ a physician to conduct a reconsideration on-site review who was not involved with the initial on-site review or determination;

(c) Base its reconsideration decision solely upon information that is:

- 1. Contained in a resident's medical records; and
- 2. Submitted with a written request pursuant to subsection (1) of this section; and

(d) Issue a notification of approval or denial within two (2) workdays of a reconsideration on-site review.

(3) The department shall reconsider its decision to deny a request for a therapy as an ancillary service pursuant to Section 2(2) of this administrative regulation if:

(a) Form MAP-703, "Request for Reconsideration Ancillary Therapy Billing", incorporated into this administrative regulation by reference, is submitted to the department by a NF; and

(b) Form MAP-703 is received by the department within seven (7) days of the date on the notice of adverse action.

(4) If the department receives a request for reconsideration pursuant to subsection (3) of this section, the department shall:

(a) Conduct a reconsideration on-site review within seven (7) workdays from receipt of a request;

(b) Employ a registered nurse to conduct the reconsideration on-site review who was not involved with the initial on-site review or determination; and

(c) Base its reconsideration decision solely upon information that is:

- 1. Contained in a resident's medical records; and
- 2. Submitted with a request pursuant to subsection (3)(a) of this section; and

(d) Issue a notification of approval or denial within three (3) workdays of a reconsideration on-site review.

(5) If an outcome of a reconsideration on-site review results in the denial of a therapy as an ancillary service, the department shall grant an appeal as follows:

(a) An appeal of the denial of oxygen therapy as an ancillary service shall be granted pursuant to 907 KAR 1:563; and

(b) An appeal of the denial of a therapy pursuant to Section 2(2) of this administrative regulation as an ancillary service shall be granted pursuant to 907 KAR 1:671.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The "Technical Criteria for Reviewing Ancillary Services for Adults", Department for Medicaid Services, October 1999 edition;

(b) The "Technical Criteria for Reviewing Ancillary Services for Pediatrics", Department for Medicaid Services, October 1999 edition;

(c) Form "MAP-703, Request for Reconsideration of Ancillary Therapy Billing", Department for Medicaid Services, October 1999 edition.

(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. [Coverage of Oxygen: The Medicaid review agency shall determine medical necessity for the use of oxygen in nursing facilities in accordance with criteria shown in the Review and Approval of Oxygen and Selected Therapies in Nursing Facilities Manual:

Section 2. Coverage of Selected Therapies as Ancillary Services. The Medicaid review agency shall determine whether respiratory, occupational, speech, and physical therapy, when ordered by a physician for a Medicaid patient in a Medicaid participating nursing facility, meets program criteria to be billed as an ancillary service using criteria shown in the Review and Approval of Oxygen and Selected Therapies in Nursing Facilities Manual.

Section 3. Review and Approval of Oxygen and Selected Therapies in Nursing Facilities Manual. The Review and Approval of Oxygen and Selected Therapies in Nursing Facilities Manual, dated May 1, 1994, incorporated by reference in this administrative regulation, specifies the review and approval criteria for determinations of medical necessity for oxygen; the criteria for billing specified therapies as an ancillary service in a nursing facility; and the appeals process for the medical necessity decisions

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made by the review agency. The Review and Approval of Oxygen and Selected Therapies in Nursing Facilities Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m., Eastern Standard Time) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

~~Section 4. Implementation Date. The provisions of this administrative regulation shall be applicable for services provided on or after May 1, 1994.]~~

DENNIS BOYD, Commissioner
JOHN H. WALKER, Attorney
JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: October 28, 1999

FILED WITH LRC: October 28, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 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 December 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: Karen Doyle or Neville Wise

(1) Type and number of entities affected: There are approximately 22,925 licensed or certified beds in nursing facilities. Only the residents who request and ancillary service would be impacted by this administrative regulation. The changes to the administration incorporate policy from the manual to comply with KRS Chapter 13A and clarify the review criteria for ancillary services to address the specific needs of children. Therefore, no individual will be negatively impacted as the result of the promulgation of 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 related to this issue were received by the department.

(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 related to this issue were received by the department.

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and

enforcement of administrative regulation: Federal and state matching funds. There is no fiscal impact resulting from the promulgation of this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments were received related to this issue.

(b) Kentucky: No public comments were received related to this issue.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The changes to the administrative regulation will assist the department in addressing the specific needs of children when assessing the need for ancillary services.

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

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

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

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full

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year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Long Term Care (Amendment)

907 KAR 1:031. Payments for home health services.

RELATES TO: 42 CFR 440.70, 447.325, 42 USC 1396a-d [KRS 205.520]

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 205.520 [194.050, 42 CFR 440.70, 447.325, 42 USC 1396a-d]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, [Human Resources] has responsibility to administer the Kentucky Medicaid Program [of Medical Assistance]. KRS 205.520 authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the method for determining amounts payable by the Medicaid Program [cabinet] for home health agency services that are provided to Kentucky's Medicaid eligible recipients.

Section 1. Definitions. (1) "Allowable cost" means that portion of the home health agency's cost that shall be allowed by the department in establishing reimbursement.

(2) "Cost report" means the Annual Medicaid Home Health/HCB Cost Report.

(3) "Cost report instructions" means the Annual Medicaid Home Health/HCB Cost Report Instructions.

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

(5) "Home health agency" (HHA) means an agency defined pursuant to 42 CFR 440.70(d).

(6) "Interim rate" means a rate set for a provider for tentative reimbursement, based on reasonable allowable cost of providing a covered service, which may result in reimbursement adjustments after an audit or review determines the actual allowable cost during an accounting period.

(7) "Medicaid upper limit" means the maximum amount the Medicaid Program shall reimburse, on a facility-by-facility basis, for a unit of service.

(8) "Medicare upper limit" means the maximum reimbursement amount allowed by Medicare specific to:

(a) Each Medicare participating provider;

(b) Each category of service; and

(c) A unit of service.

(9) "Owner" means a person and a related family member with a cumulative ownership interest of five (5) percent or more.

(10) "Necessary function" means that if an owner of an agency had not provided the services pertinent to the operation of an HHA, a facility would have had to employ another person to perform the service.

(11) "Projected cost report" means an Annual Medicaid Home Health/HCB Cost Report that reflects costs that can reasonably be expected to be incurred by a provider for a specific period of time ending in the future.

(12) "Public agency" means an agency operated by a federal, state, county, city or other local governmental agency or instrumentality.

(13) "Rate year" means a twelve (12) month period beginning July 1 and ending the following June 30.

(14) "Related family member" means:

(a) Husband or wife;

(b) Natural or adoptive parent, child, or sibling;

(c) Stepparent, stepchild, stepbrother, stepsister;

(d) Father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law;

(e) Grandparent or grandchild;

(f) Spouse of grandparent or grandchild;

(g) Aunt or uncle; or

(h) Spouse of aunt or uncle.

(15) "Settled" or "settlement" means an amount by which a provider's interim Medicaid payment for a specified period of time is adjusted based on an audited or desk reviewed cost report for that same period of time.

(16) "Uniform desk review (UDR)" means an analysis of the provider's Annual Medicaid Home Health/HCB Cost Report to determine if data is adequate, complete, accurate, and reasonable.

(17) "Usual and customary charge" means the uniform amount which a medical provider charges in the majority of cases for a specific procedure or service.

Section 2. Payment to an In-state HHA. (1) The department shall reimburse a Medicaid participating in-state HHA on the basis of an interim rate established pursuant to subsection (2) of this section for the following services:

(a) Speech therapy;

(b) Physical therapy;

(c) Occupational therapy;

(d) Medical social services;

(e) Home health aide services; and

(f) Skilled nursing services.

(2) The interim rate for a service pursuant to subsection (1) of this section shall be determined for each individual HHA provider as follows:

(a) The department shall use cost data for each category of service from an HHA's most recent available Annual Medicaid Home Health/HCB Cost Report, incorporated by reference, as of May 31 immediately preceding the rate year to set the interim rate:

1. Medicaid specific data for units of service shall be adjusted using the Medicaid paid claims data.

2. Total cost data shall be increased for inflation using the most recent available HHA Market Basket National Forecast, as published by Standard and Poor's, by:

a. Trending the total cost data to the beginning of a rate year; and

b. Indexing cost data established pursuant to clause a of this subparagraph for inflationary cost increases projected to occur during the rate year.

(b) An average unit cost for a category of service shall be established by dividing the indexed cost established pursuant to paragraph (a)2b of this subsection by the total number of units of service that are reflected in the cost report pursuant to paragraph (a) of this subsection.

(c) If a nonpublicly-operated HHA provider is eligible to receive a cost containment incentive payment pursuant to Section 4 of this administrative regulation, the department shall determine the "average unit cost plus incentive" by adding the "incentive payment per visit amount" pursuant to Section 4(1) of this administrative regulation to the average unit cost established pursuant to paragraph (b) of this subsection.

(d) The interim rate for a publicly-operated HHA shall be the lesser of:

1. The average unit cost pursuant to paragraph (b) of this subsection; or

2. The Medicare upper limit as issued to the provider through a Medicare letter.

(e) The interim rate for a nonpublicly-operated HHA shall be the lesser of the:

1. Maximum average unit cost as established pursuant to paragraph (b) or (c) of this subsection that the provider is eligible to receive;

2. Medicaid upper limit pursuant to Section 6 of this administrative regulation; or

3. Medicare upper limits.

(3) The department shall establish an interim payment not to exceed the allowable billed charge for an item pursuant to paragraphs (a) and (b) of this subsection by multiplying the provider's total cost to charge ratio for the items as reflected in the provider's most recent available cost report as of May 31 immediately preceding the rate year by the provider's billed charge for:

- (a) Disposable medical supplies; and
- (b) Enteral nutritional products.

(4) Within eighteen (18) months following the end of a facility's fiscal year, payments made pursuant to subsections (2) and (3) of this section shall be:

- (a) Settled to the lesser of the:

1. Allowable Medicaid cost, as established in an HHA provider's cost report that the department has:

- a. Audited; or
- b. Desk reviewed; or

2. Allowable billed charge reported by the Medicaid Management Information System (MMIS), except that:

3. A publicly-operated HHA furnishing services free of charge or at a nominal charge pursuant to 42 CFR 413.13(f) shall be settled pursuant to paragraph (a)1 of this subsection; and

(b) Settled utilizing aggregation of costs in accordance with the Annual Medicaid Home Health/HCB Cost Report Instructions, incorporated by reference.

(5) If the settlement pursuant to subsection (4) of this section indicates that the department has:

(a) Overpaid a provider, the excess payment to the provider shall be recovered pursuant to 907 KAR 1:671, Section 2; or

(b) Underpaid a provider, a payout shall be issued to the provider through the MMIS during the next cycle following the discovery of the underpayment.

Section 3. Payment to a New In-state HHA Provider. (1) An HHA that undergoes a change of ownership during the rate year shall continue to be reimbursed at the rate established for the previous owner for the remainder of the rate year.

(2) An HHA pursuant to subsection (1) of this section shall be reimbursed pursuant to Section 2 of this administrative regulation after the provider submits a cost report pursuant to Section 7 of this administrative regulation.

(3) An HHA that had not previously participated in the Medicaid Program under the current ownership or a previous ownership during the rate year shall be:

- (a) Considered a new HHA; and
- (b) Reimbursed at the interim rate equal to the lesser of:

1. Seventy (70) percent of the current Medicaid upper limit as established pursuant to Section 6(2)(e) of this administrative regulation; or

- 2. The current Medicare upper limits.

(4) A new HHA shall be reimbursed pursuant to subsection (3) of this section until a cost report is:

(a) Submitted pursuant to Section 7 of this administrative regulation; and

(b) Is received by the department by May 31 preceding the rate year.

(5) If during the initial period, a provider pursuant to subsection (3) of this section requests a rate adjustment, the department may grant a rate change if the provider:

(a) Submits documentation indicating that the cost of providing services is significantly higher than the reimbursement rate that the provider is receiving; and

(b) Submits a projected cost report.

(6) When a new HHA provider's first cost report is received, interim payments for the cost report period shall be adjusted pursuant to Section 2(4) of this administrative regulation.

Section 4. Incentive Payment. (1) If a nonpublicly-operated HHA's nonaggregated base year costs are below the Medicaid upper limits pursuant to Section 6 of this administrative regulation for the corresponding period of time, the HHA shall receive a cost containment incentive payment, pursuant to Section 2(2)(c) of this administrative regulation, in accordance with the following payment schedule:

INCENTIVE PAYMENT SCHEDULE	
PERCENTAGE OF PER UNIT COST TO UPPER LIMIT	INCENTIVE PAYMENT PER VISIT AMOUNT
95.01% - 100%	--
90.01% - 95%	\$1.00
85.01% - 90%	\$1.50
80.01% - 85%	\$2.00
80% and below	\$2.50

(2) The incentive payment shall:

(a) Be subject to verification of visits;

(b) Bear an inverse relationship to the current year basic per visit cost; and

(c) Be adjusted each July 1 during the interim rate setting process pursuant to Section 2 of this administrative regulation for the rate year.

(3) The portion of the interim rate equal to the "incentive payment per visit amount" shall not be subject to retrospective settlement pursuant to Section 2(4) of this administrative regulation.

Section 5. Payment to an Out-of-state HHA. (1) An out-of-state HHA that provides a covered service inside the Commonwealth of Kentucky to an eligible Kentucky Medicaid recipient shall be paid pursuant to Section 2 of this administrative regulation.

(2) Except as provided for in subsection (3) of this section, an out-of-state HHA that provides a covered service to an eligible Kentucky Medicaid recipient while the recipient is outside the Commonwealth of Kentucky shall be reimbursed the lesser of an agency's:

(a) Usual and customary billed charge;

(b) Medicare upper limit; or

(c) Medicaid upper limit.

(3) If an out-of-state HHA provides the following items to an eligible Kentucky Medicaid recipient while a recipient is outside the Commonwealth of Kentucky, reimbursement shall be paid at eighty (80) percent of the HHA's usual and customary actual billed charges for:

(a) Disposable medical supplies; and

(b) Enteral nutritional products.

Section 6. Establishment of Medicaid Upper Limits. (1) Medicaid upper limits for the services pursuant to Section 2(1)(a) through (e) of this administrative regulation shall be established each year to be effective on July 1 for a nonpublicly-operated HHA.

(2) Medicaid upper limits shall be determined by the department as follows:

(a) Based on the Standard Metropolitan Statistical Area (SMDA) designation, a nonpublicly-operated HHA shall be classified as:

1. Urban; or

2. Rural.

(b) Two (2) sets of arrays pursuant to paragraph (a) of this subsection shall be established for each category of service pursuant to subsection (1) of this section.

(c) Each HHA's average unit cost per service as established pursuant to Section 2(2)(b) of this administrative regulation shall be:

1. Grouped pursuant to paragraph (b) of this subsection; and

2. Arrayed from lowest to highest.

(d) Median per unit cost for each of the ten (10) arrays pursuant to paragraph (c) of this subsection shall be based on the median number of Medicaid units pursuant to Section 2(2)(a)1a of this administrative regulation.

(e) Medicaid upper limits for a nonpublicly-operated HHA shall be set at 105 percent of the median per unit cost as established pursuant to paragraph (d) of this subsection.

(3) The following HHA providers shall be exempt from the Medicaid upper limits, but shall be subject to the Medicare upper limits:

(a) A publicly-operated HHA; and

(b) A new HHA provider who does not have two (2) full years

of operation; and

(4) Medicaid upper limit for skilled nursing services shall be the Medicare upper limit for skilled nursing services.

Section 7. Financial Data and Cost Reporting Requirements.

(1) Except for a provider identified in Section 5(2) of this administrative regulation, an HHA shall submit a completed cost report:

(a) That includes workpapers utilized to prepare the cost report including:

1. Detail of how a reclassification and an adjustment was calculated;

2. A working trial balance; and

3. Schedules tying the trial balance to the cost report.

(b) On an annual basis, within five (5) months after the close of the HHA's fiscal year;

(c) Prepared in accordance with the Annual Medicaid Home Health/HCB Cost Report Instructions, incorporated by reference; and

(d) Pursuant to 42 CFR 413.24(a), (b), (c), and (e).

(2) A thirty (30) day extension of time for submitting the cost report pursuant to subsection (1) of this section may be granted by the Director of the Division of Long Term Care or his designee if:

(a) A provider's operations are significantly adversely affected due to extraordinary circumstances over which the provider has no control;

(b) The provider submits a request for the extension in writing; and

(c) The request is received by the department within five (5) months after the close of the HHA's fiscal year.

(3) An HHA's payment shall be suspended if:

(a) Time for submitting a cost report pursuant to subsection (1) or (2) of this section has lapsed; and

(b) A cost report has not been submitted to the department;

(c) The department determines that a provider does not maintain or no longer maintains records pursuant to subsection (4) of this section; or

(d) The provider fails to provide the department with access to records pursuant to:

1. 907 KAR 1:672, Section 2(6); and

2. Subsection (4) of this section.

(4) For a period of five (5) years from the date that the department issues a letter to an HHA detailing the Medicaid final settlement of a cost report, an HHA shall retain and make available to the department:

(a) Records and documents pursuant to 42 CFR 413.20(a), (c), and (d);

(b) Documentation of work or services performed if compensation is claimed by the:

1. Owner; or

2. A related family member of the:

a. Owner; or

b. Administrator.

(5) If during a twelve (12) month period an HHA provider contracts with a subcontractor for the provision of goods and services established pursuant to 907 KAR 1:030 costing or valued at \$10,000 or more, an HHA provider shall include a clause in a contract that requires a subcontractor to:

(a) Make available to the department records and documents related to the provision of services consistent with the requirements pursuant to subsection (4) of this section; and

(b) Include a clause in their contract with a subcontractor or related organization who provides a service pursuant to 907 KAR 1:030 consistent with the requirements of subsection (4) of this section.

(6) If the department is denied access to the subcontractor's records pursuant to subsection (4) of this section, the cost of goods or services furnished by the subcontractor shall become a nonallowable cost reported on a cost report.

(7) If an HHA provider has been voluntarily or involuntarily terminated from the Medicaid Program, reimbursement payments shall be withheld until:

(a) A cost report is received from an HHA provider for the

period of time a provider participated in the Medicaid Program:

1. Beginning with the first day of the provider's fiscal year immediately preceding the provider's termination date; and

2. Ending on the date of termination of its provider agreement with the Medicaid Program; and

(b) A final settlement pursuant to Section 2(4) of this administrative regulation is completed by the department.

Section 8. Allowable HHA Cost. (1) Except as limited pursuant to Section 9 of this administrative regulation, cost pursuant to subsection (2) of this section shall be allowable and eligible for reimbursement pursuant to this administrative regulation if costs are:

(a) Reflective of a provider's actual expenses of providing a service; and

(b) Related to Medicaid patient care pursuant to 42 CFR 413.9.

(2) Except as limited by Section 9 of this administrative regulation, and subsection (1) of this section, the following cost shall be allowable:

(a) Allowable cost to related organizations pursuant to 42 CFR 413.17;

(b) Costs of educational activities pursuant to 42 CFR 413.85;

(c) Research costs pursuant to 42 CFR 413.90;

(d) Value of services of nonpaid workers pursuant to 42 CFR 413.94;

(e) Purchase discounts and allowances, and refunds of expenses pursuant to 42 CFR 413.98;

(f) Therapy and other services pursuant to 42 CFR 412.106.

Section 9. Limitations on Allowable HHA Cost. (1) Board of directors' fees.

(a) The cost of board of director's fees shall be limited annually to:

1. Five (5) meetings for a single-facility organization; or

2. Twelve (12) meetings for a multiple-facility organization;

and

3. \$200 for each director of the board attending each meeting, including the cost of attending the meeting.

(b) The cost associated with a private club membership shall not be an allowable cost.

(2) Motor vehicles.

(a) An allowable motor vehicle cost shall be:

1. Limited to cost related to patient care; and

2. Documented sufficiently to support business use.

(b) An allowable cost associated with HHA facility-owned vehicles and mileage allowances shall be limited to the mileage allowance for federal income tax purposes.

(c) The costs associated with personal use of a facility-owned motor vehicle shall not be an allowable cost unless the value of the personal use of the vehicle is:

1. Included in the employee's W-2 statement; or

2. Reported on a Form 1099 in accordance with Internal Revenue Service regulations.

(d) An allowable cost pursuant to paragraph (c) of this subsection shall be considered compensation to the extent that:

1. Compensation to an owner does not exceed owner's compensation limits pursuant to Section 10 of this administrative regulation; and

2. The total compensation package to a nonowner is reasonable pursuant to 42 CFR 413.9(b).

(3) The cost associated with political contributions shall not be allowable.

(4) Legal fees.

(a) An allowable cost associated with legal fees shall exclude cost:

1. Associated with unsuccessful lawsuits against the Cabinet for Health Services or the department;

2. Incurred by the provider in an attempt to block the approval of a certificate of need for another provider.

3. Associated with the acquisition of another HHA;

4. Resulting from the commission of an illegal act by an:

a. HHA;

- b. HHA's owner; or
- c. HHA's agent; or
- 5. Unrelated to patient care.

(b) Legal fees associated with successful lawsuits against the cabinet shall be limited to inclusion as allowable cost in the period:

1. In which a suit is settled after a final decision has been issued that the lawsuit is successful;
 2. Agreed to by involved parties; or
 3. As ordered by the court.
- (5) Travel expenses.
- (a) The cost of travel expenses shall be limited to:
1. Activities related to the educational needs of the:
 - a. Agency owners;
 - b. Directors; or
 - c. Staff; and
 2. Reasonable and necessary cost pursuant to 42 CFR 413.9(b) as determined in evaluating the:
 - a. Number of trips taken;
 - b. Expense associated with each trip;
 - c. Number of persons attending each function; and
 - d. Appropriateness of a training.
 3. Trips taken within the forty-eight (48) contiguous United States.

Section 10. Owner's Compensation Limits. (1) Compensation to an owner who is not an administrator shall:

(a) Be considered an allowable cost pursuant to 42 CFR 413.102; but:

- (b) Exclude:
 - 1. Board of directors' fees; and
 - 2. Fringe benefits routinely provided to all employees.

(2) Compensation of a part-time owner-employee performing managerial functions shall not exceed the percent of time worked times eighty (80) percent of the applicable compensation limits for an owner administrator.

(3) A full-time owner-administrator and full-time owner-employee who performs nonmanagerial functions in an HHA other than the HHA with which he is primarily associated with shall be limited to:

(a) Reasonable compensation from the nonprimary agency for not more than fourteen (14) hours per week supported by:

1. The owner's proof of performance of a necessary function; and
 2. Documentation of time claimed for compensation; and
- (b) A salary from the agency with which they are primarily associated.

(4) Managerial functions performed in a nonprimary agency by a full-time owner-administrator or a full-time owner-employee of another agency shall not be considered an allowable cost.

(5) Compensation to an owner-administrator of a rural or urban HHA shall be:

- (a) Limited to \$ 60,579 beginning July 1, 1999;
- (b) Increased on July 1 of each year by the inflation factor index for wages and salaries of the Home Health Agency Market Basket of Operating Cost as indicated by the National Forecasts supplied by Standard and Poor's, Inc.; and
- (c) Published annually through a notification to all providers to advise of the revised limits for owner's compensation to be effective July 1 of each year.

Section 11. Audit Functions. (1) All HHA provider cost applicable to a Medicaid beneficiary is subject to:

- (a) Review or audit by the department; and
 - (b) A final retroactive settlement based upon an adjustment to an HHA provider's costs reported in a cost report for any reporting period under review or audit.
- (2) The department shall perform a uniform desk review (UDR).
- (3) A summary of the UDR shall be:
- (a) Used to settle the cost report without audit; or
 - (b) To determine the extent to which audit verification is required.

(4) If indicated by the uniform desk review (UDR), an audit shall be conducted in accordance with the "Government Auditing Standards", incorporated by reference.

Section 12. Reimbursement Review and Appeal. A participating HHA may request an appeal of a departmental decision pursuant to 907 KAR 1:671.

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

(a) The "Annual Medicaid Home Health/HCB Cost Report", Department for Medicaid Services, October 1999 edition;

(b) "The Annual Medicaid Home Health/HCB Cost Report Instructions", Department for Medicaid Services, October 1999 edition; and

(c) The "Government Auditing Standards", 1994 edition, as issued by the Comptroller General of the United States.

(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. [Payments to Home Health Agencies: (1) The cabinet shall reimburse participating home health agencies on the basis of interim rates set by the cabinet using available Medicare data and methodology as applied to Medicaid covered services (effective July 1, 1992 using cost data submitted by the home health agency provider on the annual Medicaid home health agency cost report); taking into consideration the upper limit shown in Section 2 of this administrative regulation and the various policies and guidelines specified in the Cabinet for Human Resources Title XIX Home Health Reimbursement Manual:

(a) A home health agency (but not including a publicly-operated agency) whose nonaggregated base year costs (as shown in the cost report used to set the agency's interim rate) are below the prospective upper limit for the agency shall receive a cost containment incentive payment in accordance with the incentive payment schedule shown in the reimbursement manual:

(b) The cost containment incentive payment shall not be subject to retrospective settlement.

(2) Payments made at the interim rate (except for incentive payments) shall be settled back to actual allowable cost at the end of the facilities' fiscal year, with actual allowable costs not to exceed the amounts that would be allowable taking into consideration the upper limit specified in Section 2 of this administrative regulation. The Medicaid final rates (except for incentive payments) shall not exceed federally established upper limits for Medicare:

(3) The Cabinet for Human Resources Title XIX Home Health Reimbursement Manual, revised July 1, 1993, is incorporated by reference:

(a) The Home Health Reimbursement Manual is available for inspection and copying during regular working hours (8 a.m. to 4:30 p.m. eastern time) in the office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621:

(b) A fee shall be charged for the Home Health Reimbursement Manual not to exceed the approximate cost of copying and materials:

(4) Provider taxes shall be considered allowable costs. For the rate period beginning on July 1, 1993 and ending on June 30, 1994, the cost of the provider tax shall be added to the rate as an add-on without offset or application of upper limits. For subsequent rate periods, the provider tax cost shall be shown in the appropriate cost report used for rate setting:

Section 2. Application of Upper Limits. (1) Publicly-operated home health agencies (except new facilities as shown in Section 5 of this administrative regulation) shall be reimbursed at full allowable cost but shall be subject to the Medicare upper limits:

(2) Payments for agencies other than publicly-operated home health agencies (except payments for disposable medical supplies, as shown in Section 4 of this administrative regulation); incentive payments as shown in Section 1 of this administrative regulation, and rate add-ons to recognize provider taxes as

shown in Section 1 of this administrative regulation, shall not exceed a prospective upper limit which shall be set at 105 percent of the weighted median of the array of allowable per visit costs of those agencies that are subject to the upper limits.

(3) Facilities shall be placed in an urban or rural array based on the facility location for the following cost centers or disciplines: speech pathology, physical therapy, occupational therapy, medical social services, and home health aid services.

(a) The upper limit for the skilled nursing cost center shall be the Medicare upper limit. A determination as to whether a county is urban or rural shall be made taking into account usual standard metropolitan statistical areas.

(b) Arrays shall be based on annual cost report data with costs trended through June 30 and indexed for the rate year; the rate year shall begin on July 1 and end on June 30; and the upper limit shall be subject to an annual adjustment to be effective on July 1 of each rate year. Aggregation of costs (i.e., shifting of allowable costs from one cost center to another if the limit is exceeded in one cost center but not in another) shall be permitted.

(c) For rate years beginning July 1, 1986 and thereafter, the array shall be based on the latest available cost report as of May 31 preceding the rate year.

Section 3. Payments for Durable Medical Equipment. Effective with regard to services provided on or after July 1, 1989, home health agencies shall not be reimbursed for durable medical equipment unless enrolled as a participating durable medical equipment provider.

Section 4. Disposal medical supplies shall be reimbursed on an interim basis at a percent of allowable billed charges with a settlement to actual costs at the end of the agency's fiscal year.

Section 5. New home health agencies shall be paid seventy (70) percent of the Medicaid maximum rate not to exceed Medicare upper limits, until a fiscal year end cost report is available. During this initial period, the rate may be adjusted if the provider documents the justification for a rate change by the submittal of a projected cost report.

Section 6. Owners' compensation shall be limited as shown in the Home Health Reimbursement Manual.

Section 7. Payments to Out-of-state Home Health Agencies Effective with Regard to Services Provided on or after July 1, 1990. (1) The cabinet shall reimburse participating out-of-state home health agencies at the lower of the Medicare maximum payment rate, the Medicaid maximum payment rate, or the agency's actual usual and customary billed charge.

(2) Disposable medical supplies shall be reimbursed at a rate of eighty (80) percent of the actual usual and customary billed charge.

Section 8. Requests for Reconsideration and Appeals. Participating home health agencies are provided the following mechanism for a review of program decisions relating to the application of the policies and procedures governing home health agency payments:

(1) Request for reconsideration. A home health agency operator may request reconsideration of a program decision by writing to the Director, Division of Reimbursement Operations:

(a) A request for reconsideration shall be received within forty-five (45) days following transmittal of the audited cost report to the agency or the notification of the agency's prospective rate. A request for workpapers pertaining to audit adjustments to the home health agency's cost report shall not extend the forty-five (45) day time limit.

(b) If the home health agency operator fails to request reconsideration of the audited cost report within the forty-five (45) days, the audited cost report shall be final and shall not be reopened unless the cabinet determines that there is suspected fraud or misrepresentation.

(c) A request for reconsideration shall indicate which adjust-

ments the home health agency wishes reconsidered. A blanket request for reconsideration of the cost report shall not be accepted.

(d) Program/vendor conference. Upon receipt of the request for reconsideration, the division shall determine the need for a program/vendor conference and shall contact the home health agency to arrange a conference.

1. If a program/vendor conference is needed, the conference shall be held within sixty (60) days of receipt of the home health agency's request for review unless delayed due to extenuating circumstances.

2. Regardless of the program decision, the provider shall be afforded the opportunity for a conference if he so wishes for a full explanation of the factors involved in the decision.

(e) Following reconsideration of the matter, the Director of the Division of Reimbursement Operations shall notify the home health agency in writing of the action to be taken by the division within twenty (20) days of receipt of the request for reconsideration or the date of the program/vendor conference, whichever is later.

(f) The twenty (20) day period for notification in paragraph (e) of this subsection may be extended by the program when necessary to secure additional information for resolution of the issue.

(2) Appeal to the reimbursement review panel. If the Director of Reimbursement Operations' decision is unsatisfactory, the home health agency may appeal the question to a reimbursement review panel established by the Commissioner of the Department for Medicaid Services.

(a) The reimbursement review panel shall include one (1) member of the Division of Reimbursement Operations, a representative of the Kentucky Association of Home Health Agencies, and a member of the Department for Medicaid Services (but not within the Division of Reimbursement Operations) as designated by the commissioner, with the designated member to serve as chairperson.

(b) A request for review by the reimbursement review panel shall be postmarked within twenty (20) days following the notification of the initial decision by the Director, Division of Reimbursement Operations.

(c) A date for the reimbursement review panel to convene shall be established within twenty (20) days after receipt of a written request for the appeal. The question shall be heard by the panel.

(d) The review panel shall issue a binding decision on the issue within thirty (30) days of the hearing unless the review panel determines that additional time is needed to secure further information or clarification pertinent to the resolution of the issue.

(e) The review panel may consider extenuating circumstances to provide equitable treatment and reimbursement of the provider.

Section 9. Audits may be performed by either the Medicare or Medicaid program; if audited by both, the Medicaid audit shall take precedence over the Medicare audit.

Section 10. Implementation Date. The amendments to this administrative regulation shall be effective with regard to services provided on or after July 1, 1993.]

DENNIS BOYD, Commissioner
JOHN H. WALKER, Attorney
JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: October 28, 1999

FILED WITH LRC: October 28, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 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 December 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 regula-

tion. 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: Approximately 125 home health agencies.

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

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

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

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

1. First year following implementation: 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: 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: Will ensure that providers of home health services know their appeal rights and clarify the Medicaid payment structure.

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

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety and welfare of Medicaid recipients if providers of home health services do not clearly understand Medicaid's payment structure and do not know how to exercise their appeal rights.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due proc-

ess" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Long Term Care (Amendment)

907 KAR 1:605. Medicaid procedures for determining initial and continuing eligibility.

RELATES TO: KRS 205.520, 42 CFR 435.530, 435.531, 435.540, 435.541, 435.914, 435.916, 42 USC 416, 1382[e], 1396a, b, d

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 205.520(3), 42 USC 1396a, 1998 Ky. Acts ch. 426, sec. 4(3)]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes provisions relating to determining initial and continuing eligibility for assistance under the Medicaid Program.

Section 1. Definition. (1) "Department" means the Department for Medicaid Services or its designee.

(2) "First month of SSI payment" means the first month for which an SSI-related Medicaid recipient is determined to be eligible for SSI payments.

(3) "Partnership" is defined in 907 KAR 1:705.

Section 2. Eligibility Determination Process. (1) Except as provided in subsection (3) or (5) of this section, eligibility shall be determined prospectively. To receive or continue to receive assistance, a household shall meet technical and financial eligibility criteria pursuant to this section and Section 3 of this administrative regulation and as established in 907 KAR 1:011, 907 KAR 1:640 and 907 KAR 1:645 for the appropriate month of coverage.

(2) A [Each] decision regarding eligibility or ineligibility for Medicaid shall be supported by facts recorded in the case record.

(a) The applicant or recipient shall be the primary source of information and shall:

1. Furnish verification of financial and technical eligibility as required by 907 KAR 1:011, 907 KAR 1:640, and 907 KAR 1:645; and

2. Give written consent to those contacts necessary to verify or clarify a factor pertinent to the decision of eligibility.

(b) The department may schedule an appointment with an

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applicant or recipient to receive specified information as proof of eligibility. Failure to appear for the scheduled appointment or to furnish the requested information shall be considered a failure to present adequate proof of eligibility if the applicant or recipient was informed in writing of the scheduled appointment and the required information.

(3) Retroactive eligibility for Medicaid not related to the receipt of SSI shall be effective no earlier [later] than the third month prior to the month of application if:

(a) A Medicaid service was received;

(b) Technical and financial eligibility requirements were met as established in 907 KAR 1:011, 907 KAR 1:640 and 907 KAR 1:645; and

(c) 1. The applicant resides in a nonpartnership county; or

2. The applicant resides in a county served by a partnership and meets one (1) of the excluded categories as established in 907 KAR 1:705.

(4) Eligibility for qualified Medicare beneficiary (QMB) coverage shall be effective the month after the month of case approval if technical and financial eligibility requirements were met as established in 907 KAR 1:011, 907 KAR 1:640 and 907 KAR 1:645.

(5) Retroactive eligibility for specified low-income Medicare beneficiary (SLMB) benefits, Medicare qualified individuals (QI) benefits or qualified disabled working individuals shall be effective no earlier [later] than the third month prior to the month of application if an individual meets technical and financial eligibility requirements as established in 907 KAR 1:011, 907 KAR 1:640 and 907 KAR 1:645. Retroactive eligibility for a qualified individual shall not include months of a prior year.

(6) An SSI-related recipient, in accordance with HCFA Program Issuance Transmittal Notice, Region IV, May 7, 1997, MCD-014-97, shall be eligible for Medicaid benefits effective the month prior to the first month of SSI payment provided that he resides in a partnership county and meets Medicaid eligibility requirements for that month.

(7) An SSI-related recipient, in accordance with HCFA Program Issuance Transmittal Notice, Region IV, May 7, 1997, MCD-014-97, shall be retroactively eligible for Medicaid benefits effective no earlier than the third month prior to the first month of SSI payment provided he resides in a nonpartnership county and meets Medicaid eligibility requirements for these months or resides in a partnership county and meets the requirements for one (1) of the excluded categories established in 907 KAR 1:705.

Section 3. Continuing Eligibility. (1) The recipient shall be responsible for reporting within ten (10) days a change in circumstances which may affect eligibility. In addition, eligibility shall be redetermined:

(a) Every twelve (12) months; or

(b) If a report is received or information is obtained about a change in circumstances.

(2) Pursuant to the waiver granted by the Secretary, United States Department of Health and Human Services, and promulgated as 907 KAR 1:705, a recipient shall have a one (1) time guarantee of six (6) months of eligibility regardless of a loss of technical eligibility for Medicaid during that six (6) month time period if the recipient:

(a) Resides in a county included in a partnership;

(b) Did not meet one (1) of the excluded categories established in 907 KAR 1:705;

(c) Did not receive Medicaid in any of the twelve (12) months preceding participation in a partnership;

(d) Participated in a partnership for less than six (6) months;

(e) Continued to reside in a partnership region during the guaranteed six (6) month eligibility period; and

(f) Is not an:

1. Incarcerated recipient;

2. Alien who is eligible for emergency Medicaid; or

3. A recipient requesting discontinuance of Medicaid.

Section 4. Determination of Incapacity or Permanent and Total Disability. (1) Except as provided in subsections (2) and (3) of this section, a determination that a parent with whom the needy

child lives is incapacitated, or that the individual requesting Medicaid due to disability is both permanently and totally disabled, shall be made by the medical review team following review of both medical and social reports.

(2) A parent shall be considered incapacitated without a determination from the medical review team if:

(a) The parent declares physical inability to work;

(b) The worker observes some physical or mental limitation; and

(c) The parent:

1. Is receiving supplemental security income (SSI);

2. Is age sixty-five (65) or over;

3. Has been determined to meet the definition of blindness or permanent and total disability as contained in 42 USC 1382[e] or 416 by either the Social Security Administration or the medical review team;

4. Has previously been determined to be incapacitated or permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction without a reexamination requested and there is no visible improvement in condition;

5. Is receiving retirement, survivors, and disability insurance (RSDI) benefits, federal black lung benefits, or railroad retirement benefits based on disability as evidenced by an award letter;

6. Is receiving Veterans Administration (VA) benefits based on 100 percent disability, as verified by an award letter; or

7. Is currently hospitalized and a statement from the attending physician indicates that incapacity will continue for at least thirty (30) days. If application was made prior to the admission, the physician shall indicate if incapacity existed as of the application date.

(3) An individual shall be considered permanently and totally disabled without a determination from the medical review team if the individual:

(a) Receives RSDI or railroad retirement benefits based on disability;

(b) Received SSI based on disability during a portion of the twelve (12) months preceding the application month and discontinuance was due to income or resources, not to improvement in physical condition;

(c) Has been determined to meet the definition of blindness or permanent and total disability as contained in 42 USC 416 or 1382[e] by the Social Security Administration; or

(d) Has previously been determined to be permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction without a reexamination requested and there is no visible improvement in condition.

(4)(a) A child who was receiving supplemental security income benefits on August 22, 1996 and who, but for the change in definition of childhood disability established by 42 USC 1396a(a)(10) would continue to receive SSI, shall continue to meet the Medicaid definition of disability.

(b) If a redetermination is necessary, and in accordance with 921 KAR 5:470 [904-KAR-2:470], the definition of childhood disability effective on August 22, 1996 shall be used.

Section 5. Disqualification. An adult individual shall be disqualified from receiving Medicaid for a specified period of time if the department or a court determines the individual has committed an intentional program violation in accordance with 907 KAR 1:675.

Section 6. Incorporation by Reference. (1) "HCFA Program Issuance Transmittal Notice Region IV", May 7, 1997, MCD-014-97 is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DENNIS BOYD, Commissioner

JOHN H. WALKER, Attorney

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: October 28, 1999

VOLUME 26, NUMBER 6 – DECEMBER 1, 1999

FILED WITH LRC: October 28, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 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 December 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: Karen Doyle or Neville Wise

(1) Type and number of entities affected: Adult recipients who have committed an intentional program violation.

(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 regarding cost of living and employment during the public hearing process.

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

(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: No additional requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue required.

(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: Administrative regulation to be implemented statewide. No public comments received on economic impact.

(b) Kentucky: Refer to 6(a).

(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: Clarifies Medicaid coverage for SSI recipients.

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

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

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

None

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Neither

3. State the aspect or service of local government to which this administrative regulation relates. None

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Member and Provider Services (Amendment)

907 KAR 1:640. Income standards for Medicaid.

RELATES TO: KRS 205.520, 42 USC 1396jj(b), 1397aa
STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 42 CFR 435, 42 USC 1396a, b, d, 1397aa [1998 Ky. Acts ch. 426, sec. 4(3)]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with 42 USC 1396 through 1396v. KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal

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law for the provisions of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the income standards by which eligibility is determined.

Section 1. Definitions. (1) "ABD" means an individual who is aged, blind, or disabled.

(2) "AFDC" means the Aid to Families with Dependent Children Program as it existed on July 16, 1996.

(3) "[Dependent] Child" means a person [child] who [is]:

(a) 1. Is [Deprived of parental support due to death, incapacity, or absence of a parent; and

(b) under the age of:

1- eighteen (18); or

2. Is under the age of nineteen (19) if the person [child] is:

a. In high school or the same level of vocational or training school; and

b. Expected to graduate before or during the month of his 19th birthday.

(b) Is not self-supporting;

(c) Is not a member of the Armed Forces of the United States; and

(d) If previously emancipated by marriage, has returned to the home of his parents or to the home of another relative; or

(e) Has not attained nineteen (19) years of age as specified in 42 USC 1396a(l)(1).

(4) "Family alternatives diversion payment" means a lump sum payment made to a K-TAP applicant to meet short-term emergency needs.

(5) [(4)] "Incapacity" means a [any] condition of mind or body making a parent physically or mentally unable to provide the necessities of life for a child.

(6) [(5)] "Income" means money received from statutory benefits (including Social Security, Veteran's Administration pension, black lung benefits, or railroad retirement benefits), pension plans, rental property, investments, or wages for labor or services.

(7) [(6)] "Lump sum income" means money received at one (1) time which is normally considered as income, including accumulated back payments from Social Security, unemployment insurance or workman's compensation, back pay from employment, money received from an insurance settlement, gift, inheritance, lottery winning, noncontinuing proceeds from a bankruptcy proceeding, money withdrawn from an IRA, KEOGH plan, deferred compensation, tax deferred retirement plan, or other tax deferred asset.

(8) [(7)] "Minor parent" means a parent under the age of twenty-one (21).

(9) [(8)] "Official poverty income guidelines" means the poverty income guidelines which are:

(a) Updated annually in the Federal Register by the United States Department of Health and Human Services, under authority of 42 USC 9902(2); and

(b) The latest poverty guidelines available as of March 1 of the particular state fiscal year.

(10) [(9)] "SSI" means supplemental security income program.

Section 2. Income Limitations. (1) For the medically needy as described in 907 KAR 1:011, income shall be determined by comparing adjusted income as required by Section 3 of this administrative regulation, of the applicant, applicant and spouse, or applicant, spouse and minor dependent children with the following scale of income protected for basic maintenance:

Size of Family	Annual	Monthly
1	\$ 2,600	\$ 217
2	3,200	267
3	3,700	308
4	4,600	383
5	5,400	450
6	6,100	508
7	6,800	567

For each additional member, \$720 annually or sixty (60) dollars monthly shall be added to the scale.

(2) The following special factors shall be applicable for a pregnant woman or child eligible pursuant to 42 USC 1396a(e):

(a) A pregnant woman or a child under age one (1) shall have family income not exceeding 185 percent of the official poverty income guidelines;

(b) A child age one (1) or over but under age six (6) shall have family income not exceeding 133 percent of the official poverty income guidelines;

(c) A child born after September 30, 1983, who has attained six (6) years of age but has not attained nineteen (19) years of age shall have family income not exceeding 100 percent of the official poverty income guidelines;

(d) A pregnant woman or child who would be eligible under provisions of 42 USC 1396a(l) or 1397j(b) [of the Social Security Act] except for income in excess of the allowable standard shall not become eligible by spending down [(pursuant to Section 9 of this administrative regulation)] to the official poverty guidelines as described in Section 9 of this administrative regulation;

(e) A change of income that occurs after the determination of eligibility of a pregnant woman shall not affect the pregnant woman's eligibility through the remainder of the pregnancy including the postpartum period which ends at the end of the month containing the 60th day of a period beginning on the last day of her pregnancy;

(f) A child as specified in 907 KAR 1:011, Section 2(17), shall have family income not exceeding 100 percent of the official poverty income guidelines;

(g) A targeted low-income child as specified in 907 KAR 1:011, Section 2(18), shall have family income not exceeding 150 percent of the official poverty income guidelines.

(3) The following special income limits and provisions shall be applicable for a determination of eligibility of a qualified Medicare beneficiary, specified low-income Medicare beneficiary, qualified disabled working individual, or Medicare qualified individual.

(a) A qualified Medicare beneficiary shall have income not exceeding 100 percent of the official poverty income guidelines.

(b) A specified low-income Medicare beneficiary shall have income greater than 100 percent of the official poverty income guidelines but not to exceed 120 percent of the official poverty income guidelines.

(c) Medicare qualified individuals shall be divided into two (2) groups:

1. Group one (1) shall have income greater than 120 percent of the official poverty income guidelines but less than or equal to 135 percent of the official poverty income guidelines.

2. Group two (2) shall have income greater than 135 percent of the official poverty income guidelines but less than or equal to 175 percent of the official poverty income guidelines.

(d) A qualified disabled working individual shall have income not exceeding 200 percent of the official poverty income guidelines.

(4) Income shall be limited to the allowable amounts for the SSI Program for:

(a) A child who lost eligibility for supplemental security income benefits due to the change in the definition of childhood disability as established in 42 USC 1396a(a)(10); or

(b) A person with hemophilia who received a class action settlement as established in 42 CFR 435.122.

(5) Income shall be limited to the allowable amounts for the State Supplementation Program for a pass through recipient as established in 42 CFR 435.135.

Section 3. Income Disregards. In comparing income with the scale established in Section 2 of this administrative regulation, gross income shall be adjusted as follows:

(1) In an AFDC or family related Medicaid case, the standard work related expenses of an adult member or out-of-school child shall be deducted from gross earnings. For a person with either full-time or part-time employment the standard work expense deduction shall be ninety (90) dollars per month. [All] Earnings of an individual attending school who is a [in-school] child or parent under age nineteen (19) or a child under age eighteen (18) who is a high school graduate shall be disregarded.

(2) In an AFDC or family related Medicaid case, child care as a work expense shall be allowed for a child who is living in the home of the caretaker and is related to the caretaker in accordance with 907 KAR 1:011, Section 5(8) [(9)](b) for full-time and part-time employment.

(a) The dependent child care work expense shall be deducted after all other disregards have been applied.

(b) The child care work expense allowed shall not exceed, per month:

1. \$200 for full-time or part-time employment per child under age two (2); and

2. \$175 for full-time employment or \$150 for part-time employment per:

a. Child age two (2) or above; or

b. Incapacitated adult.

(3) For an AFDC-related Medicaid case, a thirty (30) dollar and one-third (1/3) deduction of earned income shall be allowed in accordance with 921 KAR 2:016.

(4) In an ABD Medicaid case, income disregards shall be those applicable in the federal SSI program established in 42 USC 1382a(b).

Section 4. Income of the Stepparent or Parent of a Minor Parent referred to as a "Grandparent". An incapacitated stepparent's income, or a grandparent's income, shall be considered in the same manner as for a parent if the stepparent or grandparent is included in the family case. If the stepparent or grandparent living in the home is not being included in the family case, the stepparent's gross income shall be considered available to the spouse or the grandparent's gross income shall be considered available to the minor parent in accordance with the policies set forth in this section. The following disregards and exclusions from income shall be applied:

(1) The first ninety (90) dollars of the gross earned income of the stepparent or grandparent who is employed full time or part time.

(2) An amount equal to the appropriate income limitations scale established in Section 2 of this administrative regulation for the appropriate family size, for the support of the stepparent or grandparent and any other individuals (not including the spouse or minor parent) living in the home but whose needs are not taken into consideration in the Medicaid eligibility determination and are claimed by the stepparent or grandparent as dependents for purposes of determining federal personal income tax liability.

(3) Any amount actually paid by the stepparent or grandparent to an individual not living in the home who is claimed by him as a dependent for purposes of determining his personal income tax liability.

(4) A payment by the stepparent or grandparent for alimony or child support with respect to an individual not living in the household.

(5) Income of a stepparent or grandparent receiving SSI.

(6) Verified medical expenses for the stepparent or grandparent and his dependents in the home.

Section 5. Lump Sum Income. (1) For an AFDC related Medicaid case, lump sum income shall be divided by the medically needy income level and prorated over the resultant number of months. A deduction from the lump sum may be allowed for related or extraordinary expenses.

(2) For an individual eligible under the federal poverty level standards specified in Section 2(2)(a), (b), (c), (f), and (g) of this administrative regulation, lump sum income shall be divided by the appropriate standard for the eligible group and prorated over the resultant number of months. A deduction from the lump sum may be allowed for related or extraordinary expenses.

(3) For an ABD Medicaid case, lump sum income shall be considered as income in the month received.

Section 6. Income Exclusions. (1) Income of a person who is blind or disabled necessary to fulfill an approved plan for achieving self-support (PASS), impairment related work expense (IRWE) deduction, or the blind work expense (BWE) deduction

shall be excluded from consideration.

(2) A payment or benefit from a federal statute, other than SSI benefits, shall be excluded from consideration [(as income)] if precluded from consideration in SSI determinations of eligibility by the specific terms of the statute.

(3) A cash payment intended specifically to enable an applicant or recipient to pay for medical or social services shall not be considered as available income in the month of receipt.

(4) A Federal Republic of Germany reparation payment shall not be considered available in the eligibility or posteligibility treatment of income of an individual in a nursing facility or hospital or who is receiving home and community based services under a waiver.

(5) A Social Security cost of living adjustment on January 1 of each year shall not be considered as available income for a qualified Medicare beneficiary, specified low-income Medicare beneficiary, qualified disabled working individual or Medicare qualified individual until after the month following the month in which the official poverty guideline promulgated by the Department of Health and Human Services U.S. Government, is published.

(6) Any amount received from a victims compensation fund established by a state to aid victims of crime shall be excluded as income.

(7) A veteran in a nursing facility who is receiving the reduced ninety (90) dollars Veterans Administration (VA) benefit shall have the ninety (90) dollars:

(a) Excluded as income in the Medicaid eligibility determination; and

(b) Considered as income in the posteligibility determination process.

(8) An Austrian Social Insurance payment based, in whole or in part, on a wage credit granted under Sections 500-506 of the Austrian General Social Insurance Act shall be excluded from income consideration.

(9) An individual retirement account, KEOGH plan or other tax deferred asset shall be excluded as income until withdrawn.

(10) Disaster relief assistance shall be excluded as income.

(11) Income which is exempted from consideration for purposes of computing eligibility for the comparable money payment program (AFDC and SSI) shall be exempted from consideration by the cabinet.

(12) In accordance with 42 CFR 435.122 and Section 4735 of PL 105-33 a [any] payment made from a fund established by a settlement in the case of Susan Walker v. Bayer Corporation or payment made for release of claims in this action shall be excluded as income.

(13) In accordance with 42 CFR 435.122 any payment received by a person with hemophilia from a class action law suit entitled "Factor VIII or IX Concentrate Blood Products Litigation" shall be excluded as income.

(14) Family alternatives diversion payments shall be excluded as income.

(15) For an AFDC or family-related Medicaid case a Medicaid recipient shall have the option to receive a one (1) time exclusion of two (2) months of earned income for new employment or increased wages acquired after approval and reported timely.

Section 7. Consideration of State Supplementary Payments. For an individual receiving a state supplementary payment, that portion of the individual's income which is in excess of the basic maintenance standard (established in Section 2(1) of this administrative regulation) shall be applied to the special need which results in the supplementary payment.

Section 8. Pass-through Cases. (1)(a) An increase in a Social Security payment shall be disregarded in determining eligibility for Medicaid benefits if:

1. The increase is a cost of living increase; and

2. The individual would otherwise be eligible for an SSI benefit or state supplementary payment.

(b) An individual who would otherwise be eligible for an SSI benefit or state supplementary payment shall remain eligible for

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the full scope of program benefits with no spend-down requirements, as established in Section 9 of this administrative regulation.

(2) For an individual who applied by July 1, 1988, the additional amount specified in 42 USC 1383c(b) shall be disregarded, meaning that amount of Social Security benefits to which a specified widow or widower was entitled as a result of the recomputation of benefits effective January 1, 1984, and except for which (and subsequent cost of living increases) an individual would be eligible for federal SSI benefits.

Section 9. Spend-down Provisions. (1) A technically eligible individual or family shall not be required to utilize protected income for medical expenses before qualifying for Medicaid.

(2) An individual with income in excess of the basic maintenance scale established in Section 2(1) of this administrative regulation may qualify for Medicaid in any part of a three (3) month period in which medical expenses incurred have utilized all excess income anticipated to be in hand during that period.

(3) Medical expenses incurred in a period prior to the quarter for which spend-down eligibility is being determined may be used to offset excess income if the medical expenses remain unpaid at the beginning of the quarter and have not previously been used as spend-down expenses.

(4) The incurred costs may be reimbursed under another public program of the state or political subdivision of the state and still be considered incurred costs of the applicant or recipient.

DENNIS BOYD, Commissioner

JOHN H. WALKER, Attorney

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: November 8, 1999

FILED WITH LRC: November 12, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 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 December 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: Karen Doyle or Neville Wise

(1) Type and number of entities affected: 35,000 KCHIP children and 26,184 TANF related cases.

(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: Public comments are scheduled to be received during a public hearing scheduled on December 21, 1999. No public comments were received during the NOI process.

(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: Public comments are scheduled to be received during a public hearing scheduled on December 21, 1999. No public comments were received during the NOI process.

(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 requirements.

2. Second and subsequent years: No additional requirements.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The cost associated with the KCHIP Medicaid expansion were specified in the Regulatory Impact Analysis for 907 KAR 4:020.

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: No additional requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 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 during the NOI process.

(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 is being amended to include income requirements for KCHIP Medicaid expansion and to allow income disregards and exclusions consistent with TANF policy.

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No addi-

tional standard or responsibilities are imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Neither

3. State the aspect or service of local government to which this administrative regulation relates. None

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Long Term Care (Amendment)

907 KAR 1:645. Resource standards for Medicaid.

RELATES TO: KRS 205.520, 42 CFR Part 435, 42 USC 1396a, b, d, 1397jj(b)

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 205.520, EO 96-862, 1998 Ky. Acts ch. 426, sec. 4(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the resource standards for determining eligibility for Medicaid.

Section 1. Definitions. (1) "ABD" means an individual who is aged, blind, or has a disability.

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

(3) "Individual development account" means an account containing funds for the purpose of continuing education, purchasing a first home, business capitalization or other purposes allowed by federal regulations or clarifications which meets the criteria established in 921 KAR 2:016.

(4) "K-TAP" is defined in 907 KAR 1:011.

(5) [(3)] "Poverty level guidelines" means the poverty income guidelines updated annually in the Federal Register by the United States Department of Health and Human Services, under authority of 42 USC 9902(2).

(6) [(4)] "Real property" means land or an interest in land with an improvement, permanent fixture, mineral, or appurtenance considered to be a permanent part of the land, and a building with an improvement or permanent fixture attached.

(7) [(5)] "Resources" mean cash money and other personal property or real property that an individual owns; has the right, authority or power to convert to cash; and is not legally restricted for support and maintenance.

(8) [(6)] "SSI" means the Social Security Administration Program called supplemental security income.

Section 2. Resource Limitations. (1) For the medically needy as defined in 907 KAR 1:011, the upper limit for resources for a family size of one (1) and for family size of two (2) shall be \$2,000 and \$4,000 respectively, with fifty (50) dollars for each additional member.

(2) For a pregnant woman or a child meeting the following criteria, resources shall be disregarded:

(a) A child under age one (1);

(b) A child who is at least age one (1) but under age six (6);

(c) A child who is at least age six (6) but under age nineteen (19) born after September 30, 1983 who is eligible under federal poverty level guidelines;

(d) A child born on or before September 30, 1983 who has not attained the age of nineteen (19) years as specified in 42 USC 1396a(l) and who is eligible under the Children's Health Insurance Program; or

(e) A targeted low income child, as defined in 42 USC 1397jj(b), from birth to age nineteen (19).

(3) For a qualified Medicare beneficiary, specified low-income Medicare beneficiary, qualified working disabled individual, or a Medicare qualified individual, resources shall be limited to twice the allowable amount for the SSI Program.

(4) For a pass-through recipient as defined in 907 KAR 1:640, a person with hemophilia who received a settlement in a class action lawsuit as described in 907 KAR 1:011, or a child who lost supplemental security income eligibility due to the change in definition of childhood disability as established in 907 KAR 1:011, resources shall be limited to the allowable amounts for the SSI Program.

(5) For an AFDC-related Medicaid case, the resource limit shall be \$1,000.

Section 3. Resource Exclusions. (1) A homestead, occupied or abandoned, household, personal effects, and farm equipment without limitation on value shall be excluded from consideration.

(2) Equity of \$6,000 in income-producing, nonhomestead real property, business or nonbusiness, essential for self-support, shall be excluded from consideration. The value of property (including the tools of a tradesperson or the machinery or livestock of a farmer) that is essential for self-support for the individual or spouse, or family group in the instance of a family with a child, and which is used in a trade or business or by the individual or member of the family group as an employee shall be excluded from consideration as a resource.

(3) For a family related Medicaid case, the value of otherwise countable real property (whether income producing or nonincome producing) shall be excluded from consideration for six (6) months if the individual can demonstrate that he is trying to dispose of the property properly. An additional three (3) months shall be allowed for the disposal at the request of the recipient if efforts to dispose of the property within the six (6) month period have been unsuccessful.

(4) For an ABD Medicaid case, real property or nonreal property shall be excluded from consideration if it can be demonstrated that there was a reasonable effort to sell the property at fair market value within a year of application for Medicaid.

(5) For an AFDC-related Medicaid case, \$1,000 in resources shall be excluded from consideration.

(6) For an AFDC-related Medicaid case, the equity value of one (1) automobile shall be excluded from consideration.

(7)(a) For the adult or family-related Medicaid case, except as provided in paragraph (b) of this subsection, equity of \$4,500 in automobiles [an automobile] shall be excluded from consideration.

(b) For the adult or family-related Medicaid case, if an automobile is used as a home, for employment, to obtain medical treatment of a specific or regular medical problem, or if specially equipped for use by an individual with a disability, the total value of the automobile shall be excluded.

(8) [(6)] A burial reserve of up to \$1,500 per individual, which may be in the form of a burial agreement, prepaid burial or similar arrangement, trust fund, life insurance policy, or other identifiable fund shall be excluded from consideration.

(a) The cash surrender value of life insurance shall be considered if determining the total value of burial reserves.

(b) If a burial fund is commingled with another fund, the applicant shall have thirty (30) days to separately identify the burial reserve amount.

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(c) Interest or other appreciation of value of an excluded burial reserve or space shall be excluded as a resource if the amount is left to accumulate as a part of the burial reserve or space.

(9) [(7)] A burial trust, burial space, plot, vault, crypt, mausoleum, urn, casket, or other repository which is customarily and traditionally used for the remains of a deceased person shall be excluded from consideration as a countable resource without regard to value.

(10) [(8)](a) For an ABD Medicaid case, proceeds from the sale of a home shall be excluded from consideration for three (3) months from the date of receipt if used to purchase another home.

(b) For a family related Medicaid case, proceeds from the sale of a home shall be excluded from consideration for six (6) months from the date of receipt if used to purchase another home.

(11) [(9)] Resources of an individual who is blind or has a disability shall be excluded if the resources are included in an approved plan for achieving self-support (PASS).

(12) An individual development account up to a total of \$5,000, excluding interest accruing, shall be excluded from consideration as a resource for an AFDC-related Medicaid case.

(13) [(10)] A payment or benefit from a federal statute, other than an SSI benefit, shall be excluded from consideration as a resource if precluded from consideration in an SSI determination of eligibility by the specific terms of the statute.

(14) [(11)] Disaster relief assistance shall be excluded from consideration.

(15) [(12)] Cash or in-kind replacement for repair or replacement of an excluded resource shall be excluded from consideration if used to repair or replace the excluded resource within nine (9) months of the date of receipt.

(16) [(13)] A life interest that a Medicaid applicant or recipient has in real estate or other property shall be excluded from consideration as an available resource.

(17) [(14)] Real property other than the homestead shall be excluded from consideration if:

(a) The property is jointly owned and its sale would cause loss of housing for the other owner or owners;

(b) Its sale is barred by a legal impediment; or

(c) The owner's reasonable efforts to sell by informing the public of his intention to sell the property at fair market value have been unsuccessful.

(18) [(15)] A cash payment intended specifically to enable an applicant or recipient to pay for a medical or social service shall not be considered as a resource in the month of receipt or for one (1) calendar month following the month of receipt. If the cash is still being held at the beginning of the second month following its receipt, it shall be considered a resource.

(19) [(16)] An amount received which is a result of an underpayment or a retroactive payment of benefits from retirement, survivors, and disability insurance benefits or SSI shall be excluded as a resource for the first six (6) months following the month in which the amount is received.

(20) [(17)] A federal Republic of Germany reparation payment shall not be considered as an available resource.

(21) [(18)] An amount received from a victim's compensation fund established by a state to aid victims of crime shall be:

(a) Completely excluded as a resource if the individual can show that the amount was paid as compensation for expenses incurred or losses suffered as a result of a crime; or

(b) Excluded as a resource for nine (9) months if the individual can show that the amount was paid for pain and suffering.

(22) [(19)] An Austrian social insurance payment based on a wage credit granted under Sections 500-506 of the Austrian General Social Insurance Act shall be excluded from resource consideration.

(23) [(20)] An individual retirement account, Keogh plan or other tax deferred asset shall be excluded as a resource until withdrawn.

(24) [(21)] A payment made from a fund established by a settlement in the case of Susan Walker v. Bayer Corporation or payment made for release of claims in this action shall be ex-

cluded from consideration as an available resource.

(25) [(22)] A payment received from a class action law suit entitled "Factor VIII or IX Concentrate Blood Products Litigation" shall be excluded from consideration as an available resource.

Section 4. Resource Exemptions. A resource which is exempted from consideration for purposes of computing eligibility for the SSI Program shall be exempted from consideration by the department.

DENNIS BOYD, Commissioner

JOHN H. WALKER, Attorney

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: October 28, 1999

FILED WITH LRC: October 28, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 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 December 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: Karen Doyle or Neville Wise

(1) Type and number of entities affected: Approximately 4,242 AFDC-related Medicaid cases.

(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 regarding cost of living and employment were received.

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

2. Second and subsequent years: No additional reporting requirements.

(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:

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

(4) Assessment of anticipated effect on state and local revenues: Full value automobile exclusion for AFDC-related cases should allow more adults to seek employment in communities.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenues required.

(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: Administrative regulation to be implemented statewide. No public comments received on economic impact.

(b) Kentucky: Refer to 6(a).

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The additional \$1,000 resource exclusion for AFDC-related Medicaid cases would permit families to save for emergencies and not be dependent on communities for charity.

(b) State whether a detrimental effect on environment and public health would result if not implemented: None anticipated.

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Neither

3. State the aspect or service of local government to which this administrative regulation relates. None

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

CABINET FOR FAMILIES AND CHILDREN Department for Community Based Services (Amendment)

922 KAR 2:090. 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, 620.020

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

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 child day care [of children]. [The function of] This administrative regulation establishes [is to establish] licensure requirements for child day care facilities.

Section 1. Application. (1) An applicant for either a provisional or 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) Provisional and regular licenses shall be issued pursuant to KRS 199.896(3), (4), and (6).

(2) Effect of previous denial or revocation.

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

1. Within the previous 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. Within the previous five (5) years, voluntarily forfeited his certification, license, registration, or permit after the cabinet has initiated denial or revocation action; or

3. Within the previous 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 paragraph (a) 1 or 2 of this subsection [the person] may apply for a provisional license after establishing that 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. 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. [Inspections shall be unannounced.]

(3) ~~[(2)]~~ A provisional and regular 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 of the children in care [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 Marshall'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 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 2:110 and 922 KAR 2:120. ~~[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 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).

(7) A regular or provisional license shall not be sold or transferred. [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:

1. For a facility that meets requirements, the date the facility is acquired by the new owner;

2. For a facility that does not meet requirements, the date that compliance is achieved; or

3. For a facility that increases capacity, not before 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 as listed in 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) A fee shall not 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 charged pursuant to KRS 199.896(4), [-

(a) Eighty (80) dollars for initial licensure for a Type I facility;

(b) Forty (40) dollars for initial licensure of a Type II facility; or

(c) Forty (40) dollars for renewal licensure.]

(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 an inspection [a survey] has been made by the Cabinet for Health Services [Families and Children] or the State Fire Marshall's Office.

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Section 4. Inspections. Inspections of licensed day care facilities shall be made pursuant to KRS 199.896(6), (7), and (10) and 199.989(2)(d) and (e). [Representatives of the cabinet shall be trained to apply the administrative regulations and have the authority to make unannounced inspections of facility's:

- (1) Premises;
- (2) Records required by 922 KAR 2:090, 922 KAR 2:110, and 922 KAR 2:120; and
- (3) Programs.]

Section 5. Annual Renewal. A licensee seeking renewal shall submit, one (1) month prior to license expiration, an 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 applicant or 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 a violation involving abuse, neglect, or exploitation of a child or adult, or a sexual offense; or

(b) Has been convicted:

1. Of a sexual offense designated in KRS 510.040 to 510.140, 510.150, 529.020 to 529.050, 530.020, 530.064, or 531.310 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

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 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).

(4) Public information shall be provided pursuant to KRS 199.896(6) and (7) and KRS 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 revoca-

tion 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 the right to appeal, pursuant to KRS Chapter 13B.

(2) If, within fifteen (15) days after receiving notice of the Cabinet for Health Service's 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 taken pursuant to Section 6(3) of this administrative regulation shall conform to the requirements of KRS 199.896(5). [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. Incorporation by Reference. (1) The following material is 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". [The form necessary for the implementation of the application for license shall be herein incorporated by reference.]

(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, Monday through Friday, [office hours] 8 a.m. - 4:30 p.m.

DIETRA PARIS, Commissioner
CHARLES P. LAWRENCE, Attorney
VIOLA MILLER, Secretary

APPROVED BY AGENCY: November 15, 1999

VOLUME 26, NUMBER 6 – DECEMBER 1, 1999

FILED WITH LRC: November 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 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 December 14, 1999 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judy Trigg, Regulations Coordinator, 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: 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 of \$30 for the cost of the initial license, and a savings of \$15 for the cost of the renewal of a 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 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. There is a loss of an estimated at \$30,000 from the annual renewal fees.

2. Continuing cost or savings: 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. A loss of an estimated \$30,000 in annual renewal fees.

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 a loss of state revenues of approximately 30% of the total costs to the administrative body, due to the annual renewal fees.

(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: KRS 199.896(2) and (15) and 17.165.

(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.

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, NOVEMBER 15, 1999

**TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(New Administrative Regulation)**

301 KAR 3:015. Shooting ranges on wildlife management areas.

RELATES TO: KRS 150.620

STATUTORY AUTHORITY: KRS Chapter 13A, 150.025, 150.620

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to allow for the safe operation of department-owned shooting ranges on department property. Such ranges would enhance the programs of the department and further carry out its mandate under KRS 150.015. The function of this administrative regulation is to set the parameters for the safe use of such facilities and conforms with the regulatory guidelines of the department and the state.

Section 1. Definitions. (1) "Range officer" means a designated individual responsible for supervising a shooting range and ensuring compliance with this administrative regulation.

(2) "Shooting range" means a facility on a wildlife management area owned or controlled by the department which is:

(a) Established and maintained for target shooting with a rifle, pistol, or shotgun with single projectile ammunition;

(b) Designated by a department sign as a public shooting range; and

(c) Not a trap, skeet or similar facility where shotguns with multiple projectiles are fired at moving targets.

Section 2. (1) If a shooting range exists on department property, a person shall not target practice, sight in a firearm or otherwise discharge a firearm except on the shooting range.

(2) Subsection (1) of this section shall not apply to:

(a) A hunter shooting at a legal game species; or

(b) A department employee or certified volunteer hunter education instructor in the performance of his official duty; or

(c) Individuals participating in a department sponsored hunter education class.

Section 2. (1) Unless otherwise posted by a department sign or pursuant to an event permit issued according to 301 KAR 3:010, on a shooting range a person shall not:

(a) Enter except at a designated entrance;

(b) Discharge a firearm;

1. Before 9 a.m.; or

2. After sunset except on a lighted range.

(c) Be under the influence of alcohol or other intoxicant;

(d) Use a target other than a paper target;

(e) Place a target anywhere except in the target frames provided;

(f) Leave a target on a frame after he has finished shooting.

(g) Use or have in his possession:

1. A tracer bullet;

2. Armor piercing ammunition; or

3. A fully automatic firearm.

(h) Leave spent cartridge cases or litter on the range;

(i) Point a firearm in an unsafe direction or otherwise carelessly handle a firearm;

(j) Engage in horseplay or other potentially unsafe practices.

(2) A person under the age of sixteen (16) shall not discharge a firearm unless he is under the direct supervision of a person at least eighteen (18) years old.

(3) A spectator or other person not actively engaged in shooting shall not go beyond the firing line.

(4) A person actively engaged in shooting shall not go beyond the firing line:

(a) Without first stating "cease fire" in a voice loud enough for the other shooters to hear or clearly indicating for the other

shooters to understand and,

(b) Waiting until the other shooters have:

1. Ceased firing; and

2. Holstered their firearms or placed them in a rack or on a table provided.

(5) Upon hearing a "cease fire" command or seeing a person move beyond the firing line, a person shall:

(a) Immediately cease firing;

(b) Unload his firearm;

(c) Leave his firearm's action open;

(d) Place his firearm:

1. In a holster;

2. In a rack or on a table at the shooting station; or

3. On the ground;

(e) Not handle a firearm while a person is beyond the firing line.

(6) More than one (1) person shall not be at a shooting station at the same time.

(7) If a department employee is serving as a range officer, a person shall immediately obey his command.

Section 3. A shooting range may be reserved for group use, provided that:

(1) The group has an event permit as specified in 301 KAR 3:010; and

(2) The reservation is made thirty (30) days in advance; and

(3) The group designates a range officer who shall oversee the event and ensure that all participants are in compliance with this regulation.

DOUGLAS SCOTT PORTER, Assistant Attorney General

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

TOM BAKER, Chairman

APPROVED BY AGENCY: November 15, 1999

FILED WITH LRC: November 15, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1999 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, # 1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 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 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: Jennifer F. Fields, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4338 FAX (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: Jennifer F. Fields

(1) Type and number of entities affected: Individuals wishing to use a shooting range on a department owned wildlife management area that provides such activity.

(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, but no increase in the cost of living is anticipated. In addition, this regulation should have not impact on the employment in the geographical area.

(b) Cost of doing business in the geographical area in which

the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. Costs to the department are 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: Not applicable.

2. Second and subsequent years: Not applicable.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Some costs in the development of shooting ranges and monitoring

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Minimal. Tracking and monitoring of use of shooting ranges for department use.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fish and Game Fund revenues.

(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: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.

(8) Assessment of expected benefits: Increased opportunities for outdoor recreation for the public at large.

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

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

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

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applicable to this regulation and was not used.

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(New Administrative Regulation)

301 KAR 5:050. Purchasing licenses electronically.

RELATES TO: KRS 150.195, 150.225, 150.235

STATUTORY AUTHORITY: KRS 150.025(1), 150.195

NECESSITY, FUNCTION AND CONFORMITY: KRS 150.195 requires the department to provide for the issuance of all licenses and permits. This administrative regulation enhances the current license system by enabling licensees to purchase licenses over the internet or the telephone.

Section 1. A person may remotely purchase a license or permit from the department by:

(1) Connecting through the internet or by telephone as prescribed by the agency;

(2) Providing the following information at the time the license is purchased:

(a) Full name;

(b) Complete mailing address;

(c) Date of birth;

(d) Driver's license or Social Security number;

(e) Telephone number or e-mail address;

(f) A valid Visa or Mastercard number and expiration date; and

(3) Paying a processing fee equal to six (6) percent of the total cost of the licenses purchased.

Section 2. (1) The department shall not complete a transaction not approved by the credit card company.

(2) Upon completion of the license transaction, the department shall issue an authorization number to the license purchaser.

(3) The authorization number shall serve in lieu of the paper license. A person, while performing an act authorized by the license, shall carry upon his person and present upon request to a law enforcement officer:

(a) The authorization number; and

(b) Identification that has a picture and date of birth.

(4) A person using an authorization number in lieu of a deer or turkey permit shall:

(a) Before hunting, write his name, address and applicable authorization number on cards corresponding to the number big game, including deer or turkey, he is allowed to take during the appropriate season;

(b) Immediately after taking an animal, write the date the animal was taken on the card; and

(c) Attach the card to the carcass while it is being transported by vehicle or is out of the hunter's possession.

(d) Complete any check-in procedure required for that species.

DOUGLAS SCOTT PORTER, Assistant Attorney General

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

TOM BAKER, Chairman

APPROVED BY AGENCY: November 15, 1999

FILED WITH LRC: November 15, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1999 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 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 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: Jennifer F. Fields, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4338 FAX (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: Jennifer F. Fields

(1) Type and number of entities affected: License holders who wish to obtain their licenses over the phone or by the internet.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation should have no significant impact on costs of living or employment. It may reduce the overall costs to the department to issue licenses, however, based on evidence from other states who have set up similar systems, it is unlikely to represent a significant number of license sales.

(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 impacts are anticipated. See above.

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

1. First year following implementation: Reduced paperwork and compliance costs to the consumer.

2. Second and subsequent years: Same as first.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: After initial internal training, reduced or similar administrative costs.

2. Continuing costs or savings: Agency should see either neutral or reduced administrative costs in implementing and running this program.

3. Additional factors increasing or decreasing costs: There are some additional processing costs to the agency, such as storage space on a web server and the operation of an IRV system. These costs should be directly compensated through the processing fee.

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

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Start up costs will come from trust and agency funds. Program eventually self funded.

(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; reasons why alternatives were rejected: The alternative was to not implement any program. This program allows greater access to licenses and serves as a convenience to license holders. Greater and easier access to license purchases may also enhance compliance with fish and game laws.

(8) Assessment of expected benefits: Expected benefits include improved customer service. It should come at no loss to the agency and even reduce agency administrative costs. It should be a neutral cost to the consumer. Under the existing system, a consumer must travel to a site to purchase a license. This costs the consumer time and money. The consumer under this system would have the option of purchasing licenses over the phone or through the internet at a costs that is likely to be less than the costs under the current system.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Only secondary impacts that may come from greater compliance with fish and game laws.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No detrimental effect is anticipated.

(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: Not applicable.

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied.

CABINET FOR ECONOMIC DEVELOPMENT
Department of Financial Incentive
Kentucky Enterprise Zone Program
(New Administrative Regulation)

306 KAR 1:045. Monitoring.

RELATES TO: KRS 154.45-001-154.45-120

STATUTORY AUTHORITY: KRS Chapter 13A, 154.45-070

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes the procedure for monitoring an enterprise zone qualified business.

Section 1. Compliance Monitoring. (1) The authority may monitor, audit and request additional information, as it deems necessary, to assure the qualified business is in compliance with the requirements pursuant to KRS 154.45-010. In addition, the authority shall require each qualified business to complete and submit an annual monitoring form. The monitoring form shall be completed and returned to the authority within thirty (30) days of receipt by the qualified business.

(2) A qualified business that fails to submit the annual monitoring form or who fails to maintain compliance with the requirements pursuant to KRS 154.45-010 shall be given written notice by the authority by certified mail that the qualified business may lose its enterprise zone qualified business certificate within sixty (60) days from receipt of said notice unless the qualified business can provide sufficient written documentation to the authority showing the qualified business is in compliance with the requirements of KRS 154.45-010.

(3) The authority shall consider decertification of a qualified business that fails to respond within the sixty (60) day period or provides insufficient written documentation of compliance at a regular meeting following expiration of the sixty (60) day time period provided for in this section.

(4) The authority shall notify the Revenue Cabinet in writing within thirty (30) days of the decertification of a qualified business resulting from any of the following circumstances:

(a) Failure to meet the targeted workforce criteria within ninety (90) days after being in operation;

(b) Failure to increase its capital investment by a minimum of twenty (20) percent within eighteen (18) months from the date of application;

(c) Failure to maintain at least twenty-five (25) percent of its total workforce from the targeted workforce; or

(d) Failure to submit the annual monitoring form.

Section 2. Repayment of Tax. (1) If a qualified business is decertified under Section 1(4)(a) or (b) of this administrative regulation, the decertified business shall repay the sales and use tax on purchases of machinery and equipment, repay the usage tax on any vehicle purchased, and not be eligible to claim any income tax credit pursuant to KRS 141.040 for which enterprise zone exemptions were claimed.

(2) If a qualified business is decertified under Section 1(4)(c) of this administrative regulation, the decertified business shall repay the sales and use tax on purchases of machinery and equipment, repay the usage tax on any vehicle purchased, and not be eligible to claim any income tax credit pursuant to KRS 141.040 from the date the business receives notice by certified mail that the business has been decertified by the authority.

(3) If a qualified business is decertified under Section 1(4)(d) of this administrative regulation, the decertified business shall repay the sales and use tax on purchases of machinery and equipment, repay the usage tax on any vehicle purchased, and not be eligible to claim any income tax credit pursuant to KRS 141.040 from the date the last monitoring form was submitted to the authority or from the date the business was certified by the authority if no previous monitoring form has been submitted by the business.

(4) Repayment of the sales and use tax exemption claimed by the business shall be made directly to the Revenue Cabinet within twenty (20) days following the close of the month during

which the qualified business received its decertification notice from the authority.

(5) The Revenue Cabinet shall be responsible for the collection of any sales and use tax, vehicle usage tax or income tax credit the business fails to repay after decertification.

Section 3. Incorporation by Reference. (1) The "Kentucky Enterprise Zone Program Qualified Existing Business/Capital Investment Annual Monitoring Form (10/99)" is incorporated by reference. A copy of the form may be inspected, copied or obtained from the Cabinet for Economic Development Kentucky Enterprise Zone Program, Capital Plaza Tower, 24th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-7670 from 8 a.m. to 4:30 p.m., Monday through Friday.

(2) The "Kentucky Enterprise Zone Program Qualified New Business Annual Monitoring Form (10/99)" is incorporated by reference. A copy of the form may be inspected, copied or obtained from the Cabinet for Economic Development Kentucky Enterprise Zone Program, Capital Plaza Tower, 24th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-7670 from 8 a.m. to 4:30 p.m., Monday through Friday.

GORDON C. DUKE, Commissioner

ROBIN FIELDS KINNEY, General Counsel

APPROVED BY AGENCY: November 12, 1999

FILED WITH LRC: November 15, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1999 at 10 a.m. in Room G1, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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 cancelled. Persons who need accommodation for a disability should request the needed accommodation in the notification of intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made by a person in his notification of intent to attend the hearing. 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 agency contact person: Phyllis Bruning, Director, Kentucky Enterprise Zone Program, Cabinet for Economic Development, 24th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-7670, FAX: (502) 564-7697.

REGULATORY IMPACT ANALYSIS

Contact Person: Phyllis Bruning

(1) Type and number of entities affected: All Kentucky businesses located in an enterprise zone that apply for certification as an enterprise zone qualified business.

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects on 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: No monetary savings can be quantified.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The enterprise zone qualified business is required to submit an annual monitoring form to the authority to insure statutory compliance and to report on all tax exemptions or credits claimed by the qualified business for the previous calendar year.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General fund of the Cabinet for Economic Development.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applicable to this administrative regulation. Tiering was not applied because the provisions apply to all businesses who submit an application for certification as an enterprise zone qualified business.

JUSTICE CABINET Department of Juvenile Justice (New Administrative Regulation)

505 KAR 2:010. Definitions.

RELATES TO: KRS 15A.210

STATUTORY AUTHORITY: KRS 15A.210 to 15A.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.210 mandates that the Department of Juvenile Justice issue administrative regulations governing juvenile detention centers and juvenile holding facilities.

Section 1. Definitions. The following definitions shall apply in this chapter:

(1) "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition are supported by evidence.

(2) "Admission" means the point of entry into a program; during admission processing the juvenile receives an orientation to the goals of the program and program rules and regulations. Assignment to living quarters and to appropriate staff members shall also be completed at this time.

(3) "Agency" means the unit of a governing authority which has direct responsibility for the operation of a juvenile detention center program, including the implementation of policy as set by the governing authority.

(4) "Agency administrator" means the jailer or the administrative officer appointed by the governing authority that is responsible for all operations of the agency and all related programs placed under control of the agency.

(5) "Casework" means the function of the caseworker, social worker, or other professional in providing services to the juvenile.

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(6) "Chronic care" means health care provided to patients over a long period of time.

(7) "Cocorrectional facility" means an institution designed to house both male and female juveniles.

(8) "Code of ethics" means a set of rules describing acceptable standards of conduct for all employees.

(9) "Community resources" means those social and welfare agencies, service clubs, citizen interest groups, self-help groups, and citizen volunteers who have the potential to assist juveniles.

(10) "Contraband" means any item possessed by juveniles or found within the facility that is illegal by law or that is expressly prohibited by those legally charged with the responsibility for administration and operation of the facility or program.

(11) "Corporal punishment" means any act of inflicting punishment directly on the body, causing pain or injury.

(12) "Detention" means the care of a youth who requires custody in a physically restricting facility or program.

(13) "Dispositional hearing" means a hearing held subsequent to the adjudicatory hearing in order to determine what order of disposition should be made concerning any adjudicated child.

(14) "Dormitory" means any room sleeping more than five (5) juveniles.

(15) "Educational program" means a program of formal academic education or a vocational training activity designed to improve the juvenile's employment capability.

(16) "Emergency care" means care for an acute illness or unexpected health care need that cannot be deferred until the next scheduled sick call.

(17) "Environmental health" means all the conditions, circumstances, and surrounding influences that affect the health of persons or groups required to be in the area.

(18) "Facility" means a place, an institution, a building or part thereof, set of buildings, or an area, whether or not enclosing a building or set of buildings, which is used for the lawful custody and treatment of youths and may be owned and/or operated by public or private agencies.

(19) "First aid" means care for a condition that requires immediate assistance from a person trained in first aid care and the use of the facility's first aid kits.

(20) "Governing authority" means for public/governmental agencies, the administrative department or division to which the agency reports; it is the policy-setting body. For private agencies, this may be an administrative headquarters or central unit, or the board of directors or trustees.

(21) "Grievance" means a circumstance or action made by a youth which is considered to be unjust and grounds for complaint or resentment.

(22) "Handicapped youth" means a person with a mental or physical impediment or disadvantage that restricts that person's ability to utilize programs or services.

(23) "Holidays" means all days legally designated as non-workdays by statute or by the governing authority.

(24) "Information system" means the collection, organization, and delivery of information for administrative use.

(25) "Independent outside source" means a person qualified by license, education, or experience to examine a condition or service. To be considered independent, the examiner shall not be in the employment of the facility being inspected. An auditor or inspector examining a program or condition within a community center may not be an employee of that center and still be considered independent.

(26) "Juvenile" means a person under the age of eighteen (18) and shall mean the same as "child" defined in KRS 600.020(5).

(27) "Juvenile court" means the juvenile session of the district court.

(28) "Life safety code" means a manual published and updated by the National Fire Protection Association specifying minimum standards for fire safety necessary in the public interest including corrections facilities.

(29) "Official personnel file" means a current and accurate record of the employee's job history, including all important information relating to that history.

(30) "Parent" means the biological or adoptive mother or father of a youth.

(31) "Person exercising similar custodial control or supervision" means a person who has assumed the role and responsibility of a parent or guardian for the youth, but who does not necessarily have legal custody of the youth.

(32) "Physical examination" means a thorough evaluation of a patient's current physical condition and medical histories conducted by, or under the supervision of, a licensed professional.

(33) "Placing authority" means that court or agency with the authority to order a juvenile into a specific placement. This may be the juvenile court, the Department of Juvenile Justice, or other duly constituted and authorized placement agency.

(34) "Policy" means a definite, stated course or method of action that guides and determines present and future decisions and activities. A policy is a statement of principles that guides the agency in the attainment of objectives. To comply with a standard that requires a policy for a certain area, there shall be not only a written policy, but also evidence that a line of action or principle has been adopted and is being followed by the agency.

(35) "Procedure" means a procedure that provides the detailed and sequential actions that must be executed to ensure that a policy is fully implemented.

(36) "Professional associations" means a collective body of persons engaged in a particular profession or vocation, e.g., the American Correctional Association, the American Medical Association, the National Association of Clinical Psychologists, and the National Juvenile Detention Association.

(37) "Program" means the plan or system through which a juvenile detention facility agency works to meet its goals.

(38) "Public offense" means an act if committed by an adult would be a crime.

(39) "Rated capacity" means the actual number of beds available for regular use. This does not include hospital beds, segregation beds, or other spaces used only on a temporary basis.

(40) "Renovation" means a significant structural or design change in the physical plant of a facility.

(41) "Secure institution" means any facility that is designed and operated to ensure that all entrances and exits are under the exclusive control of the facility's staff, thereby not allowing a juvenile to leave the facility unsupervised or without permission.

(42) "Security devices" means locks, gates, doors, bars, fences, screens, ceiling, floors, walls, and barriers used to confine and control detained persons. Also included are electronic monitoring equipment, security alarm systems, security light units, auxiliary power supplies, and other equipment used to maintain facility security.

(43) "Training" means formal classroom instruction; on-the-job training under the direction of an instructor or coworker; training meetings, staff meetings or conferences that include a formal agenda and instruction by a teacher, manager, or official; physical training; or other instructional programs that include a trainer/trainee relationship. Training programs include requirements for completion, attendance recording, and a system for recognition of completion.

(44) "Volunteers" means persons who donate their time and effort to enhance the activities of the program. They are selected on the basis of their skills or personal qualities to provide services in recreation, counseling, education, religious activities, etc.

RALPH E. KELLY, Ed.D., Commissioner

MICHAEL KEITH HORN, Office of General Counsel

APPROVED BY AGENCY: November 9, 1999

FILED WITH LRC: November 10, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 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 December 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 juvenile detention and holding facilities and all juveniles that are or will be detained in these facilities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public 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 competition) 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 regulation will be required to maintain adequate records to document compliance, as they are currently required to do, and DJJ 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 regulation will be required to maintain adequate records to document compliance and DJJ 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 because it has been responsible for the enforcement of existing regulations that govern juvenile detention and holding facilities.

2. Continuing costs or savings: There will not be any continuing direct or indirect costs or savings to the Department of Juvenile 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 treatment in juvenile detention and holding facilities.

(b) Reporting and paperwork requirements: The only change in reporting and paperwork requirements is that DJJ 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 for enforcement and

whatever funds are currently utilized by local governing bodies to operate juvenile detention and holding facilities.

(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 KRS 15A.210 requires that the Department of Juvenile Justice promulgate regulations to govern the operation of juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: There are no additional information or comments of which we are aware.

(11) TIERING: Is tiering applied? No. This administrative regulation applies to all juvenile detention and holding facilities in the Commonwealth.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.

2. State compliance standards. Since there is no federal mandate, there are no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

JUSTICE CABINET
Department of Juvenile Justice
(New Administrative Regulation)

505 KAR 2:020. Administration, organization and management.

RELATES TO: KRS 15A.210

STATUTORY AUTHORITY: KRS 15A.210 to 15A.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.210 mandates that the Department of Juvenile Justice issue administrative regulations governing juvenile detention centers and juvenile holding facilities.

Section 1. (1) The agency operating a detention facility is a legal entity or a part of a legal entity.

(2) The governing authority of the detention facility shall hold meetings at least annually with the facility administrator in order to facilitate communication, establish policy, explore problems, ensure conformity to legal and fiscal requirements, and implement programs.

(3) There shall be a written statement that describes the philosophy, goals or purposes of the facility, which shall be reviewed at least annually and updated if necessary.

(4) If services for adult and juvenile offenders are provided for by the same agency, statements of philosophy, policy, program and procedures shall distinguish between criminal codes and the statutes which establish and give direction to programs for juveniles; there shall be a separate service delivery system for juveniles.

(5) Abused, dependent or neglected youths shall not be held in the facility.

(6) Written agency policy shall prohibit the confinement of any offender in the facility unless the facility complies with standards or rules promulgated by the Administrative Office of the Courts or a lawful court order.

(7) Service personnel other than facility staff shall perform work in the facility only under direct and continuous supervision of facility staff in those areas permitting contact with juveniles.

(8) There shall be a written description of the facility that specifies its mission within the context of the system of which it is a part. This description shall be reviewed at least annually and updated if necessary.

(9) The facility shall adopt and enforce written policies and procedures which:

(a) Provide for regular meetings and case conferences between the staff of the Department of Juvenile Justice and social service agencies, the court, the local law enforcement agency and the detention facility staff to develop and maintain sound interagency policies and procedures;

(b) Provide for a communications system within the facility that requires, at a minimum, that the facility administrator meet at least monthly with all department heads and that all department heads meet monthly with their key staff members;

(c) Specify that the facility administrator participates in the formulation of goals for the facility, establishes policies and priorities related to them and translates the goals into measurable objectives for accomplishment by the staff;

(d) Provide that legal assistance shall be available to the facility administrator;

(e) Provide for a daily population report on every juvenile in detention, including the day admitted, accumulated days of stay, and county of origin and offense for which juvenile is charged;

(f) Provide a mechanism for communication with executive, legislative and judicial bodies at all governmental levels;

(g) Provide for participation of employees in the formulation of policies, procedures and programs;

(h) Permits the participation of other community agencies in policy development, coordinated planning and interagency consultation;

(i) Provide for collaboration with colleges and universities where available in programs of mutual concern;

(j) Provide for a public information program that is reviewed at least annually and updated if necessary;

(k) Grant representatives of the media access to the facility, consistent with the preservation of juveniles' privacy and the maintenance of order and security in the facility;

(l) Provide that the facility administrator report at least quarterly to the governing authority major problems and plans for resolving them;

(m) Govern facility compliance with statutes and administrative regulations relating to campaigning, lobbying and political

practices; and

(n) Provide that the facility administrator cooperates with the interstate compact administrator in the return of juveniles charged with juvenile offenses to the requesting state, pursuant to the provisions of the interstate compact on juveniles.

(10) The facility administrator or parent agency shall participate in federal, state and regional planning efforts with both juvenile justice and nonjuvenile justice agencies.

(11) The facility shall have a policy manual that specifically describes its purpose, program and services offered, which is reviewed at least annually and updated if necessary.

(12) There shall be an operations manual that delineates written policies and procedures for operating and maintaining the facility; the manual shall be explained and made available to all employees at the time of their employment.

(13) There shall be an organizational chart for the facility staff that accurately reflects the structure of authority, responsibility and accountability within the facility.

(14) The facility and its programs shall be managed by a single administrative officer to whom all employees or units of management shall be responsible.

(15) When employees of other public or private agencies provide a service to the facility, written policy and procedure shall be developed and reviewed, at least annually, to describe their roles and functions as they relate to the authority and responsibility of the facility administrator.

(16) The facility administrator shall review space requirements, at least annually, and record requests for corrective action in writing.

(17) The facility administration shall furnish written information to the parent agency at least annually, which is used to report on the system's objectives, availability of services and programs, juvenile population, budget, major developments, problems, plans and such additional information as the parent agency may require.

(18) The facility shall make available to all employees a written code of ethics that prohibits employees from using their official position to secure privileges for themselves or others and from engaging in activities that constitute a conflict of interest.

(19) The facility shall meet all applicable licensing requirements of the jurisdiction in which it is located.

(20) There may exist a community advisory committee, representative of the community, which serves as a link between the program and the community.

(21) All monies collected at the facility shall be secured daily in an officially designated and secure place.

(22) The facility shall have written policy and procedure approved by the governing authority that includes, at a minimum:

(a) Internal controls;

(b) Petty cash procedures;

(c) Bonding for all appropriate staff;

(d) Signature control on checks;

(e) Handling of juvenile funds;

(f) Employee expense reimbursement; and

(g) Issuance or use of vouchers.

(23) If there is a commissary or canteen, strict controls shall be maintained over its operation and regular accounting procedures shall be followed. All profits from the commissary or canteen shall be used for the benefit of the residents.

(24) Juveniles' personal funds held by the facility shall be controlled by accepted accounting procedures.

Section 2. (1) The facility administrator shall have access to and use an organized system of information retrieval and review that is part of an overall research and decision-making capacity.

(2) The facility staff shall establish or participate in the establishment of policies and procedures developed for management information purposes. These policies are reviewed at least annually.

(3) There shall be specific, written definitions of criteria for evaluating overall facility performance.

(4) Facility staff shall maintain a daily report of juvenile population movement.

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(5) The administrator shall participate in the review of policies and practices regarding the collection and retention of information pertaining to the juveniles assigned to the facility, at least annually.

(6) The facility or parent agency staff collects and aggregates data relative to its program.

(7) Programs shall be periodically analyzed and evaluated to determine their contribution to the mission of the facility.

(8) The administrator shall review and approve all facility research projects in conformity with parent agency policy before implementation.

(9) Written policy and procedure shall govern voluntary juvenile participation in nonmedical, nonpharmaceutical and noncosmetic research programs.

Section 3. All requirements in this section shall apply only to facilities operated by private corporations or to facilities operated by two (2) or more counties.

(1) The facility administrator shall participate in budget preparation and reviews conducted by the parent agency.

(2) The fiscal system shall account for all income and expenditures on an ongoing basis.

(3) The facility shall adopt written policies and procedures which:

(a) Provide for a financial audit, independent of the facility, which is conducted annually;

(b) Specify that the methods used for collecting, safeguarding and disbursing monies comply with accepted accounting procedures;

(c) Require reports of all monies collected and disbursed to the governing authority and other designated authorities;

(d) Provide for facility insurance coverage that includes at a minimum: worker's compensation, civil liability, liability for official vehicles, and public employee blanket bond;

(e) Govern inventory control of property, stores and other assets;

(f) Govern the requisition and purchase of supplies and equipment;

(g) Require the systematic review of equipment needs and the replacement of equipment if necessary; and

(h) Regulate position control, personnel records and the payroll function.

(4) The facility shall operate under a constitution or articles of incorporation that meets all of the legal requirements of the governmental jurisdiction in which the facility is located.

(5) The facility or its parent agency shall have a local, regional, or state governing authority.

(6) The facility or its parent agency shall have identified, documented and publicized its tax status with the Internal Revenue Service and the Kentucky Revenue Cabinet.

(7) The facility shall have bylaws, approved by the governing authority, which are filed with the appropriate local, state and/or federal body.

(8) At a minimum, the facility bylaws include for the governing authority:

(a) Membership (types, qualifications, community representation, rights, duties);

(b) Size of the governing body;

(c) Method of selection;

(d) Terms of office;

(e) Duties and responsibilities of officers;

(f) Times authority will meet;

(g) Committees;

(h) Quorums;

(i) Parliamentary procedures;

(j) Recording of minutes;

(k) Method of amending the bylaws;

(l) Conflict of interest provisions; and

(m) Specification of the relationship of the chief executive to the governing body.

(9) When the facility administration is the governing authority, meetings shall be held as prescribed in the bylaws, a permanent record is kept of all such meetings.

RALPH E. KELLY, Ed.D., Commissioner

MICHAEL KEITH HORN, Office of General Counsel

APPROVED BY AGENCY: November 9, 1999

FILED WITH LRC: November 10, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 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 December 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 juvenile detention and holding facilities and all juveniles that are or will be detained in these facilities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public 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 competition) 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 regulation will be required to maintain adequate records to document compliance, as they are currently required to do, and DJJ 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 regulation will be required to maintain adequate records to document compliance and DJJ 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 because it has been responsible for the enforcement of existing regulations that govern juvenile detention and holding facilities.

2. Continuing costs or savings: There will not be any continuing direct or indirect costs or savings to the Department of Juvenile 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 treatment in juvenile detention and holding facilities.

(b) Reporting and paperwork requirements: The only change in reporting and paperwork requirements is that DJJ 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 for enforcement and whatever funds are currently utilized by local governing bodies to operate juvenile detention and holding facilities.

(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 KRS 15A.210 requires that the Department of Juvenile Justice promulgate regulations to govern the operation of juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: There are no additional information or comments of which we are aware.

(11) TIERING: Is tiering applied? No. This administrative regulation applies to all juvenile detention and holding facilities in the Commonwealth.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.

2. State compliance standards. Since there is no federal mandate, there are no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

JUSTICE CABINET Department of Juvenile Justice (New Administrative Regulation)

505 KAR 2:030. Personnel.

RELATES TO: KRS 15A.210

STATUTORY AUTHORITY: KRS 15A.210 to 15A.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.210 mandates that the Department of Juvenile Justice issue administrative regulations governing juvenile detention centers and juvenile holding facilities.

Section 1. (1) The facility shall adopt and enforce written policies and procedures which:

(a) Provide for lateral entry as well as promotion from within the organization;

(b) Require that a criminal record check be conducted on new employees;

(c) Require that a copy of all personnel policies and administrative regulations is made available to all employees. Each employee shall sign a statement acknowledging receipt of the personnel policies and administrative regulations and his or her responsibility for being aware of their contents;

(d) Require a current, accurate and confidential personnel record and separate health record for each employee; confidentiality shall be ensured by restricting its availability to only the employee who is the subject of the record and to other agency employees who have a need for the record in the performance of their duties;

(e) Provide for provisional appointments to ensure the availability of personnel for short-term, full-time or part-time work in emergency situations;

(f) Provide for a written annual performance evaluation of all employees, which is based on defined criteria and is reviewed and discussed with the employee;

(g) Provide that employees are reimbursed for all approved expenses incurred in the performance of their duties; and

(h) Ensure that consultants, contract personnel and volunteers who work with juveniles comply with the facility's policies on confidentiality of information.

(2) If a county is operating the facility, the personnel policies shall be consistent with the county policies; otherwise, there shall be a personnel policy manual which covers, at a minimum:

(a) Organization;

(b) Recruitment policies and procedures;

(c) Employment practices and procedures;

(d) In-service training;

(e) Promotion;

(f) Job qualifications, descriptions and responsibilities;

(g) Grievance procedures;

(h) Employee evaluation;

(i) Physical fitness policy;

(j) Personnel records;

(k) Benefits, holidays, leave and work hours;

(l) Basis for determining salaries;

(m) Disciplinary procedures;

(n) Retirement;

(o) Resignation and termination;

(p) Staff-juvenile relationships; and

(q) Equal employment opportunity provisions.

(3) The administrator shall review the facility's personnel policy annually and submit recommended changes to the parent agency or governing board.

(4) Written policy shall specify that equal employment opportunities exist for all positions. When deficiencies exist in regard to the utilization of minority groups and women, the facility can document the implementation of an affirmative action program

approved by the appropriate government agency, showing annual reviews and necessary changes required to keep it current.

(5) The facility administration shall have a written policy and procedure that does not categorically exclude employment of offenders.

(6) A written procedure shall exist whereby the employee can challenge information in his or her personnel file and have it corrected or removed if it proves to be inaccurate.

(7) The facility administrator shall be appointed by the chief executive officer with approval of the governing body.

(8) If the facility is operated by a county, the education and experience of the administrator shall be determined by statute governing county employment. Otherwise, the education and experience qualifications of the facility administrator shall be specified in writing by the appointing authority and include, at a minimum, a bachelor's degree in an appropriate discipline, two (2) years of experience working with juveniles, and three (3) years in staff supervision and administration; and/or, the completion of a career development program which includes work-related experience, training, or college credits providing a level of achievement equivalent to the bachelor's degree.

(9) If the facility is operated by a county, the term of the facility administrator shall be determined by statutes governing county employment. Otherwise, the term of the facility administrator is continuous and may be terminated only by the appointing authority for good cause and subsequent to a formal hearing on specific charges, if requested.

(10) The facility and/or parent agency administration shall systematically determine personnel requirements in all categories of employees working directly with juveniles in order to ensure access to staff and availability of services; personnel requirements are reviewed at least annually.

(11) There shall be a written grievance procedure for employees, which is available to them and which has been approved by the parent agency.

(12) Resident data shall be kept and transmitted to the Department of Juvenile Justice in a prescribed manner as identified by the Department of Juvenile Justice. This data shall include but not be limited to:

(a) Admissions and releases;

(b) Special incident reporting forms.

(13) After juvenile detention facilities are provided the Automated Fingerprint Identification System (AFIS) by the Kentucky State Police, each juvenile detained in any detention facility shall be fingerprinted by facility staff. The prints shall be kept at the facility for identification purposes and distributed to other approved agencies as required or needed.

RALPH E. KELLY, Ed.D., Commissioner

MICHAEL KEITH HORN, Office of General Counsel

APPROVED BY AGENCY: November 9, 1999

FILED WITH LRC: November 10, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 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 December 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 juvenile detention and holding facilities and all juveniles that are or will be detained in these facilities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public 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 competition) 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 regulation will be required to maintain adequate records to document compliance, as they are currently required to do, and DJJ 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 regulation will be required to maintain adequate records to document compliance and DJJ 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 because it has been responsible for the enforcement of existing regulations that govern juvenile detention and holding facilities.

2. Continuing costs or savings: There will not be any continuing direct or indirect costs or savings to the Department of Juvenile 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 treatment in juvenile detention and holding facilities.

(b) Reporting and paperwork requirements: The only change in reporting and paperwork requirements is that DJJ 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 for enforcement and whatever funds are currently utilized by local governing bodies to operate juvenile detention and holding facilities.

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(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 KRS 15A.210 requires that the Department of Ju-

venile Justice promulgate regulations to govern the operation of juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

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(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 applies to all juvenile detention and holding facilities in the Commonwealth.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.

2. State compliance standards. Since there is no federal mandate, there are no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

JUSTICE CABINET

Department of Juvenile Justice
(New Administrative Regulation)

505 KAR 2:040. Juvenile records.

RELATES TO: KRS 15A.210

STATUTORY AUTHORITY: KRS 15A.210 to 15A.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.210 mandates that the Department of Juvenile Justice issue administrative regulations governing juvenile detention centers and juvenile holding facilities.

Section 1. (1) Written policy and procedure shall govern record management and include, but not be limited to, the establishment, utilization, content, privacy, security and preservation of records, and a schedule for the retirement or destruction of inactive case records. These policies and procedures shall be reviewed annually.

(2) An admittance form shall be completed for every juvenile admitted to the facility and contain at least the following information:

tion:

(a) Court case number, if any, and detention facility admission number;

(b) Date and time of admission and release;

(c) Name and nicknames;

(d) Last known address;

(e) Legal status (authority for detention);

(f) Name of attorney, if any;

(g) Name, title and signature of delivering officer;

(h) Specific charges;

(i) Sex;

(j) Date of birth;

(k) Place of birth;

(l) Race or nationality;

(m) Education and school attended;

(n) Employment, if any;

(o) Religion;

(p) Health status;

(q) Medical consent forms;

(r) Name, relationship, address and phone number of the parent, guardian, or person juvenile resides with at time of admission;

(s) Driver's license number, Social Security number and Medicaid number, if applicable;

(t) Date of petition;

(u) Court and disposition, if any;

(v) Space for remarks (to include notation of any open wounds or sores requiring treatment, evidence of disease or body vermin, or tattoos);

(w) Person recording data;

(x) Inventory of property;

(y) Emergency contact; and

(z) Suicide assessment.

(3) Written policy and procedure shall provide for guidelines for the collection and retention of information pertaining to the detained juveniles.

(4) A record shall be maintained on each juvenile and include, at a minimum, the following information:

(a) Initial intake information form;

(b) Documented legal authority to accept juvenile;

(c) Information on referral source;

(d) Record of court appearances;

(e) Signed release of information forms;

(f) A record of cash and valuables held;

(g) Notations of temporary absences from the facility, if any;

(h) Visitors' names and dates of visits, if any;

(i) A record of telephone calls, if any;

(j) Probation officer or caseworker assigned;

(k) Progress reports on program involvement;

(l) Program rules and disciplinary policy signed by juvenile;

(m) Grievance and disciplinary record, if any;

(n) Referrals to other agencies, if any; and

(o) Final discharge or transfer report.

(5) Written policy and procedure shall require the responsible staff members to make all entries into the records assigned to them, and date and sign each entry.

(6) The facility shall maintain a single master file identifying all juveniles detained in the facility.

(7) The contents of records shall be identified and separated according to an established format.

(8) The facility shall maintain a system that identifies all juveniles in custody and their actual physical locations.

(9) Written policy and procedure shall provide that records are safeguarded from unauthorized and improper disclosure. Manual records shall be marked confidential and kept in locked files that shall be also marked confidential. Written policy and procedure shall provide that when any part of the information system is computerized, security ensures confidentiality.

(10) The administration shall use a consent form that complies with applicable federal and state regulations. The juvenile signs a "release of information consent form" before the release of information as required by regulation and a copy of the form is maintained in the juvenile's record.

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(11) Consistent with open record statutes, written policy and procedure shall provide that individuals and agencies may have access to records for the purposes of research, evaluation and statistical analysis in accordance with a formal written agreement that authorizes access, specifies uses of data, and ensures confidentiality and security.

RALPH E. KELLY, Ed.D., Commissioner

MICHAEL KEITH HORN, Office of General Counsel

APPROVED BY AGENCY: November 9, 1999

FILED WITH LRC: November 10, 1999 at 11 a.m.

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REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Keith Horn

(1) Type and number of entities affected: The type and number of entities affected are all juvenile detention and holding facilities and all juveniles that are or will be detained in these facilities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public 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.

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1. First year: There will not be any first year direct or indirect costs to the Department of Juvenile Justice because it has been

responsible for the enforcement of existing regulations that govern juvenile detention and holding facilities.

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FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.

2. State compliance standards. Since there is no federal

mandate, there are no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

JUSTICE CABINET
Department of Juvenile Justice
(New Administrative Regulation)

505 KAR 2:050. Safety and emergency procedures.

RELATES TO: KRS 15A.210

STATUTORY AUTHORITY: KRS 15A.210 to 15A.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.210

mandates that the Department of Juvenile Justice issue administrative regulations governing juvenile detention centers and juvenile holding facilities.

Section 1. (1) The facility shall file documentation with the Department of Juvenile Justice that the facility complies with the applicable fire safety codes. A fire alarm and automatic detection system shall be required as approved by the Department of Juvenile Justice, or there shall be a plan for addressing these or other deficiencies within a reasonable time period. The Department of Juvenile Justice may approve any variances, exceptions, or equivalencies that do not constitute a serious life safety threat to the occupants of the facility.

(2) The facility shall comply with applicable federal, state and local sanitation, safety and health codes.

(3) Written policy and procedure shall provide for a local fire and safety officer to perform a comprehensive and thorough monthly inspection of the facility for compliance with safety and fire prevention standards and for an annual review of this policy and procedure. There shall be a weekly fire and safety inspection of the facility by a qualified departmental staff member.

(4) Written policy and procedure shall specify the facility's fire prevention regulations and practices to ensure the safety of staff, juveniles, and visitors. These include, but are not limited to:

(a) Provision for an adequate fire protection service;

(b) A system of fire inspection and testing of equipment at least quarterly;

(c) An annual inspection by the Department of Juvenile Justice or its designee; and

(d) Availability of fire hoses or extinguishers at appropriate locations throughout the facility.

(5) Specification for the selection and approval of facility furnishings shall indicate the fire safety performance requirements of the materials selected. Such materials shall be subjected to careful fire safety evaluation before purchase or use. Neoprene or cotton mattresses treated with boric acid are recommended. Polyurethane shall not be used in any living area.

(6) The facility shall be equipped with noncombustible receptacles for smoking materials and separate containers for other combustible refuse at readily accessible locations in the living quarters and other locations throughout the facility. Special containers shall be provided for flammable liquids and for rags used with flammable liquids.

(7)(a) All new and renovated facilities opened after July 1, 1987 shall have an alternate power source to maintain essential services for the entire facility.

(b) All existing facilities shall provide a sufficient alternate power source to operate emergency lighting, smoke detectors and alarms.

(8) The facility shall have a written plan for evacuation in the event of fire or major emergency. This plan shall be approved by the Department of Juvenile Justice. The plan shall be reviewed

annually, updated if necessary, and reissued to the local fire jurisdiction. The plan includes the following:

(a) Location of building/floor plans;

(b) Use of exit signs and directional arrows for traffic flow;

(c) Location of publicly posted plans;

(d) At least quarterly drills on all shifts in all institution locations; and

(e) Staff drills when it is impossible to evacuate extremely dangerous juveniles.

(9) Written policy and procedure shall specify the means for the prompt release of juveniles from locked areas in case of emergency, and provide for a secondary release system.

(10) All facility personnel shall be trained in the implementation of written emergency plans.

(11) Written policy and procedure shall govern the control and use of all flammable, toxic and caustic materials.

RALPH E. KELLY, Ed.D., Commissioner

MICHAEL KEITH HORN, Office of General Counsel

APPROVED BY AGENCY: November 9, 1999

FILED WITH LRC: November 10, 1999 at 11 a.m.

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REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Keith Horn

(1) Type and number of entities affected: The type and number of entities affected are all juvenile detention and holding facilities and all juveniles that are or will be detained in these facilities.

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(b) Reporting and paperwork requirements: The only change in reporting and paperwork requirements is that DJJ 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 for enforcement and whatever funds are currently utilized by local governing bodies to operate juvenile detention and holding facilities.

(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 KRS 15A.210 requires that the Department of Juvenile Justice promulgate regulations to govern the operation of juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: There are no

additional information or comments of which we are aware.

(11) TIERING: Is tiering applied? No. This administrative regulation applies to all juvenile detention and holding facilities in the Commonwealth.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.

2. State compliance standards. Since there is no federal mandate, there are no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

JUSTICE CABINET

Department of Juvenile Justice (New Administrative Regulation)

505 KAR 2:060. Security and control.

RELATES TO: KRS 15A.210

STATUTORY AUTHORITY: KRS 15A.210 to 15A.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.210 mandates that the Department of Juvenile Justice issue administrative regulations governing juvenile detention centers and juvenile holding facilities.

Section 1. (1) There shall be a manual containing the facility's policies and procedures for security and control, which shall include detailed instructions for implementing these procedures. The manual shall be made available to all personnel and shall be reviewed annually and updated as necessary.

(2) The facility shall maintain a control center.

(3) There shall be a minimum of two (2) youth care workers on duty at all times in the facility, one (1) of whom is female when females are housed in the facility and one (1) of whom is male when males are housed in the facility. The general staffing ratio shall be one (1) youth care worker to every ten (10) residents or fraction thereof during waking hours. The circumstances of particular facilities shall be taken into consideration as waiver requests are received by the Department of Juvenile Justice.

(a) If a waiver from this standard is desired, the responsible local authority shall submit a written request to the Department of Juvenile Justice. The written request shall include:

1. Identification and description of the specific problems involved in meeting the staffing ratio requirement.

2. A description of the needed ratio change, including identification of supporting factors.

3. A description of the classification to be used, additional staffing alternatives and programming.

4. Sufficient documentation demonstrating that the waiver, if granted, does not jeopardize the security or supervision of juveniles and programs, or the safe, healthful, and efficient operation of the facility.

(b) The Department of Juvenile Justice may grant a waiver of the minimum staffing ratio for an existing facility if it determines:

1. That strict compliance may cause unreasonable difficulties in securing housing for juvenile offenders; and

2. That a waiver does not seriously effect the security or supervision of juveniles and programs, or the safe, healthful and efficient operation of the facility.

(c) A waiver, if granted by the Department of Juvenile Justice, shall apply only to the petitioner for the period of time specified and may include conditions imposed by the department. A waiver shall not be granted for longer than twelve (12) months. A waiver

granted for a twelve (12) month period shall be reviewed at the end of the period for reapproval.

(4) The facility shall adopt written policy and procedure which governs the availability, control and use of chemical agents and related security devices. Chemical agents and related security devices shall be used only at the direction of the facility administrator or designee. O.C. spray shall be of an organic nature. The use of mace is prohibited. A written report shall be prepared following all use of force and shall be submitted to the facility administrator. These reports shall be kept in a file labeled as such and maintained for review by the Department of Juvenile Justice.

(5) Written policy and procedure shall require that all security perimeter entrances, exterior doors and all doors the facility administrator determines should be locked are kept locked except when used for admission or exit of employees, detained juveniles or visitors, and in emergencies.

(6) The facility shall have a system to physically count juveniles that includes strict accountability for juveniles assigned to work and educational release, furloughs and other approved, temporary absences.

(7) The facility shall adopt and enforce written policies and procedures which:

(a) Require that supervisory staff maintain a permanent log and prepare shift reports that record routine and emergency situations;

(b) Provide for notifying appropriate staff of increases and decreases in the population, on a shift-by-shift basis;

(c) Provide for weekly inspection and maintenance of security devices; corrective action is initiated when necessary;

(d) Require that line supervisory staff inspect every area of the facility daily and submit a written report to an administrative official for review whenever deficiencies are noted;

(e) Require that the facility administrator or designee and other department heads inspect the facility's living and activity areas at least weekly;

(f) Provide that staff regulate juvenile movement;

(g) Govern the control and use of keys;

(h) Govern the control and use of tools, medical and culinary equipment;

(i) Provide that all persons injured in an incident, as defined in subsection (10) of this section, receive an immediate medical examination and treatment;

(j) Provide for a communications system within the facility, and between the facility and the community, in the event of an emergency;

(k) Provide that the facility maintains a written record of routine and emergency distribution and use of restraint equipment;

(l) Provide that instruments of restraint are never applied as punishment and are applied only with the approval of the facility administrator or designee;

(m) Govern safety and security precautions pertaining to facility and staff vehicles;

(n) Govern the transportation of juveniles outside the facility and from one (1) jurisdiction to another; and

(o) Limit the use of physical force to instances of self-protection, protection of the juveniles or others, prevention of property damage, prevention of escapes and in accordance with appropriate statutory authority. In no event shall physical force be justifiable as punishment. A written report shall be prepared following all uses of force and shall be submitted to the facility administrator.

(8) The written plan for searches of the facility and juveniles to control contraband shall be reviewed by legal counsel to ascertain the legality of the plan.

(9) The policy regarding searches for the control of contraband shall be published, made available to staff and juveniles, reviewed at least annually and updated if necessary.

(10) All special incidents, including, but not limited to, the taking of hostages, use of restraint equipment or the use of physical force shall be reported in writing, dated and signed by the staff person reporting the incident. The report shall be placed in the juvenile's case record and reviewed by the facility administrator and/or the parent agency.

(11) Except in emergency situations, as determined by the facility administrator, firearms shall not be permitted in the facility.

(12) There shall be written operational shift assignments or post orders that state the duties and responsibilities for each assigned position in the facility. These shift assignments shall be reviewed at least annually and updated if necessary.

(13) There shall be written procedures for handling escapes, runaways and unauthorized absences. These procedures shall be reviewed at least annually and updated as necessary.

(14) The facility shall adopt written plans that: specify procedures to be followed in emergency situations, e.g., fire, disturbance, taking of hostages. These plans shall be made available to all applicable personnel and they shall be reviewed and updated at least annually.

(15) The facility shall adopt written plans which govern space arrangements and procedures to follow in the event of a group arrest that exceeds the maximum capacity of the juvenile detention facility. These plans shall be reviewed annually and updated if necessary.

(16) The facility shall adopt a written plan that provides for continuing operations in the event of a work stoppage or other job action. Copies of this plan shall be available to supervisory personnel, who are required to familiarize themselves with it.

(17) Power generators, where present, shall be tested at least every two (2) weeks and other emergency equipment and systems shall be tested at least monthly for effectiveness and repaired or replaced as necessary.

(18) Written policy and procedure shall provide for the following:

(a) Manual or instrument inspection of juvenile body cavities shall be conducted only when there is reason to do so and when authorized by the facility administrator or designee. All such inspections shall be conducted in privacy. Manual or instrument inspection of body cavities shall be done by a licensed physician, registered nurse, LPN or physician assistant.

(b) Visual inspections shall be conducted only when there is a reasonable belief that the juvenile is carrying contraband or other prohibited material; and

(c) Strip searches may be done, by a staff member of the same sex, with a documented account submitted to the facility administrator, without specific authorization only upon entry to the facility and at all other times based on articulable suspicion.

(19) Transportation, other than facility provided, shall be available for use in emergencies.

(20) Incidents involving riots, escapes, the death or serious injury of a juvenile or a staff member, the taking of hostages, facility fire or other natural disasters affecting the facility, suicide, and suicide attempts resulting in injury shall be reported in writing to the Department of Juvenile Justice within forty-eight (48) hours, exclusive of weekends or holidays.

RALPH E. KELLY, Ed.D., Commissioner

MICHAEL KEITH HORN, Office of General Counsel

APPROVED BY AGENCY: November 9, 1999

FILED WITH LRC: November 10, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 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 December 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 Com-

plex 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 juvenile detention and holding facilities and all juveniles that are or will be detained in these facilities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public 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 competition) 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 regulation will be required to maintain adequate records to document compliance, as they are currently required to do, and DJJ staff will be required to monitor compliance and report back as related to meeting the terms of the regulation. Additionally, some facilities may experience an increase in cost of operation because of the staffing ratio required by this regulation. Many facilities already meet this staffing ratio requirement. Those who do not will be required to hire additional staff to meet the requirement. The cost will depend on what the facility pays its staff. This requirement can be waived provided that the facility requesting the waiver provides proof to support its request.

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 regulation will be required to maintain adequate records to document compliance and DJJ 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 because it has been responsible for the enforcement of existing regulations that govern juvenile detention and holding facilities.

2. Continuing costs or savings: There will not be any continuing direct or indirect costs or savings to the Department of Juvenile 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 treatment in juvenile detention and holding facilities.

(b) Reporting and paperwork requirements: The only change in reporting and paperwork requirements is that DJJ 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 for enforcement and whatever funds are currently utilized by local governing bodies to operate juvenile detention and holding facilities.

(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 KRS 15A.210 requires that the Department of Juvenile Justice promulgate regulations to govern the operation of juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities. The staffing ratio requirement will provide safety and security to staff and juveniles in the facility and will allow the facility to operate a better program.

(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 detained in juvenile detention and holding facilities.

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: There are no additional information or comments of which we are aware.

(11) TIERING: Is tiering applied? No. This administrative regulation applies to all juvenile detention and holding facilities in the Commonwealth.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.

2. State compliance standards. Since there is no federal mandate, there are no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will effect the unit of local government responsible for the operation of a secure juvenile detention facility or a juvenile holding

facility.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to the operation of secure juvenile detention and juvenile holding facilities.

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

Revenues (+/-): There will be no effect on the revenues of a local government.

Expenditures (+/-): See below.

Other Explanation: It is not possible to estimate specific dollar amounts, but it is possible that this regulation could increase expenditures for a local government. If an increase did result, it is anticipated that it would not be significant. This regulation requires that a juvenile detention or holding facility have a general staffing ratio of 1 youth care worker to every 10 residents, during waking hours. It also requires that a minimum of 2 youth care workers be on duty at all times. Many facilities already meet this requirement. For those that do not, expenditures would increase because of the necessity of hiring additional staff. The increase in cost would depend on salary and benefits the local government offers to workers in their juvenile detention or holding facility. The facility can request that this requirement be waived if it can demonstrate that the waiver does not jeopardize the security or supervision of juveniles and programs, or the safe, healthful and efficient operation of the facility. A staff to resident ratio is necessary to provide minimal safety and security to juveniles detained in the facility and staff working in the facility. With the minimal coverage required by this regulation, staff can provide a number of different program activities as well as provide adequate supervision. It also addresses staff safety issues as it is generally considered an unrealistic expectation for 1 person to care for more than 10 juveniles in this type of setting.

JUSTICE CABINET
Department of Juvenile Justice
(New Administrative Regulation)

505 KAR 2:070. Food service.

RELATES TO: KRS 15A.210

STATUTORY AUTHORITY: KRS 15A.210 to 15A.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.210 mandates that the Department of Juvenile Justice issue administrative regulations governing juvenile detention centers and juvenile holding facilities.

Section 1. (1) There shall be documentation that the facility's system of dietary allowance is reviewed at least annually by a dietician or physician to ensure compliance with nationally recommended food allowances.

(2) Menu evaluations shall be conducted at least quarterly by facility food service supervisory staff to verify adherence to the nationally recommended basic daily servings.

(3) The facility shall adopt and enforce written policies and procedures which:

(a) Require that food service staff develop advanced, planned menus and substantially follow the schedule, and that in the planning and preparation of all meals, food flavor, texture, temperature, appearance and palatability are taken into consideration;

(b) Provide for special diets as prescribed by appropriate medical or dental personnel;

(c) Provide for special diets for juveniles whose religious beliefs require the adherence to religious dietary laws;

(d) Preclude the use of food as a disciplinary measure;

(e) Require that at least three (3) meals, of which two (2) are hot meals, are provided at regular meal times during each twenty-four (24) hour period, with no more than fourteen (14) hours between the evening meal and breakfast. Provided basic nutritional

goals are met, variations may be allowed based on weekend and holiday food service demands;

(f) Require that accurate records are maintained of all meals served;

(g) Specify that the food services comply with the applicable sanitation and health codes as promulgated by federal, state and local authorities;

(h) Provide for:

1. Weekly inspection of all food service areas, including dining and food preparation areas and equipment;

2. Sanitary, temperature-controlled storage facilities for all foods; and

3. Daily checks of refrigerator and water temperatures by administrative, medical or dietary personnel.

(i) Ensure that the special food needs of juveniles shall be accounted for in the overall program of the facility; and

(j) Provide that staff members provide supervision of juveniles during meals.

(4) A staff member, experienced in food service management, shall supervise food service operations.

(5) The designated food service supervisor shall receive training in food service operations before assuming this responsibility.

(6) The food service plan shall provide for a single menu for staff and juveniles.

(7) There shall be provisions for adequate storage and loading areas and garbage disposal facilities.

RALPH E. KELLY, Ed.D., Commissioner

MICHAEL KEITH HORN, Office of General Counsel

APPROVED BY AGENCY: November 9, 1999

FILED WITH LRC: November 10, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 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 December 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 juvenile detention and holding facilities and all juveniles that are or will be detained in these facilities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public 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 competition) 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 regulation will be required to maintain adequate records to document compliance, as they are currently required to do, and DJJ 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 regulation will be required to maintain adequate records to document compliance and DJJ 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 because it has been responsible for the enforcement of existing regulations that govern juvenile detention and holding facilities.

2. Continuing costs or savings: There will not be any continuing direct or indirect costs or savings to the Department of Juvenile 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 treatment in juvenile detention and holding facilities.

(b) Reporting and paperwork requirements: The only change in reporting and paperwork requirements is that DJJ 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 for enforcement and whatever funds are currently utilized by local governing bodies to operate juvenile detention and holding facilities.

(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 KRS 15A.210 requires that the Department of Juvenile Justice promulgate regulations to govern the operation of juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the

proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: There are no additional information or comments of which we are aware.

(11) TIERING: Is tiering applied? No. This administrative regulation applies to all juvenile detention and holding facilities in the Commonwealth.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.

2. State compliance standards. Since there is no federal mandate, there are no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

JUSTICE CABINET Department of Juvenile Justice (New Administrative Regulation)

505 KAR 2:080. Sanitation and hygiene.

RELATES TO: KRS 15A.210

STATUTORY AUTHORITY: KRS 15A.210 to 15A.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.210 mandates that the Department of Juvenile Justice issue administrative regulations governing juvenile detention centers and juvenile holding facilities.

Section 1. (1) The facility shall comply with applicable federal, state and local sanitation and health codes.

(2) The facility shall adopt and enforce written policies and procedures which:

(a) Require weekly sanitation inspections of all facility areas;

(b) Provide for the control of vermin and pests;

(c) Provide for waste disposal;

(d) Require that articles necessary for maintaining proper personal hygiene shall be provided to all juveniles;

(e) Provide for the issue of special and, when appropriate, protective clothing and equipment to juveniles assigned to food service, hospital, farm, garage, physical plant maintenance shops, and other special work;

(f) Provide for the issue of suitable clean bedding and linens, to include two (2) sheets, pillow and pillowcase, one (1) mattress and sufficient blankets to provide comfort under existing temperature controls. There is provision for linen exchange at least weekly or more often when health reasons dictate;

(g) Specify accountability for clothing and bedding issued to juveniles; and

(h) Provide an approved shower schedule that allows daily showers and showers after strenuous exercise.

(3) There shall be a written housekeeping plan for the facility's physical plant.

(4) The institution's potable water source and supply, whether owned and operated by the public water department or the institution, shall be approved by an independent, outside source to be

in compliance with jurisdictional laws and regulations;

(5) Hair care services may be made available to juveniles.

(6) Youth shall have three (3) complete sets of clean clothing, towels and wash cloths per week.

(7) The stored supply of clothing, linens and bedding shall exceed that required for the facility's maximum juvenile population.

(8) The institution shall provide for the thorough cleaning and, when necessary, disinfecting of juveniles' personal clothing before storage or before allowing the juvenile to keep and wear personal clothing.

RALPH E. KELLY, Ed.D., Commissioner

MICHAEL KEITH HORN, Office of General Counsel

APPROVED BY AGENCY: November 9, 1999

FILED WITH LRC: November 10, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 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 December 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 juvenile detention and holding facilities and all juveniles that are or will be detained in these facilities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public 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 competition) 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 regulation will be required to maintain adequate records to document compliance, as they are currently required to do, and DJJ 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 regulation will be required to maintain adequate records to document compliance and DJJ 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 because it has been responsible for the enforcement of existing regulations that govern juvenile detention and holding facilities.

2. Continuing costs or savings: There will not be any continuing direct or indirect costs or savings to the Department of Juvenile 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 treatment in juvenile detention and holding facilities.

(b) Reporting and paperwork requirements: The only change in reporting and paperwork requirements is that DJJ 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 for enforcement and whatever funds are currently utilized by local governing bodies to operate juvenile detention and holding facilities.

(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 KRS 15A.210 requires that the Department of Juvenile Justice promulgate regulations to govern the operation of juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: There are no additional information or comments of which we are aware.

(11) TIERING: Is tiering applied? No. This administrative regulation applies to all juvenile detention and holding facilities in the Commonwealth.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.
2. State compliance standards. Since there is no federal mandate, there are no state compliance standards.
3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

JUSTICE CABINET
Department of Juvenile Justice
(New Administrative Regulation)

505 KAR 2:090. Juvenile rights.

RELATES TO: KRS 15A.210

STATUTORY AUTHORITY: KRS 15A.210 to 15A.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.210 mandates that the Department of Juvenile Justice issue administrative regulations governing juvenile detention centers and juvenile holding facilities.

Section 1. (1) The facility shall adopt and enforce written policies and procedures which:

- (a) Provide that juveniles shall not be subject to discrimination based on race, national origin, color, creed, sex, or physical handicap;
 - (b) Provide each juvenile freedom from discrimination based on race, religion, national origin, sex, handicap or political beliefs, and equal access to various programs and work assignments;
 - (c) Provide that supervision and control of juveniles shall be exercised by staff;
 - (d) Provide that juveniles may participate in religious services and religious counseling on a voluntary basis, subject only to the limitations necessary to maintain order and security;
 - (e) Grant juveniles access to recreational opportunities and equipment, including, when the climate permits, outdoor exercise in facilities listed in the physical plant regulations in this chapter;
 - (f) Ensure the right of juveniles to have access to the courts;
 - (g) Exist to assist juveniles in making confidential contact with attorneys and their authorized representatives. Such contact includes, but is not limited to, telephone communications, uncensored correspondence and visits;
 - (h) Provide that juveniles are not subjected to corporal or unusual punishment, humiliation, mental abuse or punitive interference with the daily functions of living, such as eating or sleeping;
 - (i) Grant juveniles the right to receive visits, subject only to the limitations necessary to maintain order and security;
 - (j) Grant juveniles the right to communicate or correspond with persons or organizations, subject only to the limitations necessary to maintain facility order and security;
 - (k) Provide juveniles reasonable access to the general public through the communications media, subject only to the limitations necessary to maintain order and security and protect the juveniles' rights. Media requests for interviews and any juvenile consent shall be in writing;
 - (l) Authorize juveniles to keep facial hair, if desired, except in individual cases where such restrictions are necessary for reasons of health and safety; and
 - (m) Govern the possession of items of jewelry that could be used to inflict bodily harm.
- (2) There shall be equal access to programs and services for male and female juveniles in cocorrectional facilities.
 - (3) There shall be a written grievance procedure, which shall

be explained and made available to juveniles, and allows for at least one (1) level of appeal.

(4) Juveniles shall not be required to participate in uncompensated work assignments unless the work is related to house-keeping, maintenance of the facility or grounds, or personal hygiene needs, or the work is part of an approved vocational or training program.

(5) There shall be no restrictions on the right of juveniles to determine the length and style of their hair, except in individual cases where such restrictions are necessary for reasons of health and safety.

(6) Juveniles may wear personal clothing consistent with facility guidelines or wear combinations of their own and facility clothing.

RALPH E. KELLY, Ed.D., Commissioner

MICHAEL KEITH HORN, Office of General Counsel

APPROVED BY AGENCY: November 9, 1999

FILED WITH LRC: November 10, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 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 December 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 juvenile detention and holding facilities and all juveniles that are or will be detained in these facilities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public 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 competition) 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 regulation will be required to maintain adequate records to document compliance, as they are currently required to do, and DJJ 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 regulation will be required to maintain adequate records to document compliance and DJJ 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 because it has been responsible for the enforcement of existing regulations that govern juvenile detention and holding facilities.

2. Continuing costs or savings: There will not be any continuing direct or indirect costs or savings to the Department of Juvenile 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 treatment in juvenile detention and holding facilities.

(b) Reporting and paperwork requirements: The only change in reporting and paperwork requirements is that DJJ 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 for enforcement and whatever funds are currently utilized by local governing bodies to operate juvenile detention and holding facilities.

(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 KRS 15A.210 requires that the Department of Juvenile Justice promulgate regulations to govern the operation of juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: There are no additional information or comments of which we are aware.

(11) TIERING: Is tiering applied? No. This administrative

regulation applies to all juvenile detention and holding facilities in the Commonwealth.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.

2. State compliance standards. Since there is no federal mandate, there are no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

JUSTICE CABINET
Department of Juvenile Justice
(New Administrative Regulation)

505 KAR 2:100. Training and staff development.

RELATES TO: KRS 15A.210

STATUTORY AUTHORITY: KRS 15A.210 to 15A.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.210 mandates that the Department of Juvenile Justice issue administrative regulations governing juvenile detention centers and juvenile holding facilities.

Section 1. For the purposes of this administrative regulation:

(1) "Administrative/management personnel" includes superintendents, deputy or assistant superintendents, business managers, personnel directors, youth care supervisors and shift supervisors;

(2) "Clerical/support employee" is defined as an employee who has minimum contact with juveniles including, but not limited to, secretaries, clerks, typists, computer and warehouse personnel, accountants and personnel staff;

(3) "Professional specialist" includes, but is not limited to case managers, counselors, social workers, psychologists, teachers, librarians, medical personnel, chaplains, and recreation specialists;

(4) "Support employee" is defined as an employee who has regular or daily contact with juveniles including, but not limited to food, service, industry work supervisors, farm work supervisors, maintenance work supervisors;

(5) "Training" is defined as an organized, planned and evaluated activity designed to achieve specific learning objectives;

(6) "Youth care/supervision staff" is defined as all staff assigned to full-time youth care or supervision duties.

Section 2. (1) The facility shall adopt and enforce written policies and procedures which:

(a) Provide that the facility's training program for all employees is planned, coordinated and implemented by a qualified employee at the supervisory level who has completed forty (40) hours of training as a trainer. The program is reviewed annually;

(b) Provide that all training programs are presented by persons who are qualified in the areas in which they are conducting training;

(c) Provide that all new full-time employees, who have youth care responsibilities, shall receive forty (40) hours of orientation/training before being independently assigned to a particular job. This orientation/training is to include, at a minimum, orientation to the purpose, goals, policies and procedures of the institution and parent agency; working conditions and regulations; responsibilities and rights of employees; and an overview of the juvenile justice and correctional field. Depending upon the employee and the requirements of the particular job, the orienta-

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tion/training may include some preparatory instruction related to the particular job. There shall be provisions for acknowledging and giving credit for prior training received;

(d) Provide that all clerical/support employees who have minimal contact with juveniles receive an additional sixteen (16) hours of training during the first year of employment and sixteen (16) hours of training each year thereafter;

(e) Provide that all support employees who have regular or daily juvenile contact receive an additional forty (40) hours of training during their first year of employment and forty (40) hours of training each subsequent year of employment;

(f) Provide that all professional specialist employees who have juvenile contact receive an additional forty (40) hours of training during their first year of employment, and forty (40) hours of training each subsequent year of employment;

(g) Provide that all new youth care/supervision staff receive an additional forty (40) hours of training during their first year of employment and forty (40) hours of training each subsequent year of employment. At a minimum, this training shall cover the following areas:

1. Security procedures;
2. Supervision of juveniles;
3. Use of force regulations and restraint techniques;
4. Report writing;
5. Juvenile rules and regulations;
6. Rights and responsibilities of juveniles;
7. Fire and emergency safety procedures;
8. Key control;
9. Interpersonal relations;
10. Social/cultural lifestyles of the juvenile population;
11. Youth growth and development;
12. Communication skills;
13. First aid;
14. Cardiopulmonary resuscitation; and
15. Suicide precautions and behavioral management techniques.

(h) Provide that all administrative and managerial staff, except elected jailers, receive forty (40) hours of training during their first year of employment, and forty (40) hours of training each subsequent year of employment. This training shall cover the following areas, at a minimum:

1. General management and related subjects;
2. Labor law;
3. Employee-management relations;
4. The interaction of elements of the criminal and juvenile justice systems; and
5. Relationships with other service agencies.

(2) Where there is a full-time training director, there shall be an advisory training committee composed of the training director and a representative of each department.

(3) All part-time staff and volunteers working less than forty (40) hours per week shall receive training appropriate to their assignments, volunteers working the same schedule as full-time, paid staff receive the same training as full-time staff.

(4) Personnel who work with juveniles confined separately from the total population shall receive specialized training.

(5) Training may occur on-site, at an academy or training center, at an institution of higher learning, through contract service, at professional meetings, or through closely supervised on-the-job training which includes staff meetings at the facility.

RALPH E. KELLY, Ed.D., Commissioner

MICHAEL KEITH HORN, Office of General Counsel

APPROVED BY AGENCY: November 9, 1999

FILED WITH LRC: November 10, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 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 December 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 juvenile detention and holding facilities and all juveniles that are or will be detained in these facilities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public 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 competition) 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 regulation will be required to maintain adequate records to document compliance, as they are currently required to do, and DJJ 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 regulation will be required to maintain adequate records to document compliance and DJJ 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 because it has been responsible for the enforcement of existing regulations that govern juvenile detention and holding facilities.

2. Continuing costs or savings: There will not be any continuing direct or indirect costs or savings to the Department of Juvenile 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 treatment in juvenile detention and holding facilities.

(b) Reporting and paperwork requirements: The only change in reporting and paperwork requirements is that DJJ 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 De-

partment of Juvenile Justice General Funds for enforcement and whatever funds are currently utilized by local governing bodies to operate juvenile detention and holding facilities.

(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 KRS 15A.210 requires that the Department of Juvenile Justice promulgate regulations to govern the operation of juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

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

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: There are no additional information or comments of which we are aware.

(11) TIERING: Is tiering applied? No. This administrative regulation applies to all juvenile detention and holding facilities in the Commonwealth.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.

2. State compliance standards. Since there is no federal mandate, there are no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

JUSTICE CABINET Department of Juvenile Justice (New Administrative Regulation)

505 KAR 2:110. Medical and health care services.

RELATES TO: KRS 15A.210

STATUTORY AUTHORITY: KRS 15A.210 to 15A.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.210 requires the Department of Juvenile Justice to promulgate administrative regulations governing the operation of juvenile detention centers and juvenile holding facilities, including medical and health services. This administrative regulation governs medical and health care services at juvenile detention centers and juvenile holding facilities.

Section 1. (1) Medical treatment and services, including emergency psychiatric and dental matters involving medical judgment shall be the sole province of the responsible physician and dentist, respectively. Security regulations that are applicable to the facility personnel shall also apply to health personnel.

(2) The facility shall issue and enforce written policies and procedures which:

(a) Specify the provision of emergency mental health services for juveniles in need of the services including services provided by qualified mental health professionals who meet educational and licensure or certification criteria specified by their respective professional disciplines, such as psychiatry, psychology, psychiatric nursing and social work;

(b) Govern the relationship between the responsible physician and physicians in private practice working in the facility;

(c) Require that first aid kits shall be available. The responsible physician shall approve the contents, number, location and procedure for periodic inspection of the kits;

(d) Provide for medical examination of any employee or juvenile suspected of a communicable disease;

(e) Require medical screening to be performed by health-trained staff or qualified health care personnel on all juveniles, including intrasystem transfers, upon arrival at the facility. All findings shall be recorded on a printed screening form approved by the Department of Juvenile Justice;

(f) Ensure that juveniles shall be informed orally and in writing of the procedures required for gaining access to medical services;

(g) Provide for the prompt notification of a juvenile's parent or guardian and the responsible agency if serious illness, surgery, injury or death;

(h) Provide that youth care staff and other personnel are trained to respond to health-related situations within a four (4) minute response time. A training program shall be established by the responsible health authority in cooperation with the facility administrator, which includes the following:

1. Recognition of signs and symptoms, and knowledge of action required in potential emergency situations;

2. Administration of first aid and cardiopulmonary resuscitation (CPR);

3. Methods of obtaining assistance;

4. Signs and symptoms of mental illness, retardation and chemical dependency; and

5. Procedures for patient transfers to appropriate medical facilities or health care providers;

(j) Provide that emergency dental care is made available to each juvenile under the direction and supervision of a dentist licensed in the state;

(k) Provide for screening, and referral for care for mentally ill or retarded juveniles. The responsible physician shall have designated, in advance, specific referral sources;

(l) Ensure a special program for juveniles requiring close medical supervision. A physician shall develop a written medical treatment plan for each of these patients that includes directions to medical and nonmedical personnel regarding their roles in the care and supervision of these patients;

(m) Provide that juveniles in need of detoxification for chemical impairment shall not be admitted to the facility, but shall be referred for appropriate medical care;

(n) Provide for the proper management of pharmaceuticals and address the following subjects:

1. A formulary specifically developed for the facility;

2. Prescription practices that require that:

a. Psychotropic medications are prescribed only if clinically indicated as one (1) facet of a program of therapy;

b. "Stop order" time periods shall be required for all medica-

tions; and

c. The prescribing provider reevaluates a prescription before its renewal;

3. Dispensing of medicine in conformance with appropriate state and federal law;

4. Administration of medication, which shall be carried out by persons properly trained and under the supervision of the health authority and facility administrator or designee;

5. Accountability for administering or distributing medications in a timely manner, according to physician orders;

6. Procedures for medication receipt, storage, dispensing and administration or distribution;

7. Maximum security storage and periodic inventory of all controlled substances, syringes and needles;

(o) Uphold the principle of confidentiality of the health record and support these requirements:

1. The active health record shall be maintained separately from the confinement record;

2. Access to the health record shall be controlled by the health authority; and

3. The health authority shall share with the facility administrator information regarding a juvenile's medical management, security and ability to participate in programs;

(p) Provide that if a juvenile is in need of hospitalization, a staff member or a designee approved by the court accompanies him and stays with the juvenile at least during admission;

(q) Provide that all informed consent standards in the jurisdiction shall be observed and documented for medical care. The informed consent of parent, guardian or legal custodian applies if required by law. If health care is rendered against the patient's will, it shall be in accord with state and federal laws and regulations.

(3) Written health care policy and procedures shall be approved by the responsible physician or medical administrator.

(4) The specific duties of qualified medical personnel shall be governed by written job descriptions approved by the responsible physician and the facility administrator.

(5) Treatment by health care personnel other than a physician, dentist, psychologist, optometrist, podiatrist or other independent providers shall be performed pursuant to written standing or direct orders given by personnel who, by law, may give the orders. Nurse practitioners and physician's assistants may practice within the limits of applicable laws and regulations.

(6) Arrangements shall be made with health care specialists in advance of need.

(7) A written agreement shall exist between the facility administration and a nearby hospital for all medical services which cannot be provided within the facility.

(8) Appropriate state and federal licensure, certification or registration requirements and restrictions apply to personnel who provide health care services to juveniles. Verification of current credentials and job descriptions shall be on file in the facility.

(9) If medical services are delivered in the facility or through contract services, adequate space, equipment, supplies and materials, as determined by the responsible physician, shall be provided for the performance of primary health care delivery.

(10) Program staff shall be informed of juveniles' special medical problems. When a juvenile is admitted, staff shall be informed of any physical problems that might require medical attention.

(11) The facility shall issue and enforce written policy and procedure for the collection and recording of health appraisal data which requires that:

(a) The process shall be completed in a uniform manner as determined by the health authority;

(b) Health history and vital signs shall be collected by health-trained or qualified health personnel; and

(c) Collection of all other health appraisal data shall be performed only by qualified health personnel.

(12) Juveniles' medical complaints shall be monitored and responded to by medically trained personnel.

(13) Sick call for nonemergency medical service, conducted by a physician or other qualified medical personnel, shall be

available to each juvenile at least once per week.

(14) If sick call is not conducted by a physician, a physician shall be available once each week to respond to juvenile complaints regarding service they did or did not receive from other health personnel.

(15) The facility administration shall provide access to twenty-four (24) hour emergency medical and dental care as outlined in a written plan which includes:

(a) Arrangements for the emergency evacuation of the juvenile from the facility;

(b) Arrangements for the use of an emergency medical vehicle;

(c) Arrangements for the use of one (1) or more designated hospital emergency rooms or other appropriate health facilities; and

(d) Arrangements for emergency on-call physician and dental services if the emergency health facility is not located in a nearby community.

(16) Medical maintenance shall be provided to juveniles of the facility if medically indicated by written medical order.

(17) The person administering medications shall:

(a) Have received training from a responsible physician and the official responsible for the facility;

(b) Be accountable for administering medications according to orders; and

(c) Record the administration of medications in a manner and on a form approved by a responsible physician.

(18) Stimulants, tranquilizers and psychotropic drugs requiring intramuscular administration shall be prescribed only by a physician, following a physical examination of the juvenile by the physician, and shall be administered by a physician or registered nurse. Drugs and medications, including stimulants, tranquilizers, and psychotropics, usually administered by parents may be administered to juveniles by facility staff pursuant to a physician's prescription.

(19) Under no circumstances shall a stimulant, tranquilizer or psychotropic drug be administered for purposes of program management and control, or for purposes of experimentation and research.

(20) The facility shall have a written policy involving the location of the health record file. The health record file shall contain the following:

(a) The completed receiving screening form;

(b) Health appraisal data forms;

(c) All findings, diagnoses, treatments, disposition;

(d) Prescribed medications and their administration;

(e) Laboratory, x-ray and diagnostic studies;

(f) Signature and title of documentor;

(g) Consent and refusal forms;

(h) Release of information forms;

(i) Place, date and time of health encounters;

(j) Health service reports, e.g., dental, mental health and consultations;

(k) Treatment plan, including nursing care plan;

(l) Progress reports; and

(m) Discharge summary of hospitalization and other termination summaries.

The method of recording entries in the records, the form and format of the records, and the procedures for their maintenance and safekeeping shall be approved by the Department of Juvenile Justice.

(21) Programs and training shall be provided for the development of sound habits and practices regarding personal hygiene.

(22) For juveniles being transferred to other facilities, summaries or copies of the medical history record shall be forwarded to the receiving facility prior to or at arrival.

(23) Written policy shall prohibit the use of juveniles for medical, pharmaceutical or cosmetic experiments. This policy shall not preclude individual treatment of a juvenile based on his need for a specific medical procedure that is not generally available.

(24) The facility may seek reimbursement for medical care from the parent, person exercising similar custodial control, the

state or any other party who may be financially responsible.

RALPH E. KELLY, Ed.D., Commissioner

MICHAEL KEITH HORN, Office of General Counsel

APPROVED BY AGENCY: November 9, 1999

FILED WITH LRC: November 10, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 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 December 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 juvenile detention and holding facilities and all juveniles that are or will be detained in these facilities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public 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 competition) 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 regulation will be required to maintain adequate records to document compliance, as they are currently required to do, and DJJ 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 regulation will be required to maintain adequate records to document compliance and DJJ 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 because it has been responsible for the enforcement of existing regulations that govern juvenile detention and holding facilities.

2. Continuing costs or savings: There will not be any continuing direct or indirect costs or savings to the Department of Juvenile 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 treatment in juvenile detention and holding facilities.

(b) Reporting and paperwork requirements: The only change in reporting and paperwork requirements is that DJJ 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 for enforcement and whatever funds are currently utilized by local governing bodies to operate juvenile detention and holding facilities.

(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 KRS 15A.210 requires that the Department of Juvenile Justice promulgate regulations to govern the operation of juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: There are no additional information or comments of which we are aware.

(11) TIERING: Is tiering applied? No. This administrative regulation applies to all juvenile detention and holding facilities in the Commonwealth.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.

2. State compliance standards. Since there is no federal mandate, there are no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements,

than those required by the federal mandate? There is no federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

JUSTICE CABINET
Department of Juvenile Justice
(New Administrative Regulation)

505 KAR 2:120. Rules and discipline.

RELATES TO: KRS 15A.210

STATUTORY AUTHORITY: KRS 15A.210 to 15A.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.210 mandates that the Department of Juvenile Justice issue administrative regulations governing juvenile detention centers and juvenile holding facilities.

Section 1. (1) All requirements in this administrative regulation shall be applied with consideration for the range of ages and maturity found in a juvenile detention facility in consideration of the juveniles' social-emotional ages, which may vary more than their physical ages.

(2) The facility shall adopt written rules of juvenile conduct which specify acts prohibited within the institution and penalties that may be imposed for various degrees of violation. The written rules shall be reviewed annually and updated if necessary. The use of tobacco products by juveniles shall be prohibited.

(3) A rulebook that contains all chargeable offenses, ranges of penalties and disciplinary procedures shall be posted in a conspicuous and accessible area; a copy shall be made available to each juvenile and staff member, and shall be translated into those languages spoken by significant numbers of juveniles. When a literacy or language problem prevents a juvenile from understanding the rulebook, a staff member or translator shall assist the juvenile in understanding the rules.

(4) All personnel who deal with juveniles shall receive in-service training so that they shall be thoroughly familiar with the rules of juvenile conduct, the sanctions available, and the rationale for the rules.

(5) There shall be written guidelines for informally resolving minor juvenile misbehavior.

(6) The facility shall adopt and enforce written policies and procedures which:

(a) Specify that room restriction for minor misbehavior serves only a "cooling off" purpose, shall be short in time duration, with the time period - fifteen (15) minutes to sixty (60) minutes - specified at the time of assignment;

(b) Require that prior to room restriction, juveniles have the reasons for the restriction explained to them and have an opportunity to explain the behavior leading to the restriction;

(c) Require that employees prepare an incident report where they have a reasonable belief that a juvenile has committed a major violation of facility rules or reportable minor violations. Incident reports prepared by staff members shall include, but are not limited to, the following information:

1. Specific rules violated;
2. A formal statement of the event;
3. An explanation of the event, which should include who was involved, what transpired, and the time and location of occurrence;
4. Unusual juvenile behavior;
5. Staff witnesses;
6. Disposition of any physical evidence;
7. Any immediate action taken, including the use of force;
8. Reporting staff member's signature; and
9. Date and time report is made.

(d) Specify that juveniles placed in confinement status shall be afforded living conditions and privileges approximating those to the general juvenile population. Exceptions shall be justified by substantial evidence;

(e) Provide that the incident report shall be removed from all files of juveniles found not guilty of an alleged rule violation;

(f) Each facility shall develop a procedure to ensure the youth's due process for appealing disciplinary procedures.

(g) Ensure that prior to privilege suspension the juvenile has the reasons for the restriction explained to him, and has an opportunity to explain the behavior leading to the suspension; and

(h) Provide that in instances in which a juvenile is alleged to have committed a crime, the case is referred to appropriate law enforcement officials for possible prosecution.

(7) During room restriction staff shall visibly check the juvenile at least every fifteen (15) minutes, depending on his emotional state.

(8) When a juvenile has been charged with a major rule violation requiring confinement status for the safety of the juvenile or other juveniles, or to ensure the security of the facility, the youth may be confined for a period of up to twenty-four (24) hours. Confinement status for periods of over twenty-four (24) hours shall be reviewed every twenty-four (24) hours by the administrator or his designee who was not involved in the incident.

(9) Whenever juveniles are removed from the regular program, they shall be seen by a designated staff member, other than the staff member involved in the removal decision, as soon as possible, but not more than twenty-four (24) hours after removal.

(10) Juveniles held in confinement status shall be interviewed at least once each day by personnel from administrative, clinical, social work, religious or medical units.

(11) A log shall be kept stating who authorized the confinement status, persons visiting the juvenile, the person authorizing release from confinement status, and the time of the release.

RALPH E. KELLY, Ed.D., Commissioner

MICHAEL KEITH HORN, Office of General Counsel

APPROVED BY AGENCY: November 9, 1999

FILED WITH LRC: November 10, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 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 December 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 juvenile detention and holding facilities and all juveniles that are or will be detained in these facilities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public 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 competition) 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 regulation will be required to maintain adequate records to document compliance, as they are currently required to do, and DJJ 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 regulation will be required to maintain adequate records to document compliance and DJJ 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 because it has been responsible for the enforcement of existing regulations that govern juvenile detention and holding facilities.

2. Continuing costs or savings: There will not be any continuing direct or indirect costs or savings to the Department of Juvenile 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 treatment in juvenile detention and holding facilities.

(b) Reporting and paperwork requirements: The only change in reporting and paperwork requirements is that DJJ 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 for enforcement and whatever funds are currently utilized by local governing bodies to operate juvenile detention and holding facilities.

(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 KRS 15A.210 requires that the Department of Juvenile Justice promulgate regulations to govern the operation of juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: There are no additional information or comments of which we are aware.

(11) TIERING: Is tiering applied? No. This administrative regulation applies to all juvenile detention and holding facilities in the Commonwealth.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.

2. State compliance standards. Since there is no federal mandate, there are no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

JUSTICE CABINET

Department of Juvenile Justice
(New Administrative Regulation)

505 KAR 2:130. Intake.

RELATES TO: KRS 15A.210

STATUTORY AUTHORITY: KRS 15A.210 to 15A.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.210 mandates that the Department of Juvenile Justice issue administrative regulations governing juvenile detention centers and juvenile holding facilities.

Section 1. Only juveniles meeting the criteria provided in this regulation shall be admitted to a detention facility.

(1)(a) The agency or individual seeking to place a juvenile in the facility shall present one (1) of the following at the time of admission or the juvenile shall not be accepted for admission:

1. A bench warrant which includes the reason for the issuance of the warrant;

2. A commissioner's warrant; or

3. A court order.

(b) If the reason for the ordered detention is contempt of court or an alleged or found violation of probation or parole, the documentation shall indicate the underlying charge that resulted in the contempt or the probation or parole violation. Lack of information relating to the underlying charge shall not be grounds to refuse admission, however facility staff shall obtain such information and place it in the juvenile's file as soon as possible.

(2) Admissions determinations shall be made according to the following guidelines:

(a) An accused public offender taken into custody on a bench warrant may be admitted to the facility pending a court hearing.

(b) An accused public offender accompanied by a court order may be admitted to the facility and securely detained for any length time during the probable cause, adjudication and disposi-

tion phases of the juvenile court process, subject to any limitations set by the court and reflected in the court order.

(c) A juvenile taken into custody on a commissioner's warrant for violation of supervised placement may be detained in accordance with KRS 635.100.

(d) A juvenile charged with a capital offense, Class A felony or Class B felony who is ordered detained shall be detained in a secure detention facility or a juvenile holding facility, in accordance with KRS 610.265(2)(b).

(e) A public offender may be accepted for admission and detained after disposition pursuant to a court order specifically requiring detention. A public offender committed to the Department of Juvenile Justice and ordered detained until placed may be housed in the facility for up to thirty-five (35) days after disposition.

(f) A status offender, pursuant to KRS 630.070, shall not be placed in a secure detention facility or a juvenile holding facility as a means or form of punishment except following a finding that the status offender is in contempt of court. A status offender may be admitted to a facility and be securely detained in accordance with KRS 630.080, 630.090, 630.100, and 630.130.

(g) A federal ward or out-of-state runaway may be detained in accordance with KRS 615.010.

(3) Prior to admission, a juvenile shall be screened for injury, chemical and alcohol intoxication, and acute illness. If any questions or concerns regarding the physical or mental condition of the juvenile exist and the admitting officer believes that the juvenile needs medical clearance, admission shall be refused until medical clearance is obtained by the transporting officer.

RALPH E. KELLY, Ed.D., Commissioner

MICHAEL KEITH HORN, Office of General Counsel

APPROVED BY AGENCY: November 9, 1999

FILED WITH LRC: November 10, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 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 December 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 juvenile detention and holding facilities and all juveniles that are or will be detained in these facilities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public 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 competition) 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 regulation will be required to maintain adequate records to document compliance, as they are currently required to do, and DJJ 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 regulation will be required to maintain adequate records to document compliance and DJJ 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 because it has been responsible for the enforcement of existing regulations that govern juvenile detention and holding facilities.

2. Continuing costs or savings: There will not be any continuing direct or indirect costs or savings to the Department of Juvenile 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 treatment in juvenile detention and holding facilities.

(b) Reporting and paperwork requirements: The only change in reporting and paperwork requirements is that DJJ 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 for enforcement and whatever funds are currently utilized by local governing bodies to operate juvenile detention and holding facilities.

(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 KRS 15A.210 requires that the Department of Juvenile Justice promulgate regulations to govern the operation of juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

(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.

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(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 applies to all juvenile detention and holding facilities in the Commonwealth.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.
2. State compliance standards. Since there is no federal mandate, there are no state compliance standards.
3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

JUSTICE CABINET

Department of Juvenile Justice
(New Administrative Regulation)

505 KAR 2:140. Admission procedures.

RELATES TO: KRS 15A.210

STATUTORY AUTHORITY: KRS 15A.210 to 15A.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.210 mandates that the Department of Juvenile Justice issue administrative regulations governing juvenile detention centers and juvenile holding facilities.

Section 1. (1) The facility shall adopt and enforce written policies and procedures which:

(a) Govern the reception and orientation of newly admitted juveniles;

(b) Provide that juveniles receive orientation in their own language; completion of orientation shall be documented by a statement that shall be signed and dated by the juvenile; and

(c) Require that a written, itemized list is made of all personal property in the possession of a newly admitted juvenile; a copy of this list, which notes all property that will be held until release, shall be given to the juvenile.

(2) Written procedures for admitting new juveniles shall include, but are not limited to:

- (a) Verification of legal authority to detain;
- (b) Complete search of the juvenile and possessions;
- (c) Disposition of clothing and personal possessions;
- (d) Medical screening;
- (e) Shower and hair care, if necessary;
- (f) Issue of clean, laundered clothing, as needed;
- (g) Notification of family, custodian or guardian;
- (h) Provision of written orientation materials;
- (i) Recording of basic personal data and information to be used for mail and visiting lists;
- (j) Assistance to juveniles in notifying their families of their admission and procedures for mail and visiting;

(k) Assignment to a housing unit; and

(l) Assignments of a register number.

(3) Newly admitted juveniles shall be permitted a reasonable number of local or collect long distance telephone calls to an attorney of his choice, and to a family member, as soon as practical, generally within one (1) hour after arrival, until one (1) call has been completed.

RALPH E. KELLY, Ed.D., Commissioner

MICHAEL KEITH HORN, Office of General Counsel

APPROVED BY AGENCY: November 9, 1999

FILED WITH LRC: November 10, 1999 at 11 a.m.

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REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Keith Horn

(1) Type and number of entities affected: The type and number of entities affected are all juvenile detention and holding facilities and all juveniles that are or will be detained in these facilities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public 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 competition) 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 regulation will be required to maintain adequate records to document compliance, as they are currently required to do, and DJJ 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 regulation will be required to maintain adequate records to document compliance and DJJ 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

VOLUME 26, NUMBER 6 – DECEMBER 1, 1999

costs to the Department of Juvenile Justice because it has been responsible for the enforcement of existing regulations that govern juvenile detention and holding facilities.

2. Continuing costs or savings: There will not be any continuing direct or indirect costs or savings to the Department of Juvenile 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 treatment in juvenile detention and holding facilities.

(b) Reporting and paperwork requirements: The only change in reporting and paperwork requirements is that DJJ 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 for enforcement and whatever funds are currently utilized by local governing bodies to operate juvenile detention and holding facilities.

(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 KRS 15A.210 requires that the Department of Juvenile Justice promulgate regulations to govern the operation of juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: There are no additional information or comments of which we are aware.

(11) TIERING: Is tiering applied? No. This administrative regulation applies to all juvenile detention and holding facilities in the Commonwealth.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.

2. State compliance standards. Since there is no federal mandate, there are no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

JUSTICE CABINET Department of Juvenile Justice (New Administrative Regulation)

505 KAR 2:150. Programs.

RELATES TO: KRS 15A.210

STATUTORY AUTHORITY: KRS 15A.210 to 15A.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.210 requires the Department of Juvenile Justice to promulgate administrative regulations governing the operation of juvenile detention centers and juvenile holding facilities, including programs and services. This administrative regulation governs programs and services at juvenile detention centers and juvenile holding facilities.

Section 1. (1) The facility shall provide or make available the following minimum services and programs consistent with federal law to adjudicated and preadjudicated juveniles:

- (a) An education program;
- (b) Visitation with parents, guardians or persons exercising similar custodial control or supervision;
- (c) Private communication with visitors and staff;
- (d) Counseling;
- (e) Continuous supervision of living units;
- (f) Medical services;
- (g) Food services;
- (h) Recreation and exercise; and
- (i) Reading materials.

(2) Assessment for education programs and services shall be initiated for all juveniles as soon as they are admitted to living units.

(3) Educational opportunities shall be made available to all juveniles within ten (10) days of admission, except if there is substantial evidence to justify otherwise.

(4) Educational programs in detention facilities shall be designed to assist detained juveniles in keeping up with their studies.

(5) Educational supervisors and instructors shall be licensed or approved by the state.

(6) Formal educational programs shall have a minimum of one (1) teacher for every fifteen (15) students per class period.

(7) There shall be an annual evaluation to measure the effectiveness of the educational training programs against stated performance objectives.

(8) The facility shall issue and enforce written policies and procedures that require:

- (a) A recreation and leisure-time plan including at least one (1) hour per day of large muscle activity and one (1) hour of structured leisure-time activity;
- (b) Adherence to dietary and other requirements of various faiths if approved by the religious authority; and
- (c) Staff members to be available to counsel juveniles if requested and on an emergency basis.

(9) The facility shall have a staff member or trained volunteer who coordinates and supervises the recreation program.

(10) A variety of fixed and movable equipment shall be provided for each outdoor recreation area.

(11) Library services shall be available to all detained juveniles.

(12) Written policy shall define the principles, purposes and criteria used in the selection and maintenance of library materials.

(13) There shall be a volunteer staff or a contractual social services program that makes available a range of resources to meet the needs of juveniles, including individual and family counseling and community services, as required.

(14) Detained juveniles shall be afforded access to religious, mental health counseling and crisis intervention services in accordance with their needs.

(15) A staff member shall coordinate the facility's religious programs.

(16) There shall be a system for juveniles and staff to communicate with one another at all times.

(17) Work assignments shall not conflict with education programs.

(18) Juveniles shall not be permitted to perform any work prohibited by state and federal child labor laws.

RALPH E. KELLY, Ed.D., Commissioner

MICHAEL KEITH HORN, Office of General Counsel

APPROVED BY AGENCY: November 9, 1999

FILED WITH LRC: November 10, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 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 December 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 juvenile detention and holding facilities and all juveniles that are or will be detained in these facilities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public 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 competition) 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 regulation will be required to maintain adequate records to document compliance, as they are currently required to do, and DJJ 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 regulation will be required to maintain adequate records to document compliance and DJJ 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 because it has been responsible for the enforcement of existing regulations that govern juvenile detention and holding facilities.

2. Continuing costs or savings: There will not be any continuing direct or indirect costs or savings to the Department of Juvenile 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 treatment in juvenile detention and holding facilities.

(b) Reporting and paperwork requirements: The only change in reporting and paperwork requirements is that DJJ 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 for enforcement and whatever funds are currently utilized by local governing bodies to operate juvenile detention and holding facilities.

(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 KRS 15A.210 requires that the Department of Juvenile Justice promulgate regulations to govern the operation of juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

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

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: There are no additional information or comments of which we are aware.

(11) TIERING: Is tiering applied? No. This administrative regulation applies to all juvenile detention and holding facilities in the Commonwealth.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.

2. State compliance standards. Since there is no federal mandate, there are no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

JUSTICE CABINET Department of Juvenile Justice (New Administrative Regulation)

505 KAR 2:160. Communication: mail, visiting and telephone.

RELATES TO: KRS 15A.210

STATUTORY AUTHORITY: KRS 15A.210 to 15A.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.210 mandates that the Department of Juvenile Justice issue administrative regulations governing juvenile detention centers and juvenile holding facilities.

Section 1. (1) There shall be no limit on the volume of mail a juvenile may send or receive, except when the facility provides postage or when there is substantial evidence to justify such limitations. Resident mail from incarcerated individuals at other facilities or correctional institutions may be delivered, returned, or placed in the youth's possessions.

(2) The facility shall adopt and enforce written policies and procedures which:

(a) Provide that juvenile letters, both incoming and outgoing, shall not be read, except where there is substantial evidence to justify such actions. If correspondence is read, the youth shall be informed in advance and shall be present when the letter is opened, and the action shall be documented;

(b) Govern inspection of juvenile letters or packages for money or contraband;

(c) Require that all cash received through the mail is held for the juvenile in accordance with the procedures approved by the governing authority;

(d) Require that incoming and outgoing mail shall be held for no more than twenty-four (24) hours, and packages for no more than forty-eight (48) hours, excluding weekends and holidays;

(e) Specify that juveniles are permitted to send sealed letters to a specified class of persons and organizations, including, but not limited to: courts, counsel, officials of the confining authority, administrators of grievance systems and members of the releasing authority;

(f) Allow the facility to provide postage for the mailing of two (2) letters per week for each juvenile, if requested, excluding legal correspondence;

(g) Govern visiting and are reviewed annually and updated if needed;

(h) Provide that juvenile visitation facilities permit informal communication, including opportunity for physical contact, if possible;

(i) Specify that visitors register upon entry into the facility and the circumstances under which visitors are searched;

(j) Govern special visits;

(k) Provide for juvenile access to the telephone to make and receive personal calls, within the limits of the orderly operation of the facility;

(l) Provide for the forwarding of first-class letters and packages after transfer or release; and

(m) Govern juvenile access to publications.

RALPH E. KELLY, Ed.D., Commissioner

MICHAEL KEITH HORN, Office of General Counsel

APPROVED BY AGENCY: November 9, 1999

FILED WITH LRC: November 10, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 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 December 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 juvenile detention and holding facilities and all juveniles that are or will be detained in these facilities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public 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 competition) 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 regulation will be required to maintain adequate records to document compliance, as they are currently required to do, and DJJ 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 regulation will be required to maintain adequate records to document compliance and DJJ 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 because it has been responsible for the enforcement of existing regulations that govern juvenile detention and holding facilities.

2. Continuing costs or savings: There will not be any continuing direct or indirect costs or savings to the Department of Juvenile 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 treatment in juvenile detention and holding facilities.

(b) Reporting and paperwork requirements: The only change in reporting and paperwork requirements is that DJJ 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 for enforcement and whatever funds are currently utilized by local governing bodies to operate juvenile detention and holding facilities.

(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 KRS 15A.210 requires that the Department of Juvenile Justice promulgate regulations to govern the operation of juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: There are no additional information or comments of which we are aware.

(11) TIERING: Is tiering applied? No. This administrative regulation applies to all juvenile detention and holding facilities in the Commonwealth.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.

2. State compliance standards. Since there is no federal mandate, there are no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

JUSTICE CABINET Department of Juvenile Justice (New Administrative Regulation)

505 KAR 2:170. Release preparation and transfer programs.

RELATES TO: KRS 15A.210

STATUTORY AUTHORITY: KRS 15A.210 to 15A. 240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.210 mandates that the Department of Juvenile Justice issue administrative regulations governing juvenile detention centers and juvenile holding facilities.

Section 1. The facility shall adopt and enforce written procedures for releasing juveniles which shall include, but not be limited to:

- (1) Verification of identity;
- (2) Verification of release papers;
- (3) Completion of release arrangements, including the person or agency to whom the juvenile is to be released;
- (4) Return of personal effects;
- (5) Completion of any pending action, such as grievances, claims for damages or lost possessions;
- (6) Medical screening and arrangements for community follow-up when needed;
- (7) Transportation arrangements; and
- (8) Instructions on forwarding of mail.

RALPH E. KELLY, Ed.D., Commissioner

MICHAEL KEITH HORN, Office of General Counsel

APPROVED BY AGENCY: November 9, 1999

FILED WITH LRC: November 10, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 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 December 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 juvenile detention and holding fa-

cilities and all juveniles that are or will be detained in these facilities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public 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 competition) 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 regulation will be required to maintain adequate records to document compliance, as they are currently required to do, and DJJ 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 regulation will be required to maintain adequate records to document compliance and DJJ 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 because it has been responsible for the enforcement of existing regulations that govern juvenile detention and holding facilities.

2. Continuing costs or savings: There will not be any continuing direct or indirect costs or savings to the Department of Juvenile 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 treatment in juvenile detention and holding facilities.

(b) Reporting and paperwork requirements: The only change in reporting and paperwork requirements is that DJJ 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 for enforcement and whatever funds are currently utilized by local governing bodies to operate juvenile detention and holding facilities.

(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 KRS 15A.210 requires that the Department of Juvenile Justice promulgate regulations to govern the operation of juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: There are no additional information or comments of which we are aware.

(11) TIERING: Is tiering applied? No. This administrative regulation applies to all juvenile detention and holding facilities in the Commonwealth.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.

2. State compliance standards. Since there is no federal mandate, there are no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

JUSTICE CABINET

Department of Juvenile Justice (New Administrative Regulation)

505 KAR 2:180. Citizen and volunteer involvement.

RELATES TO: KRS 15A.210

STATUTORY AUTHORITY: KRS 15A.210 to 15A.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.210 mandates that the Department of Juvenile Justice issue administrative regulations governing juvenile detention centers and juvenile holding facilities.

Section 1. (1) The facility shall establish and enforce written policies and procedures which:

(a) Provide for securing citizen involvement in programs, including roles as advisors and interpreters between the program and the public, direct services and cooperative endeavors with juveniles under supervision;

(b) Specify the lines of authority, responsibility and accountability for the volunteer services program;

(c) Provide for the screening and selection of volunteers, allowing for recruitment from all cultural and socioeconomic segments of the community;

(d) Provide a system for identification of volunteers while they are in the facility; and

(e) Provide that the administrator curtails, postpones or discontinues the services of a volunteer or volunteer organization when there are substantial reasons for doing so.

(2) A staff member shall be responsible for coordinating the volunteer services program.

(3) Prior to assignment, each volunteer shall complete an orientation and training program appropriate to the nature of the assignment.

(4) Volunteers shall agree in writing to abide by all facility policies, particularly those relating to security and confidentiality of information.

(5) Written policy shall specify that volunteers perform professional services only when certified or licensed to do so.

(6) There shall be provisions for volunteers to participate in the establishment of policy and procedure for the volunteer services program.

RALPH E. KELLY, Ed.D., Commissioner

MICHAEL KEITH HORN, Office of General Counsel

APPROVED BY AGENCY: November 9, 1999

FILED WITH LRC: November 10, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 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 December 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 juvenile detention and holding facilities and all juveniles that are or will be detained in these facilities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public 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 competition) 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 regulation will be required to maintain adequate records to document compliance, as they are currently required to do, and DJJ 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 regulation will be required to maintain adequate records to document compliance and DJJ 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 because it has been responsible for the enforcement of existing regulations that govern juvenile detention and holding facilities.

2. Continuing costs or savings: There will not be any continuing direct or indirect costs or savings to the Department of Juvenile 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 treatment in juvenile detention and holding facilities.

(b) Reporting and paperwork requirements: The only change in reporting and paperwork requirements is that DJJ 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 for enforcement and whatever funds are currently utilized by local governing bodies to operate juvenile detention and holding facilities.

(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 KRS 15A.210 requires that the Department of Juvenile Justice promulgate regulations to govern the operation of juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: There are no

additional information or comments of which we are aware.

(11) TIERING: Is tiering applied? No. This administrative regulation applies to all juvenile detention and holding facilities in the Commonwealth.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.
2. State compliance standards. Since there is no federal mandate, there are no state compliance standards.
3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

JUSTICE CABINET

Department of Juvenile Justice
(New Administrative Regulation)

505 KAR 2:190. Waiver of compliance.

RELATES TO: KRS 15A.210

STATUTORY AUTHORITY: KRS 15A.210 to 15A.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.210 requires the Department of Juvenile Justice to promulgate administrative regulations governing the operation of juvenile detention centers and juvenile holding facilities. This administrative regulation establishes a waiver process for compliance with rated capacity limits at juvenile detention centers and juvenile holding facilities.

Section 1. (1) The Department of Juvenile Justice may grant a waiver of the rated capacity for an existing facility if it determines:

- (a) That strict compliance may cause unreasonable difficulties in securing housing for juvenile offenders; and
 - (b) That a waiver does not seriously affect the security, supervision of juveniles, programs, or the safe, healthful, or efficient operation of the facility.
- (2) If a waiver from this standard is desired, the responsible local authority shall submit a written request to the Department of Juvenile Justice. The written request shall include:
- (a) Identification and description of the specific problems involved in meeting the capacity requirement.
 - (b) A description of the needed capacity change, including identification of the proposed usage of sleeping and program areas.
 - (c) A description of the classification to be used, additional staffing alternatives and programming.
 - (d) Sufficient documentation demonstrating that the waiver, if granted, does not jeopardize the security, supervision of juveniles, programs, or the safe, healthful, or efficient operation of the facility.

(3) A waiver, if granted by the Department of Juvenile Justice, shall apply only to the petitioner for the period of time specified and may include conditions imposed by the department. A waiver shall not be granted for longer than twelve (12) months. A waiver granted for a twelve (12) month period shall be reviewed at the end of the period for reapproval.

RALPH E. KELLY, Ed.D., Commissioner

MICHAEL KEITH HORN, Office of General Counsel

APPROVED BY AGENCY: November 9, 1999

FILED WITH LRC: November 10, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 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 December 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 juvenile detention and holding facilities and all juveniles that are or will be detained in these facilities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public 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 competition) 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 regulation will be required to maintain adequate records to document compliance, as they are currently required to do, and DJJ 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 regulation will be required to maintain adequate records to document compliance and DJJ 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 because it has been responsible for the enforcement of existing regulations that govern juvenile detention and holding facilities.

2. Continuing costs or savings: There will not be any continuing direct or indirect costs or savings to the Department of Juvenile 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 treatment in juvenile detention and holding facilities.

(b) Reporting and paperwork requirements: The only change in reporting and paperwork requirements is that DJJ 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 for enforcement and whatever funds are currently utilized by local governing bodies to operate juvenile detention and holding facilities.

(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 KRS 15A.210 requires that the Department of Juvenile Justice promulgate regulations to govern the operation of juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: There are no additional information or comments of which we are aware.

(11) TIERING: Is tiering applied? No. This administrative regulation applies to all juvenile detention and holding facilities in the Commonwealth.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.

2. State compliance standards. Since there is no federal mandate, there are no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

JUSTICE CABINET Department of Juvenile Justice (New Administrative Regulation)

505 KAR 2:200. Physical plant.

RELATES TO: KRS 15A.210

STATUTORY AUTHORITY: KRS 15A.210(5) to 15A.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.210 requires the Department of Juvenile Justice to promulgate administrative regulations governing the operation of juvenile detention centers and juvenile holding facilities, including the physical plant. This administrative regulation governs the physical plants at juvenile detention centers and juvenile holding facilities.

Section 1. (1) The facility shall conform to all applicable zoning ordinances or, through legal means, attempt to comply with or change such laws, codes or zoning ordinances.

(2) The facility shall conform to all applicable state building codes.

(3) If the facility is on the grounds of any other type of corrections facility, federal and state regulations requiring sight and sound separation from adults shall be maintained.

(4) A juvenile detention facility shall be primarily designed for single cell sleeping areas; multiple-occupancy dorms or double-occupancy cells shall not exceed twenty (20) percent of the bed capacity of the facility.

(5) If the population of a county-operated facility exceeds the rated capacity, the chief district judge, the district judge with jurisdiction for the juvenile matters, the county judge executive and the Department of Juvenile Justice shall be notified by the facility administrator.

(6) The facility shall be utilized so that juveniles can be grouped in accordance with a classification plan.

(7) If seriously ill, mentally disordered, injured or nonambulatory juveniles are held in the facility, there shall be at least one (1) single-occupancy cell or room for them that provides for continuous staff observation.

(8) The facility shall have exits that are properly positioned, clear, and distinctly and permanently marked in order to ensure the timely evacuation of juveniles and staff in the event of fire or other emergency. All housing areas, and places of assembly for fifty (50) or more persons, shall have two (2) exits.

(9) The facility perimeter shall be secured in a way that juveniles remain within the perimeter and that access by the general public is denied without proper authorization.

(10) Facilities in operation before July 1, 1987 shall be operated with day rooms of no more than twenty-five (25) juveniles each.

(11) The facility shall have living units of no more than twenty-five (25) juveniles.

(12) All housing areas shall provide for, at a minimum:

(a) Lighting as determined by the tasks to be preformed;

(b) Toilets at a minimum ratio of one (1) for every twelve (12) juveniles in male facilities and one (1) for every eight (8) juveniles in female facilities. Urinals may be substituted for up to one-half (1/2) of the toilets in male facilities. Wash basins shall be provided at a minimum ratio of one (1) basin for every twelve (12) occupants;

(c) Showers accessible to juveniles;

(d) A heating and ventilation and acoustical system to ensure healthful and comfortable living and working conditions for juveniles and staff; and

(e) Access to a drinking fountain.

(13) If the facility houses male and female juveniles, space shall be provided for cocorrectional activities.

(14) Space shall be provided for the secure storage of chemical agents, restraining devices and related security equipment, and the equipment shall be located in an area that is readily accessible to authorized persons.

(15) Water for showers shall be temperature-controlled.

(16) Single sleeping rooms shall have at least seventy (70) square feet of floor space and juveniles shall be provided activi-

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ties and services outside their rooms at least twelve (12) hours a day.

(17) All sleeping rooms in detention facilities shall have, at a minimum:

(a) Access to the following approved penal sanitation facilities:

1. Toilet above floor level which is available for use without staff assistance twenty-four (24) hours a day;
2. Wash basin and drinking water;
3. Hot and cold running water;

(b) An approved penal bed above floor level and storage space; and

(c) Natural light. Facilities existing and operating on July 1, 1987 shall be exempt from the requirement that each sleeping room have natural light.

(18) At least thirty-five (35) square feet of floor space per juvenile shall be provided in the day room on each living unit.

(19) Male and female juveniles shall not occupy the same sleeping room.

(20) Ventilation shall be available in the event of a power failure.

(21) The total indoor activity areas outside the sleeping area shall provide space of at least 100 square feet per juvenile.

(22) There shall be at least fifteen (15) square feet of floor space per person for those occupying the dining room or dining area. Meals may be served outside the cells or sleeping areas.

(23) If the facility provides food service, the kitchen shall have at least 200 square feet of floor space.

(24) School classrooms shall be designed in conformity with local or state educational requirements except that all juvenile detention facilities shall be exempt from the requirement to have operable windows for rescue and ventilation.

(25) There shall be a visiting area that allows for privacy during visits.

(26) There shall be a well-drained outdoor recreation area for all new, renovated and existing facilities.

(27) Space shall be available for religious services.

(28) The facility shall have a central medical room with medical examination facilities.

(29) If there is a confinement room separate from the living unit, it shall be equipped with plumbing and security furniture.

(30) There shall be interview space available in or near the living unit.

(31) The office in each housing unit shall have a telephone and enable supervision of the general living area; it shall be used for communications, staff conferences and storage of unit records.

(32) There shall be secure storage space provided for storage of juveniles' property and personal belongings.

(33) There shall be storage rooms for clothing, bedding and facility supplies.

(34) Closets for storage of cleaning supplies and equipment shall be located in each principal area and shall be well ventilated.

(35) Separate and adequate space shall be provided for mechanical equipment

(36) There shall be a written plan for preventive maintenance of the physical plant with provisions for emergency repairs or replacement of equipment. This plan shall be reviewed annually and updated if needed.

(37) There shall be documentation by an independent, qualified source that the interior finishing material in juvenile areas, exit areas and places of public assembly are in accordance with recognized national fire safety codes.

(38) The facility shall issue and enforce written policy and procedure providing that a new detention facility shall be built or the existing facility expanded after a needs evaluation study has been prepared by the agency in conjunction with the juvenile court and the Department of Juvenile Justice.

(39) Prior to plans development for newly-planned facilities, a written program philosophy shall be developed for the facility, which includes:

(a) Statement of general goals and purposes of the facility;

(b) Description of the facility, including statutory authority and services to be provided.

(c) Analysis of projected workload, staffing, programs and operating and capital budgets;

(d) Assessment of the impact of the facility on overall operation of the parent agency;

(e) Justification for the facility;

(f) Analysis of alternative means for achieving the same goals;

(g) Description of space requirements;

(h) Outline of budget and time restrictions; and

(i) Study of alternate ways of satisfying space requirements, including leasing, renovation and new construction.

(40) Each living unit shall be designed so that individual rooms, day rooms and program staff offices are in close proximity to juveniles for purposes of communication and interaction.

(41) Disabled juveniles shall be housed in a manner that provides for their safety and security. Cells or housing units used by them shall be designed for their use, and provide the maximum possible integration with the general population. Appropriate institution programs and activities shall be accessible to disabled juveniles confined in the facility.

(42) All parts of the facility that are accessible to the public shall be accessible to and usable by disabled staff and visitors.

(43) There shall be a day room for each housing unit or detention room cluster. The room shall have a minimum of thirty-five (35) square feet of floor space per juvenile for the maximum number using the day room at one (1) time and shall be separate and distinct from the sleeping area, which is immediately adjacent and accessible.

RALPH E. KELLY, Ed.D., Commissioner

MICHAEL KEITH HORN, Office of General Counsel

APPROVED BY AGENCY: November 9, 1999

FILED WITH LRC: November 10, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 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 December 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 juvenile detention and holding facilities and all juveniles that are or will be detained in these facilities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public 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 competition) 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 regulation will be required to maintain adequate records to document compliance, as they are currently required to do, and DJJ 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 regulation will be required to maintain adequate records to document compliance and DJJ 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 because it has been responsible for the enforcement of existing regulations that govern juvenile detention and holding facilities.

2. Continuing costs or savings: There will not be any continuing direct or indirect costs or savings to the Department of Juvenile 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 treatment in juvenile detention and holding facilities.

(b) Reporting and paperwork requirements: The only change in reporting and paperwork requirements is that DJJ 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 for enforcement and whatever funds are currently utilized by local governing bodies to operate juvenile detention and holding facilities.

(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 KRS 15A.210 requires that the Department of Juvenile Justice promulgate regulations to govern the operation of juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

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

(9) Identify any statute, administrative regulation or govern-

ment policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: There are no additional information or comments of which we are aware.

(11) TIERING: Is tiering applied? No. This administrative regulation applies to all juvenile detention and holding facilities in the Commonwealth.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.

2. State compliance standards. Since there is no federal mandate, there are no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

JUSTICE CABINET

Department of Juvenile Justice (New Administrative Regulation)

505 KAR 2:210. Application for construction, expansion or renovation.

RELATES TO: KRS 15A.210

STATUTORY AUTHORITY: KRS 15A.210 to 15A.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.210 mandates that the Department of Juvenile Justice issue administrative regulations governing juvenile detention centers and juvenile holding facilities.

Section 1. Purpose. The purpose of this administrative regulation is to provide minimum standards for the construction, expansion or renovation of juvenile detention facilities and for measuring compliance of existing juvenile detention facilities in accordance with 505 KAR 2:010 through 505 KAR 2:200.

Section 2. Consultation. The Department of Juvenile Justice may upon request provide for any county government which wishes to remodel an existing juvenile detention facility or construct a new juvenile detention facility, a consultant knowledgeable in the design, utilization, and operation of juvenile detention facilities. The consultant shall meet with the appropriate officials of that county and advise them in matters including but not limited to:

- (1) Site selection;
- (2) Probable need as it relates to capacity and types of juveniles to be housed;
- (3) Sources of financing for construction;
- (4) Laws and administrative regulations relating to facilities for juveniles;
- (5) Sources of revenue for operations of the juvenile detention facility;
- (6) Probable cost for operation of the juvenile detention facility.

ity; and

- (7) Potential for shared facilities with adjoining counties.

Section 3. Approval. No juvenile detention facility shall be built without prior approval by the Department of Juvenile Justice. The criteria considered in the approval process shall include but not be limited to:

- (1) Size;
- (2) Proximity to courts;
- (3) Proximity to community resources;
- (4) Availability of public transportation;
- (5) Environmental health;
- (6) Adequate parking;
- (7) Provisions for future expansion; and
- (8) Department of Juvenile Justice initiatives.

Section 4. Construction Documents. Prior to the construction, expansion, or renovation of any juvenile detention facility, plans and specifications shall be submitted to the Department of Juvenile Justice for review and approval as follows:

- (1) Programming phase. This submission shall show:
 - (a) Statement of general goals and purposes of the facility including a written program philosophy;
 - (b) Description of services to be provided;
 - (c) Evaluation of any existing facility;
 - (d) Assessment of the impact of facility on overall operation of parent agency;
 - (e) Population analysis;
 - (f) Space requirements based on population analysis and standards for the facility and site outlined in 505 KAR 2:010 through 505 KAR 2:200;
 - (g) Alternate means of satisfying space requirements;
 - (h) Needs assessment to determine bed space;
 - (i) Needs assessment to determine services and programming;
 - (j) Workload analysis;
 - (k) Programs analysis;
 - (l) Staffing analysis;
 - (m) Proposed governing authority and administration;
 - (n) Cost analysis;
 - (o) Financing alternatives;
 - (p) Outline of time restrictions; and
 - (q) Summary and recommendations.
- (2) Schematic phase.
 - (a) Scale drawings of each floor plan with all proposed rooms and areas one-eighth (1/8) inch minimum;
 - (b) Scale drawings of the site, locating the building, parking and other facilities - one (1) inch equals fifth (50) feet; and
 - (c) Documentation of site as to criteria in Section 3 of this administrative regulation;
 - (d) Sections through the proposed structure indicating ceiling heights of room, mechanical spaces, roof slopes and other related information;
 - (e) Scale elevation drawings of all exterior walls; and
 - (f) Schematic cost estimate.
- (3) Design development phase.
 - (a) Scale drawings on each floor plan with all proposed rooms and areas with their dimensions one-eighth (1/8) inch minimum;
 - (b) All necessary construction drawings including construction details;
 - (c) Specifications for all materials and workmanship;
 - (d) A proposed contract with general and special conditions;
 - (e) Engineering calculations for the foundations, structure, heating ventilating, air conditioning, lighting, and plumbing; and
 - (f) Detailed estimates of cost of land, site development, construction, financing, professional services, equipment and furnishings.
- (4) Construction document phase.
 - (a) Revised design development construction drawings following review by all applicable agencies.
 - (b) Signed by an architect registered in the Commonwealth of Kentucky and revised if necessary to include all changes required by the Department of Juvenile Justice.

- (c) Revised design development specifications of material and workmanship following review by all applicable agencies.
- (5) Contract administration.

- (a) Signed copies of all contracts for construction financing and bonding;

- (b) Signed copies of all construction permits;

- (c) Documentation of review by all other applicable state agencies; and

- (d) All change orders shall be submitted to the Department of Juvenile Justice for review and approval.

- (6) An on-site inspection schedule shall be submitted for inspection by governing authority, contractors, and the Department of Juvenile Justice.

- (7) The Department of Juvenile Justice shall review all submissions within thirty (30) days of receipt and issue a letter of approval, acceptance with required changes, or rejection with reasons. No construction shall be started until the construction document phase as required in subsection (4) of this section has been approved.

- (8) Depending on the site of the proposed construction, renovation or addition, the Department of Juvenile Justice may combine two (2) or more phases as outlined above for review and approval.

- (9) All changes prior to the approval of final construction documents shall require appropriate modifications to the final construction documents including redrawing of plans and rewriting of specifications. All changes after the approval of final construction documents shall require adequate documentation which fully describes and illustrates the changes which may include written and graphic addenda, field orders and change orders. In addition, a set of accurate as built drawings will be submitted to the Department of Juvenile Justice within sixty (60) days of occupancy of the facility.

Section 5. Fee. A one (1) time processing fee of \$250 shall accompany each application filed with the Department of Juvenile Justice pursuant to this administrative regulation.

RALPH E. KELLY, Ed.D., Commissioner

MICHAEL KEITH HORN, Office of General Counsel

APPROVED BY AGENCY: November 9, 1999

FILED WITH LRC: November 10, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 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 December 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 juvenile detention and holding facilities and all juveniles that are or will be detained in these facilities.

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

- (a) Cost of living and employment in the geographical area in

which the administrative regulation will be implemented, to the extent available from the public 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 competition) 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 regulation will be required to maintain adequate records to document compliance, as they are currently required to do, and DJJ 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 regulation will be required to maintain adequate records to document compliance and DJJ 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 because it has been responsible for the enforcement of existing regulations that govern juvenile detention and holding facilities.

2. Continuing costs or savings: There will not be any continuing direct or indirect costs or savings to the Department of Juvenile 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 treatment in juvenile detention and holding facilities.

(b) Reporting and paperwork requirements: The only change in reporting and paperwork requirements is that DJJ 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 for enforcement and whatever funds are currently utilized by local governing bodies to operate juvenile detention and holding facilities.

(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 KRS 15A.210 requires that the Department of Juvenile Justice promulgate regulations to govern the operation of juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: There are no additional information or comments of which we are aware.

(11) TIERING: Is tiering applied? No. This administrative regulation applies to all juvenile detention and holding facilities in the Commonwealth.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.

2. State compliance standards. Since there is no federal mandate, there are no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

JUSTICE CABINET Department of Juvenile Justice (New Administrative Regulation)

505 KAR 2:220. Registration.

RELATES TO: KRS 15A.210

STATUTORY AUTHORITY: KRS 15A.210 to 15A.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.210 mandates that the Department of Juvenile Justice issue administrative regulations governing juvenile detention centers and juvenile holding facilities.

Section 1. Each juvenile detention facility that is in operation shall file register with the Department of Juvenile Justice on an annual basis.

Section 2. The following information, as defined, shall be included in the registration:

(1) "Agency administrator" means the person responsible for the day-to-day operation of the facility.

(2) "Agency director" means the person who oversees the operation of the facility and reports to the governing authority.

(3) "Bed capacity" means the total number of beds and their allotment as requested in 505 KAR 2:210, Section 4.

(4) "Client information" means the type of youth served and average length of detention for each type. Types include, but are not limited to, the following:

(a) Public offenders;

(b) Status offenders;

- (c) Nonoffenders (dependent, neglected, abused);
- (d) Preadjudicative; and
- (e) Postadjudicative.

(5) "Contact person" means the agency administrator or the person designated by the agency administrator as liaison with the Department of Juvenile Justice.

(6) "Facility identifier" means the name of the juvenile detention facility.

(7) "Fiscal" means those agencies and organization that allot funds for operation of the facility.

(8) "Governing authority" means the organization ultimately responsible for ownership of the facility. This may be the county fiscal court, the city council or board of directors or trustees.

(9) "Physical plant" means the floor plans or a copy of the floor plans if any changes have been made after prior filing with the Department of Juvenile Justice.

(10) "Programming" means the listing of all services and programming of the facility such as medical or education.

Section 3. A one (1) time processing fee of fifty (50) dollars shall accompany each registration filed with the Department of Juvenile Justice pursuant to this administrative regulation.

RALPH E. KELLY, Ed.D., Commissioner

MICHAEL KEITH HORN, Office of General Counsel

APPROVED BY AGENCY: November 9, 1999

FILED WITH LRC: November 10, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 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 December 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 juvenile detention and holding facilities and all juveniles that are or will be detained in these facilities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public 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 competition) 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 regulation will be required to maintain adequate records to document compliance, as they are currently required to do, and DJJ 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 regulation will be required to maintain adequate records to document compliance and DJJ 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 because it has been responsible for the enforcement of existing regulations that govern juvenile detention and holding facilities.

2. Continuing costs or savings: There will not be any continuing direct or indirect costs or savings to the Department of Juvenile 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 treatment in juvenile detention and holding facilities.

(b) Reporting and paperwork requirements: The only change in reporting and paperwork requirements is that DJJ 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 for enforcement and whatever funds are currently utilized by local governing bodies to operate juvenile detention and holding facilities.

(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 KRS 15A.210 requires that the Department of Juvenile Justice promulgate regulations to govern the operation of juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: There are no additional information or comments of which we are aware.

(11) TIERING: Is tiering applied? No. This administrative regulation applies to all juvenile detention and holding facilities in the Commonwealth.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.

2. State compliance standards. Since there is no federal mandate, there are no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

JUSTICE CABINET Department of Juvenile Justice (New Administrative Regulation)

505 KAR 2:230. Additional standards for juvenile holding facilities.

RELATES TO: KRS 15A.210

STATUTORY AUTHORITY: KRS 15A.210 to 15A.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.210 mandates that the Department of Juvenile Justice issue administrative regulations governing juvenile detention centers and juvenile holding facilities.

Section 1. (1) The facility shall maintain separation between juveniles and adults so that there is no sustained sight or sound contact between juveniles and incarcerated adults in the facility. Separation shall be achieved architecturally in residential areas, and may be achieved through time-phasing in common use non-residential areas such as indoor recreation, outdoor recreation, education and dining areas.

(2) Adult inmates shall not be permitted in any juvenile residential areas under any circumstances.

(3) Adult inmates shall not, under any circumstances, be permitted in any common use nonresidential areas when juveniles are present in such areas.

(4) If juveniles share programming space with adult inmates, or must travel through the adult area of the facility to access any juvenile area, the facility shall have a written policy and corresponding procedures outlining the process that shall be used to ensure that juveniles remain sight and sound separated from adults when moving to and from activities in common areas or facilities shared with the adult inmates, and while participating in activities in such areas.

(5) The facility shall have completely separate juvenile and adult programs. The facility shall adopt written policies and procedures that are completely separate from those developed for the adult portion of the facility.

(6) The jailer shall appoint an individual to serve as the supervisor of the juvenile holding facility. Except for the jailer, who is responsible for the entire jail operation, all management, security, and direct care staff for the juvenile holding facility shall be completely separate from that for the adult facility. Staff providing specialized services such as medical care, food service, laundry, maintenance and engineering may serve both the adult and juvenile populations.

nile populations.

RALPH E. KELLY, Ed.D., Commissioner

MICHAEL KEITH HORN, Office of General Counsel

APPROVED BY AGENCY: November 9, 1999

FILED WITH LRC: November 10, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 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 December 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 juvenile detention and holding facilities and all juveniles that are or will be detained in these facilities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public 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 competition) 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 regulation will be required to maintain adequate records to document compliance, as they are currently required to do, and DJJ 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 regulation will be required to maintain adequate records to document compliance and DJJ 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 because it has been responsible for the enforcement of existing regulations that govern juvenile detention and holding facilities.

2. Continuing costs or savings: There will not be any continuing direct or indirect costs or savings to the Department of Juvenile Justice.

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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 treatment in juvenile detention and holding facilities.

(b) Reporting and paperwork requirements: The only change in reporting and paperwork requirements is that DJJ 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 for enforcement and whatever funds are currently utilized by local governing bodies to operate juvenile detention and holding facilities.

(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 KRS 15A.210 requires that the Department of Juvenile Justice promulgate regulations to govern the operation of juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

(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 detained in juvenile detention and holding facilities.

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: There are no additional information or comments of which we are aware.

(11) TIERING: Is tiering applied? No. This administrative regulation applies to all juvenile detention and holding facilities in the Commonwealth.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.

2. State compliance standards. Since there is no federal mandate, there are no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements,

than those required by the federal mandate? There is no federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Carriers (New Administrative Regulation)

601 KAR 1:018. Special overweight or overdimensional permits.

RELATES TO: KRS 189.270, 189.2715, 189.2717

STATUTORY AUTHORITY: KRS 174.080, 189.274

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.270 allows for certain overweight or overdimensional permits to be issued by the Transportation Cabinet. KRS 189.270 authorizes the Secretary of the Kentucky Transportation Cabinet to issue permits for the movement of motor vehicles with loads exceeding legal weights or dimensions. This administrative regulation establishes the procedures and requirements necessary in the interest of highway safety for the issuance of an overweight or overdimensional permit. It further exempts certain farm implement movements from the requirements of obtaining an overdimensional permit, but retains the associated safety requirements for the movement of these overdimensional vehicles.

Section 1. Definitions. (1) "Boat" means a vehicle used for movement on the water and the trailer on which it is placed for transporting the vehicle on the highway.

(2) "Daylight hours" shall mean the period of a day from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset. However, it shall not include any time when atmospheric conditions such as heavy rain, snow, sleet or fog render visibility lower than is ordinarily the case during that period of the day.

(3) "Divisible load" shall mean a load which when reasonably divided, dismantled, disassembled or rearranged would no longer be overweight or overdimensional.

(4) "Dual-wheel axle" means one (1) axle with two (2) wheels on each side of the axle.

(5) "Farm implement or equipment" means machinery, equipment or vehicle used exclusively in a farm or agriculture operation including those items which are not required by KRS Chapter 186 to be registered.

(6) "Fully-controlled access highway" means a highway which gives preference to through traffic and which shall have access only at selected public roads or streets and which shall have no highway grade crossing or intersection.

(7) "National holiday" means:

(a) New Year's Day;

(b) Memorial Day (as observed on the last Monday in May);

(c) Independence Day;

(d) Labor Day;

(e) Thanksgiving Day; and

(f) Christmas Day.

(8) "Nondivisible load" means a load or vehicle, which if separated into smaller loads would:

(a) Compromise the intended use of the vehicle, making it unable to perform the function for which it was intended;

(b) Destroy the value of the load or vehicle, making it unusable for its intended purpose; or

(c) Require more than eight (8) work hours to dismantle using appropriate equipment.

(9) "Overdimensional" means the motor vehicle exceeds the dimension limits set forth in 603 KAR 5:070.

(10) "Overweight" means the motor vehicle exceeds:

(a) The gross weight limit established for a highway segment in 603 KAR 5:300;

(b) The axle weight limit established in 603 KAR 5:066;

(c) The gross weight limits established by KRS 177.9771 for a

motor vehicle transporting coal or coal by-products;

(d) The bridge weight limit established by 603 KAR 5:066; or

(e) The gross weight limit posted at a bridge or other structure.

(11) "Permit fee" means the fee set forth in KRS 189.270 charged for the issuance of an overweight or overdimensional trip or annual permit. The fee covers the cost of processing the permit application, including:

(a) A qualification check of the applicant;

(b) A statutory compliance check; and

(c) An initial bridge and weight analysis.

(12) "Pole trailer" means a vehicle which is designed to be drawn by a motor vehicle and attached to the towing motor vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing motor vehicle. It is used for transporting long or irregularly shaped loads such as poles, pipes, or structural members which generally are capable of sustaining themselves as beams between the supporting connections.

(13) "Single-wheel axle" means a steering axle with one (1) wheel on each side of the axle.

(14) "Toll road" means any project constructed under the provisions of KRS Chapter 175 or KRS 177.390 through 177.570 on which a toll is collected or was in the past collected by the Transportation Cabinet.

(15) "Utility equipment" means the specialized equipment, including earth-moving equipment, necessary for the installation or operation of utility poles or pipes or utility electrical field equipment such as transformers or regulators. It shall not include any equipment necessary for the construction or operation of a power generation station.

Section 2. Permit Application. (1) An application (form TC 95-25, rev. 7/98) for an overweight or overdimensional annual and trip permit may be completed on forms provided by the Kentucky Transportation Cabinet, Department of Vehicle Regulation, Division of Motor Carriers, 501 High Street, Frankfort, Kentucky 40622. The permit application shall contain the following:

(a) A detailed description of the equipment or load to be moved;

(b) A description and vehicle identification number of the power unit moving the equipment;

(c) Registration weight and license plate number of the power unit;

(d) Equipment operator's name, telephone number and address;

(e) Routes requested for travel;

(f) Period of time: Single trip not to exceed ten (10) days; or annual permit shall be 365 days from date of issue.

(2) A single trip permit application or request shall specify the following:

(a) The year and make of the towing vehicle;

(b) The towing vehicle's license plate number;

(c) The maximum weight for which the vehicle is registered;

(d) The state of registration of the vehicle;

(e) Name and address of the owner;

(f) The dates of travel;

(g) The serial number of the manufactured home or hull identification number of the boat; and

(h) The specific routes of travel requested.

(3) If the towing vehicle for which a single trip permit is being applied is registered in a state other than Kentucky, the vehicle shall be either:

(a) Apportioned registered to operate in Kentucky; or

(b) In compliance with KRS 281.752.

(4) An annual permit application or request shall in writing specify the following information relating to the motor vehicle:

(a) Year and make;

(b) Vehicle identification number;

(c) License plate number;

(d) The maximum weight for which it is registered;

(e) The state of apportioned registration, if not registered in Kentucky;

(f) Name and address of the motor carrier operating or the

owner of the towing vehicle; and

(g) Whether the motor carrier operating the towing vehicle is a for-hire or private carrier.

(6) If the towing vehicle issued an annual permit is registered in a state other than Kentucky, the vehicle shall be apportioned registered to operate in Kentucky.

(7) The application for an annual permit shall contain a certification by the applicant that he is aware of the safety requirements in the movement of overweight/overdimensional load and shall at all times comply with them.

(8) Special permits to allow the movement of motor vehicles with gross weights or gross dimensions in excess of the weights and dimensions specified by statutes and administrative regulations shall be issued by the Department of Vehicle Regulation, Division of Motor Carriers when, in the discretion of the department, this movement is necessary to provide transportation for specified cargo in the interest of the health, welfare and economy of the people.

(9) Each trip or annual permit issued shall be limited to designated portions of the state primary road system and stated periods of time.

(10) A separate permit shall be required for each vehicle involved in a movement.

(11) A permit shall not be issued for a divisible load which when reasonably divided, dismantled, disassembled or rearranged would no longer be overweight or overdimensional except for as provided by KRS 189.2715.

(12) An overweight permit shall not be issued to the following:

(a) A Kentucky licensed vehicle, for a gross weight exceeding that for which the truck is registered, unless registered for 80,000 pounds (36,287.36 kilograms);

(b) A tractor-trailer combination of less than five (5) axles;

(c) A vehicle not registered in Kentucky, which has not met one (1) of the following conditions:

1. Has been apportioned registered by another jurisdiction to operate in Kentucky at 80,000 pounds (36,287.36 kilograms); or

2. Has met the provisions of KRS 281.752;

(d) A vehicle whose axle weight would exceed the product of 700 pounds (317.51 kilograms) times the aggregate width in inches established from the manufacturer's stamped tire measurement for all tires on the axle; or

(e) A towing vehicle whose horsepower or braking capacity is not adequate to safely transport the overdimensional or overweight load.

(13) This administrative regulation shall not prohibit the permit issuing office from further restricting movements or denying a permit for any movement which may cause damage to property or which may be detrimental to public safety and convenience.

(14) An annual permit will not be issued if the vehicle is licensed with a limited or restricted registration such as identified in KRS 186.050(8) and (9) for Kentucky-based vehicles.

Section 3. Height. (1) All vehicles and load with a height in excess of thirteen and one-half (13.5) feet shall obtain a permit prior to movement.

(2) There is no set maximum height limit for the issuance of an overdimensional permit except as determined by underpasses and bridges.

Section 4. Weight. (1) Gross or axle overweight shall not be permitted:

(a) On combination units of less than five (5) axles;

(b) On a single unit except off-road equipment such as scraper, mobile cranes or other self-propelled units.

(2) Kentucky licensed vehicles shall not be permitted weights exceeding that for which licensed unless licensed for the maximum of 80,000 pounds.

(3) The weight on any single axle in any combination shall not exceed the product of 700 pounds times the aggregate width in inches established by the manufacturer's stamped tire measurement of all the tires on the axle, or the following axle or axle group weights, whichever is less:

(a) Single axle - 24,000 pounds;

(b) Tandem axle group if the combination vehicle has only five (5) axles total - 45,000 pounds (minimum of forty-two (42) inches spacing between the center of each of the axles of the tandem axle group);

(c) Tandem axle group if the combination vehicle has six (6) or more axles total - 48,000 pounds (minimum of forty-two (42) inches spacing between the center of each of the axles of the tandem axle group);

(d) Tridem axle group - 60,000 pounds (minimum of forty-two (42) inches spacing between the center of each of the axles of the tridem axle group);

(e) Five (5) axle combination units shall not exceed 96,000 pounds gross weight;

(f) Six (6) axle combination units shall not exceed 120,000 pounds gross weight.

(4) Since bridge capacity is the weight-controlling factor in most instances, these maximum weights shall not be permitted unless all bridges involved have sufficient capacity to accommodate the load.

Section 5. Responsibility of Permit Holder. Any damage to the highway, signs, guardrail or other public or private property caused by the transportation of the specialized equipment shall be the responsibility of the permit holder. The permit holder shall either repair all damage incurred or pay for the repair. A permit holder shall not cut, trim, remove or relocate any tree, shrub, guardrail, highway sign or other object on the highway right-of-way without the written approval of the chief district engineer having jurisdiction over the property involved. The applicant is responsible for providing accurate information and to review the permit prior to travel on Kentucky highways.

Section 6. Permit Availability. (1) The original of the annual permit shall be carried in the overweight or overdimensional vehicle at all times.

(2) It shall be presented, upon request, to any law enforcement officer or authorized personnel of the Department of Vehicle Regulation.

(3) An unauthenticated photocopy of the annual permit shall not be valid.

(4) The original annual or facsimile copy of a single trip permit shall be carried in the overweight or overdimensional vehicle or equipment at all times. It shall be presented, upon request, to any law enforcement officer or authorized personnel of the Department of Vehicle Regulation.

Section 7. Duplicate Permits. A duplicate permit which is needed to replace a lost, stolen or destroyed annual permit or to transfer the permit to another towing vehicle may be obtained from the Division of Motor Carriers by a payment of ten (10) dollars. Only one (1) transfer to another towing vehicle shall be allowed for each annual permit during its effective year. Any additional transfer of the annual permit requested shall be subject to the fees set forth in KRS Chapter 189.270.

Section 8. Travel Restrictions. (1) A single trip permit shall be valid for a period not to exceed ten (10) days. A time extension shall only be granted if the permit holder proves extenuating circumstances. An annual permit shall be valid for 365 days from date of issuance.

(2) The department may further prohibit movements in congested areas within the peak traffic hours. The additional restrictions shall be noted on the permit when issued.

(3) When a utility company is working in an emergency situation to restore utility service to an area otherwise experiencing an outage, the overdimensional restrictions of regulation shall not prohibit travel.

Section 9. Farm Implements. (1) A permit shall not be required to transport overdimensional farm implements, unless the movement occurs on an interstate highway, toll road, or fully controlled access highway in the following instances:

(a) From one (1) farm to another;

(b) From a farm to a repair shop or dealer; or

(c) From a repair shop or dealer to a farm.

(2) The movement of overdimensional farm implements shall comply with the safety requirements set forth in this administrative regulation.

(3) The following movements of farm implements shall only be made under the authority of an overdimensional permit:

(a) Manufacturer to dealer;

(b) Dealer to manufacturer;

(c) Dealer to dealer; or

(d) Moves on an interstate highway, toll road, or fully-controlled access highway.

(4) On an interstate highway, toll road, or fully-controlled access highway a self-propelled farm implement shall not be:

(a) Operated; or

(b) Issued a permit for movement.

(5) If the farm equipment to be transported exceeds twelve (12) feet in width, the farm equipment dealer who holds the annual permit shall, prior to the proposed move, scout the entire route proposed to be used for the movement of the overdimensional farm equipment.

(6) If there is any doubt of the adequacy of the highway to safely accommodate the overdimensional farm equipment, the dealer shall:

(a) Select a different route; or

(b) Contact the appropriate highway district office for clearance to move the equipment over that specific route.

(7) If the highway district office does not issue clearance for the use of a particular route, that route shall not be used.

Section 10. Escort Vehicle, Safety and Flag Requirements.

(1) Required escort vehicles shall accompany the overdimensional vehicle at a distance of 300 feet (91.44 meters) on open highways.

(2) This interval shall be shortened in cities or congested areas to protect other traffic.

(3) An escort vehicle's headlamps shall be lit at all times.

(4) On a two (2) lane highway, a vehicle and load with a width in excess of ten (10) feet, six (6) inches (three and two-tenths (3.2) meters) but twelve (12) feet (3.66 meters) or less shall have one (1) lead escort.

(5) On a two (2) lane highway, a vehicle and load with a width exceeding twelve (12) feet (3.66 meters) shall have one (1) lead escort and one (1) trail escort.

(6) On a two (2) lane highway, a vehicle and load traveling at speeds below the average driving speed of traffic on its route shall have one (1) trail escort.

(7) On a four (4) lane or wider highway, a vehicle and load shall have one (1) trail escort if:

(a) Its width exceeds twelve (12) feet (3.66 meters); or

(b) It does not maintain a speed of forty-five (45) miles per hour (72.42 kilometers per hour).

(8) On a two (2) lane highway, a vehicle and load with a length in excess of seventy-five (75) feet (22.86 meters) but not more than eighty-five (85) feet (25.91 meters) shall have one (1) lead escort. If the vehicle and load exceed eighty-five (85) feet (25.91 meters) on a two (2) lane highway, it shall have one (1) lead and one (1) trail escort.

(9) On a four (4) lane or wider highway, a vehicle and load with a length of 120 feet shall have one (1) trail escort. Over 120 feet shall have a front and rear escort.

(10) Red or orange fluorescent flags which are a minimum of eighteen (18) inches square (11,612.7 millimeters square) shall be displayed on each vehicle and load operating under the auspices of either an overlength or an overwidth permit.

(a) Vehicles operating overwidth shall display two (2) warning flags, one (1) on each side of the vehicle or load at its widest extremities.

(b) Vehicles operating overlength or with a rearend overhang shall display two (2) warning flags at the extreme rear of the vehicle or load. These flags shall be located to indicate maximum width of the rearend.

(11) All vehicles exceeding ten and one-half (10.5) feet three

and two-tenths (3.2) meters in width or having front overhang shall display two (2) warning signs. The warning signs shall:

(a) State in black letters on a yellow background, "OVERSIZE LOAD";

(b) Not be less than seven (7) feet (2.13 meters) long and eighteen (18) inches (0.46 meters) high;

(c) Have a brush stroke of one and four-tenths (1.4) inches (35.56 millimeters); and

(d) Be fastened at the front of the power unit and the rearend of the towed unit or at the rear of the load.

(12) If the utility equipment, pole, or pipe being transported exceeds fifty-five (55) feet (16.76 meters) in length, a front escort vehicle shall accompany the vehicle required to be permitted when transporting utility equipment, poles, or pipe if the front overhang exceeds ten (10) feet (3.05 meters). An amber strobe or flashing light shall be placed on the power unit of the towing vehicle and shall be in use any time the power unit is in operation.

(13)(a) The lighting devices and reflectors set forth in 49 CFR Part 393.11 for pole trailers and projecting loads shall be required.

(b) Each lamp or light shall be used at all times the vehicle is on or beside a highway.

(c) A front overhang shall not be allowed on a combination vehicle.

(14) As a special provision of the permit, the Department of Vehicle Regulation may require additional escort vehicles, lighting or warning flags.

(15) The provisions of this section do not apply if the vehicle or equipment is less than twelve (12) feet wide and the vehicle or equipment is used in part for off-road use, is not required to be registered or licensed, and is not transporting cargo.

Section 11. House or Building Permits. (1) Permits for movement of houses or other buildings shall be issued by the Department of Vehicle Regulation, Division of Motor Carriers.

(2) House moving permits may only be issued for movement during off-peak hours when other traffic will be least affected. The mover shall be required to furnish all escorts and flagmen required in the interest of public safety.

(3) No permits shall be issued for movement of any buildings on either toll roads or interstate highways if the width of the building exceeds twelve (12) feet.

(4) The Division of Motor Carriers shall contact the appropriate Department of Highways' district office for specific routing restrictions or local highway conditions prior to the issuance of the permit. Specific restrictions shall be identified on the permit. Deviation from the restrictions shall void the permit.

Section 12. Route Deviation. Prior approval shall be secured from the Division of Motor Carriers for any vehicle transporting a load under an annual or trip permit which deviates from the routes prescribed in the permit issued for the towing vehicle.

Section 13. Permit Required. Until a special written permit has been issued by the Department of Vehicle Regulation, Division of Motor Carriers under the provisions of this administrative regulation and KRS 189.270:

(1) An overweight/overdimensional load of a width greater than eight and one-half (8 1/2) feet shall not be towed on any highway listed in 603 KAR 5:070, Section 5(1);

(2) An overweight/overdimensional load with a width greater than eight (8) feet shall not be towed on any state-maintained highway not listed in 603 KAR 5:070, Section 5(1) except as provided in KRS 189.2225(3); and

(3) A manufactured home with a combined length of manufactured home and towing vehicle greater than 120 feet shall not be towed upon any Kentucky highway. The manufactured home shall not exceed eighty-five (85) feet in length. The manufactured home itself shall not exceed eighty (80) feet long.

Section 14. Annual Permits. (1) A permit shall not be issued for the movement of an overweight/overdimensional load in ex-

cess of sixteen (16) feet in width inclusive of the usual and ordinary overhang. Mirrors on the towing vehicle shall not be considered in making the determination of width.

(2) Prior to a movement of an overweight/overdimensional load under the provisions of an annual permit, the permit holder shall scout and evaluate the entire route proposed to be used for the movement of the overweight/overdimensional load. The evaluation shall include, but not be limited to, the following:

(a) Highway width;

(b) Shoulder width and surface type;

(c) Bridge width and posted weights;

(d) Curves;

(e) Turns to be negotiated;

(f) Construction zones;

(g) Obstructions;

(h) Access control;

(i) Traffic volume; and

(j) Other routes available that might be safer even if not as convenient.

(3) The permit holder shall use the results of the evaluation to determine the safest route available to transport the overweight/overdimensional load. Also the permit holder must determine if there would be any place on the proposed route which would be too narrow, have curves or turns too sharp or have other obstacles which would prevent the route from safely accommodating the move. The route selected by the permit holder shall be the safest available.

(4) If there is any doubt about the adequacy of the highway to safely accommodate the overweight/overdimensional load, the permit holder shall either:

(a) Select a different route; or

(b) Contact the appropriate highway district office for clearance to move that overweight/overdimensional load over that specific route.

(5) If the highway district office does not issue clearance for the use of a route whose adequacy is in doubt, that route shall not be used.

(6) An annual permit shall not be issued or used for the movement if the height of the combination load and towing vehicle exceeds thirteen and one-half (13.5) feet.

(7) Acceptance and use of the annual permit is the permit holder's acceptance of the liability associated with the move.

(8) Moves of overweight/overdimensional loads more than twelve (12) feet wide shall be limited to highways of four (4) or more lanes and to the shortest and best two (2) lane route designated by the Department of Vehicle Regulation, Division of Motor Carriers to be used to the unit's ultimate destination. The department shall deny movements on any routes deemed unsuitable for move.

(9) The issuance cost of a single and annual trip permit shall be established by KRS 189.270.

Section 15. Traffic Control. (1) If an overweight/overdimensional load while crossing a bridge would encroach on any other lane of traffic:

(a) All approaching traffic shall be stopped; and

(b) All trailing traffic shall be prevented from attempting to pass the overweight/overdimensional load until the load has cleared the bridge and has moved sufficiently to the right to safely allow following traffic to pass.

(2) An overweight/overdimensional load shall slow the movement of other traffic as little as possible. If traffic backs up either behind or in front of the load being moved, the escort vehicles and load shall exit the highway wherever there is sufficient space to do so.

Section 16. Permit Validity. (1) Permits shall be valid during:

(a) Daylight hours; and

(b) From Monday through Saturday.

(2) Travel shall not be permitted from noon of the day preceding a national holiday until daylight of the next permissible day.

(3) If the national holiday occurs on Saturday, Sunday or

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Monday the restricted period shall extend from noon of the preceding Friday to daylight of the following Tuesday.

(4) Permits used for the movement of overdimensional load more than fourteen (14) feet in width shall not be valid on Saturday or Sunday.

(5) In Jefferson, Fayette, Boone, Kenton and Campbell Counties permits used for the movement of overdimensional load fourteen (14) feet wide or less but more than twelve (12) feet wide shall only be valid between the hours of 9 a.m. and 3 p.m. and from 6 p.m. to one-half (1/2) hour after sundown, local prevailing time.

(6) Permits used for the movement of overdimensional load greater than fourteen (14) feet wide shall only be valid Monday through Friday between the hours of 9 a.m. and 3 p.m. and between 6 p.m. and one-half (1/2) hour after sundown local prevailing time.

(7) If satisfactory proof of an emergency is furnished the Division of Motor Carriers, moves may be authorized during the restricted hours.

(8) A permit shall not be valid if the combined gross weight of the towing vehicle and load exceeds the registered weight of the towing vehicle.

Section 17. Weather Conditions. Moves of overdimensional loads more than twelve (12) feet wide shall not be made on any highway:

(1) When wind velocity exceeds twenty-five (25) MPH; or

(2) When adverse weather conditions or road conditions would cause these moves to be dangerous.

Section 18. Brakes. (1) The number, type, size and design of brake assemblies required to assist the towing vehicle in controlling and stopping a manufactured home or boat shall be sufficient to assure that the maximum stopping distance from an initial velocity of twenty (20) miles per hour does not exceed forty (40) feet.

(2) Manufactured homes which are not equipped with brakes on all axles shall certify that the towing unit has sufficient brake assemblies to meet the braking distance specified in this section.

(3) This certification shall be in the form of a manufacturer's statement, documented technical data, or adequate engineering analysis or its equivalent, specifying that the braking distance requirement has been met.

(4) This certificate shall be carried in the towing unit at all times and shall be presented upon request, to any law enforcement officer.

Section 19. Annual Farm Equipment Permits. (1) An annual permit shall not be issued for the movement of the following:

(a) Self-propelled farm equipment which exceeds thirteen (13) feet eleven (11) inches in width;

(b) Motor vehicle transporting farm equipment if the vehicle or load exceeds thirteen (13) feet eleven (11) inches in width unless the transporter is a farm equipment dealer transporting farm equipment from his dealership to a farm or from a farm to his dealership;

(c) A motor vehicle transporting farm equipment which exceeds sixteen (16) feet in width;

(d) Farm equipment if the length of the trailer and towing unit combined exceeds ninety-five (95) feet in length;

(e) Farm equipment if the length of the straight truck and load exceeds fifty-five (55) feet in length; or

(f) A motor vehicle transporting farm equipment if the power unit does not have sufficient horsepower or braking capacity to safely handle the load being transported.

(2) A permit for the movement of farm equipment with a width greater than twelve (12) feet but which does not exceed sixteen (16) feet shall only be:

(a) Issued to a farm equipment dealer; and

(b) Valid when he is transporting the farm equipment from his dealership to a farm or from a farm to his dealership.

(3) A motor vehicle for which a permit was issued to a farm equipment dealer to transport farm equipment with a width

greater than thirteen (13) feet eleven (11) inches shall be:

(a) Titled, registered and licensed in Kentucky; or

(b) Apportioned licensed in another jurisdiction to operate in Kentucky.

Section 21. Denial of Permit Application. (1) The Transportation Cabinet, Division of Motor Carriers shall deny a permit application if the route includes any portion of the interstate highway system. Federal regulation 23 CFR 658.17 forbids the issuance of a permit for the movement on the interstate highway system of an overweight load which can be readily divided.

(2) The Transportation Cabinet shall have the right to deny or restrict a permit for the use of any route that may be detrimental to public safety or convenience. The Transportation Cabinet shall consider the following when making the determination on the application:

(a) The strength of all bridges and structures on the route;

(b) Traffic congestion on the route;

(c) Horizontal and vertical alignment of the route;

(d) The availability of alternate routes that afford greater safety;

(e) Urban development in residential and commercial areas on the route;

(f) The proximity of schools to the route; and

(g) Any other condition that would unduly compromise public safety and convenience.

Section 22. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) The Multistate Permit Agreement for Oversize and Overweight Vehicles, March 1999 edition.

(b) 23 CFR Part 658.17, Truck Size and Weight, Route Designations - Length, Width and Weight Limitations, revised December 22, 1998.

(c) 49 CFR Part 393.11, Lighting Devices, Reflectors, and Electrical Equipment, revised December 7, 1988.

(d) Application for Annual Overweight/Overdimensional Permit, TC 95-25, July 1998.

(2) All material incorporated by reference as a part of this administrative regulation may be obtained, viewed or copied at the Division of Motor Carriers, 3rd Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622. Its telephone number is (502) 564-4540. Its office hours are 8 a.m. to 4:30 p.m. eastern time on weekdays.

ED LOGSDON, Commissioner

JAMES C. CODELL, III, Secretary

TODD SHIPP, Office of General Counsel/Legislative Affairs

APPROVED BY AGENCY: October 25, 1999

FILED WITH LRC: October 27, 1999 at 10 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on December 21, 1999, at 10 a.m., local prevailing time in the Transportation Cabinet, 501 High Street, Frankfort, Kentucky 40622. Persons wishing to attend this meeting must notify this agency in writing by December 14, 1999. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability, for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by December 14, 1999. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will be accepted until close of business on December 21, 1999. Send written notification of intent to attend the public comments hearing or written comments on the administrative regulation to: Charles Harman, Staff Assistant, Transportation Cabinet, State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-

7650, FAX: (502)-564-5238.

REGULATORY IMPACT ANALYSIS

Contact person: Charles Harman

(1) Type and number of entities affected: All persons who transport overweight or overdimensional vehicles in Kentucky.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: A public comment hearing was not held on the Notice of Intent. No impact is expected on the cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: A public comment hearing was not held on the Notice of Intent. No impact is expected 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: None known.

2. Second and subsequent years: None known.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None known.

2. Continuing costs or savings: None known.

3. Additional factors increasing or decreasing costs: None known.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Road Fund.

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

(a) Geographical area in which administrative regulation will be implemented: A public comment hearing was not held on the Notice of Intent. No impact is expected on the economy.

(b) Kentucky: A public comment hearing was not held on the Notice of Intent. No impact is expected in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet has attempted to simplify this process by combining similar overweight and overdimensional regulations.

(8) Assessment of expected benefits: Continuing highway safety will continue to result in fewer accidents involving overweight/overdimensional vehicles.

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

(b) State whether a detrimental effect on environmental and public health would result if not implemented: None known.

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

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

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

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None known.

(10) Any additional information or comments: No

(11) TIERING: Is tiering applied? Yes. Tiering is applied by requiring increased safety efforts to overweight/overdimensional vehicles.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Board of Regents
(New Administrative Regulation)

739 KAR 1:010 Acquisition and disbursement of funds, accounting system - records and annual report.

RELATES TO: KRS 164A.560, 164A.565, 164A.570, 164A.575, 164A.610, 164A.620

STATUTORY AUTHORITY: KRS 164A.560, 164A.565

NECESSITY, FUNCTION, AND CONFORMITY: The governing boards of the public postsecondary institutions may elect to perform certain financial management functions by promulgating administrative regulations. This administrative regulation implements the provisions of KRS 164A.560 and 164A.565 at the Kentucky Community and Technical College System.

Section 1. The Kentucky Community and Technical College System Board of Regents elects to perform the financial functions in KRS 164A.560(2), related to the receipt, deposit, collection, retention, investment, disbursement, and accounting of all funds and the functions in KRS 164A.565 related to the installation of and accrual basis accounting system, other records and annual reports.

Section 2. The Kentucky Community and Technical College System Board of Regents elects to comply with KRS 164A.560(2)(b) to limit disbursements to the accounts and for the purposes for which the state appropriations, or other monies have been received through the enacting resolution of the institution's annual operating budget.

Section 3. The Kentucky Community and Technical College System Board of Regents shall use an accrual basis accounting system and fund structure that conforms with generally accepted accounting principles and procedures established for colleges and universities by the National Association of College and University Business Officers and the American Institute of Certified Public Accountants, and shall act to ensure further compliance with KRS 164.565(2), (3), (6), (7), and (8).

MARTHA C. JOHNSON, Chair

BEVERLY H. HAVERSTOCK, General Counsel

APPROVED BY AGENCY: November 9, 1999

FILED WITH LRC: November 10, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1999, at 10 a.m., in the First Floor Conference Room, Kentucky Community and Technical College System, Council Center Building, 2760 Research Park Drive, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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 this date, the hearing may be cancelled. 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: Beverly H. Haverstock, General Counsel, Kentucky Community and Technical College System, 2624 Research Park Drive, P.O. Box 14092, Lexington, Kentucky, 40512, telephone (606) 246-3138, Fax (606) 246-3171.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: 13 community colleges, 15 technical colleges and the system office of the Kentucky Community and Technical College System. Also, the business

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and personnel offices of the University of Kentucky and the Commonwealth.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no known costs or savings in the geographical areas affected by the implementation of this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no known costs or savings in the geographical areas affected by the implementation of this administrative regulation.

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

1. First year following implementation: Compliance, reporting, and paperwork requirements are the ordinary, necessary and usual requirements for the financial management operations of state colleges and universities regarding the acquisition of funds and accrual accounting systems.

2. Second and subsequent years: The same as the first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The costs of operating the financial management functions of the Kentucky Community and Technical College System are offset by the savings realized by bringing the functions in house as opposed to outsourcing the services.

2. Continuing costs or savings: The costs and savings will remain about the same on a continuing basis.

3. Additional factors increasing or decreasing costs: None are known at the present time, however, if there are new 2 year colleges added to the system or if there are new responsibilities added to administer in the future, there would be increased costs to the Kentucky Community and Technical College System.

(b) Reporting and paperwork requirements: Reporting, and paperwork requirements are the ordinary, necessary and usual requirements regarding the acquisition of funds and accrual accounting systems.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulations: The sources of revenue to perform the functions in this administrative regulation are unrestricted current funds.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected. The alternative, outsourcing these financial functions, was rejected because managing financial functions outside the system is not an efficient or effective way to operate the system.

(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 detrimental effect on environment and public health would result if this administrative regulation were not implemented.

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

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

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

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

flict.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not used because all colleges and financial units will receive the financial management services provided by the system.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM Board of Regents (New Administrative Regulation)

739 KAR 1:020 Delegation of financial management responsibility.

RELATES TO: KRS 164A.560, 164A.565, 164A.570, 164A.575, 164A.620

STATUTORY AUTHORITY: KRS 164A.560

NECESSITY, FUNCTION, AND CONFORMITY: The governing boards of the public postsecondary institutions may elect to perform and delegate the responsibility for certain financial management functions by promulgating administrative regulations. This administrative regulation implements the provisions of KRS 164A.560 at the Kentucky Community and Technical College System.

Section 1. The Kentucky Community and Technical College System Board of Regents elects to delegate responsibility for the financial management provisions of KRS 164A.560, 164A.565, 164A.575, and 164A.620 to the President of the Kentucky Community and Technical College System. In addition the Kentucky Community and Technical College System Board of Regents delegates to the president responsibility for submitting to the State Property and Buildings Commission information and requests for approval of any bond project approved by the Board of Regents.

MARTHA C. JOHNSON, Chair

BEVERLY H. HAVERSTOCK, General Counsel

APPROVED BY AGENCY: November 9, 1999

FILED WITH LRC: November 10, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1999, at 10 a.m., in the First Floor Conference Room, Kentucky Community and Technical College System, Council Center Building, 2760 Research Park Drive, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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 this date, the hearing may be cancelled. 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: Beverly H. Haverstock, General Counsel, Kentucky Community and Technical College System, 2624 Research Park Drive, P.O. Box 14092, Lexington, Kentucky, 40512, telephone (606) 246-3138, Fax (606) 246-3171.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: 13 community colleges, 15 technical colleges and the system office of the Kentucky Community and Technical College System. Also, the business and personnel offices of the University of Kentucky and the Commonwealth.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the

extent available from the public comments received: There are no known costs or savings in the geographical areas affected by the implementation of this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no known costs or savings in the geographical areas affected by the implementation of this administrative regulation.

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

1. First year following implementation: Compliance, reporting, and paperwork requirements are the ordinary, necessary and usual requirements for the financial management operations of state colleges and universities regarding the acquisition of funds and accrual accounting systems.

2. Second and subsequent years: The same as the first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The costs of operating the financial management functions of the Kentucky Community and Technical College System are offset by the savings realized by bringing the functions in house as opposed to outsourcing the services.

2. Continuing costs or savings: The costs and savings will remain about the same on a continuing basis.

3. Additional factors increasing or decreasing costs: None are known at the present time, however, if there are new 2 year colleges added to the system or if there are new responsibilities added to administer in the future, there would be increased costs to the Kentucky Community and Technical College System.

(b) Reporting and paperwork requirements: Reporting, and paperwork requirements are the ordinary, necessary and usual requirements regarding the acquisition of funds and accrual accounting systems.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulations: The sources of revenue to perform the functions in this administrative regulation are unrestricted current funds.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected. The alternative, outsourcing these financial functions, was rejected because managing financial functions outside the system is not an efficient or effective way to operate the system.

(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 detrimental effect on environment and public health would result if this administrative regulation were not implemented.

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

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not used because all colleges and financial units will receive the financial management services provided by the system.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Board of Regents
(New Administrative Regulation)

739 KAR 1:030 Annual audit.

RELATES TO: KRS 164A.570

STATUTORY AUTHORITY: KRS 164A.560

NECESSITY, FUNCTION, AND CONFORMITY: The governing boards of the public postsecondary institutions may elect to perform and delegate the responsibility for certain financial management functions by promulgating administrative regulations. This administrative regulation implements the provisions of KRS 164A.570 at the Kentucky Community and Technical College System.

Section 1. The Kentucky Community and Technical College System Board of Regents elects to engage a qualified firm of certified public accountants for the purpose of submitting an annual independent opinion concerning the internal accounting controls and compliance with the provisions of KRS 164A.560, 164A.565, 164A.575, and 164A.620. The engagement of the qualified firm, scope of the audit, and report of findings shall be in accordance with the provisions of KRS 164A.570.

MARTHA C. JOHNSON, Chair

BEVERLY H. HAVERSTOCK, General Counsel

APPROVED BY AGENCY: November 9, 1999

FILED WITH LRC: November 10, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1999, at 10 a.m., in the First Floor Conference Room, Kentucky Community and Technical College System, Council Center Building, 2760 Research Park Drive, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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 this date, the hearing may be cancelled. 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: Beverly H. Haverstock, General Counsel, Kentucky Community and Technical College System, 2624 Research Park Drive, P.O. Box 14092, Lexington, Kentucky, 40512, telephone (606) 246-3138, Fax (606) 246-3171.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: 13 community colleges, 15 technical colleges and the system office of the Kentucky Community and Technical College System. Also, the business and personnel offices of the University of Kentucky and the Commonwealth.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no known costs or savings in the geographical areas affected by the implementation of this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no known costs or savings in the geographical areas affected by the implementation of this administrative regulation.

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

1. First year following implementation: Compliance, reporting, and paperwork requirements are the ordinary, necessary and usual requirements for the financial management operations of state colleges and universities regarding the acquisition of funds and accrual accounting systems.

2. Second and subsequent years: The same as the first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The costs of operating the financial management functions of the Kentucky Community and Technical College System are offset by the savings realized by bringing the functions in house as opposed to outsourcing the services.

2. Continuing costs or savings: The costs and savings will remain about the same on a continuing basis.

3. Additional factors increasing or decreasing costs: None are known at the present time, however, if there are new 2 year colleges added to the system or if there are new responsibilities added to administer in the future, there would be increased costs to the Kentucky Community and Technical College System.

(b) Reporting and paperwork requirements: Reporting, and paperwork requirements are the ordinary, necessary and usual requirements regarding the acquisition of funds and accrual accounting systems.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulations: The sources of revenue to perform the functions in this administrative regulation are unrestricted current funds.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected. The alternative, outsourcing these financial functions, was rejected because managing financial functions outside the system is not an efficient or effective way to operate the system.

(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 detrimental effect on environment and public health would result if this administrative regulation were not implemented.

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

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not used because all colleges and financial units will receive the financial management services provided by the system.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Board of Regents
(New Administrative Regulation)

739 KAR 1:040 Purchase - inventories - sale of surplus property procedures.

RELATES TO: KRS 164A.575

STATUTORY AUTHORITY: KRS 164A.560

NECESSITY, FUNCTION, AND CONFORMITY: The governing boards of the public postsecondary institutions may elect to perform and delegate the responsibility for certain financial management functions by promulgating administrative regulations. This administrative regulation implements the provisions of KRS 164A.575 at the Kentucky Community and Technical College System.

Section 1. The Kentucky Community and Technical College System Board of Regents, under the provisions of KRS 164A.560, elects to lease and manage interests in real property, contractual services, rentals of all types, supplies, materials, equipment, printing, and services in accordance with Sections (1), (2), (3), (4), (5), (6), (7), (8), (10), (11), and (12) of KRS 164A.575 with the exception of the purchase of real property.

MARTHA C. JOHNSON, Chair

BEVERLY H. HAVERSTOCK, General Counsel

APPROVED BY AGENCY: November 9, 1999

FILED WITH LRC: November 10, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1999, at 10 a.m., in the First Floor Conference Room, Kentucky Community and Technical College System, Council Center Building, 2760 Research Park Drive, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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 this date, the hearing may be cancelled. 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: Beverly H. Haverstock, General Counsel, Kentucky Community and Technical College System, 2624 Research Park Drive, P.O. Box 14092, Lexington, Kentucky, 40512, telephone (606) 246-3138, Fax (606) 246-3171.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: 13 community colleges, 15 technical colleges and the system office of the Kentucky Community and Technical College System. Also, the business and personnel offices of the University of Kentucky and the Commonwealth.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no known costs or savings in the geographical areas affected by the implementation of this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no known costs or savings in the geographical areas affected by the implementation of this administrative regulation.

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

1. First year following implementation: Compliance, reporting, and paperwork requirements are the ordinary, necessary and usual requirements for the financial management operations of state colleges and universities regarding the acquisition of funds and accrual accounting systems.

2. Second and subsequent years: The same as the first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The costs of operating the financial manage-

ment functions of the Kentucky Community and Technical College System are offset by the savings realized by bringing the functions in house as opposed to outsourcing the services.

2. Continuing costs or savings: The costs and savings will remain about the same on a continuing basis.

3. Additional factors increasing or decreasing costs: None are known at the present time, however, if there are new 2 year colleges added to the system or if there are new responsibilities added to administer in the future, there would be increased costs to the Kentucky Community and Technical College System.

(b) Reporting and paperwork requirements: Reporting, and paperwork requirements are the ordinary, necessary and usual requirements regarding the acquisition of funds and accrual accounting systems.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulations: The sources of revenue to perform the functions in this administrative regulation are unrestricted current funds.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected. The alternative, outsourcing these financial functions, was rejected because managing financial functions outside the system is not an efficient or effective way to operate the system.

(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 detrimental effect on environment and public health would result if this administrative regulation were not implemented.

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

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not used because all colleges and financial units will receive the financial management services provided by the system.

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Board of Regents
(New Administrative Regulation)**

739 KAR 1:050. Affiliated corporations.

RELATES TO: KRS 164A.610

STATUTORY AUTHORITY: KRS 164A.560

NECESSITY, FUNCTION, AND CONFORMITY: The governing boards of the public postsecondary institutions may elect to perform and delegate the responsibility for certain financial management functions by promulgating administrative regulations. This administrative regulation implements the provisions of KRS 164A.610 at the Kentucky Community and Technical College System.

Section 1. The Kentucky Community and Technical College System Board of Regents, under the provisions of KRS

164A.560, elects to organize and operate one (1) or more affiliated corporations in accordance with KRS 164A.610.

MARTHA C. JOHNSON, Chair

BEVERLY H. HAVERSTOCK, General Counsel

APPROVED BY AGENCY: November 9, 1999

FILED WITH LRC: November 10, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1999, at 10 a.m., in the First Floor Conference Room, Kentucky Community and Technical College System, Council Center Building, 2760 Research Park Drive, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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 this date, the hearing may be cancelled. 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.

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REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: 13 community colleges, 15 technical colleges and the system office of the Kentucky Community and Technical College System. Also, the business and personnel offices of the University of Kentucky and the Commonwealth.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no known costs or savings in the geographical areas affected by the implementation of this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no known costs or savings in the geographical areas affected by the implementation of this administrative regulation.

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

1. First year following implementation: Compliance, reporting, and paperwork requirements are the ordinary, necessary and usual requirements for the financial management operations of state colleges and universities regarding the acquisition of funds and accrual accounting systems.

2. Second and subsequent years: The same as the first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The costs of operating the financial management functions, including affiliated corporations, of the Kentucky Community and Technical College System are offset by the savings realized by bringing the functions in house as opposed to outsourcing the services.

2. Continuing costs or savings: The costs and savings will remain about the same on a continuing basis.

3. Additional factors increasing or decreasing costs: None are known at the present time, however, if there are new 2 year colleges added to the system or if there are new responsibilities added to administer in the future, there would be increased costs to the Kentucky Community and Technical College System.

(b) Reporting and paperwork requirements: Reporting, and paperwork requirements are the ordinary, necessary and usual

requirements regarding the acquisition of funds and accrual accounting systems.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulations: The sources of revenue to perform the functions in this administrative regulation are unrestricted current funds.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected. The alternative, outsourcing these financial functions, was rejected because managing financial functions outside the system is not an efficient or effective way to operate the system.

(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 detrimental effect on environment and public health would result if this administrative regulation were not implemented.

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

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is Tiering applied? Tiering is not used because all colleges and financial units will receive the financial management services provided by the system.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(New Administrative Regulation)

806 KAR 17:205. High-cost condition codes and severity questionnaire.

RELATES TO: KRS 304.17A-005(19)

STATUTORY AUTHORITY: KRS 304.17A-005(19)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.17A-005(19) requires the commissioner to establish uniform underwriting standards and a score or rating above which a condition is considered to be high-cost. To identify a high-cost condition of an individual who is a Guaranteed Acceptance Program qualified individual, the commissioner is required to use the most recent version of the "International Classification of Diseases". This administrative regulation establishes the high-cost condition codes in accordance with KRS 304.17A-005(19) and the method for scoring the severity of a high-cost condition.

Section 1. Definitions. (1) "Certified medical statement" means:

(a) A medical record signed by a health care professional; or

(b) A written statement from a healthcare professional.

(2) "Commissioner" is defined by KRS 304.1-050.

(3) "Guaranteed Acceptance Program" or "GAP" is defined by KRS 304.17A-005(14).

(4) "GAP participant" means a GAP qualified individual defined in KRS 304.17A-005(15) who has been issued a GAP health benefit plan.

(5) "Guaranteed Acceptance Program participating insurer" is defined by KRS 304.17A-005(12).

(6) "Guaranteed Acceptance Program qualified individual" is defined by KRS 304.17A-005(15).

(7) "Healthcare professional" means a healthcare practitioner who:

(a) Is licensed to diagnose and treat a high-cost condition in the state in which the healthcare practitioner is practicing; and

(b) Has within his statutory scope of practice the authority to diagnose and treat a high-cost condition.

(8) "High-cost condition" is defined by KRS 304.17A-005(19)(a).

(9) "High-cost condition code" means a disease or procedure code identified in the ICD-9-CM that represents a high-cost condition.

(10) "High-cost Condition Severity Questionnaire" means a questionnaire that is based upon national medical insurance underwriting guidelines and which, upon completion and proper scoring, is a determinant of whether an individual has a high-cost condition of such severity as to qualify as a GAP participant.

(11) "ICD-9-CM" means the International Classification of Diseases, Ninth Revision, Clinical Modification.

Section 2. High-cost Condition Codes. (1) A GAP participating insurer shall issue a health benefit plan to a GAP qualified individual if the individual:

(a) Completes an application for a health benefit plan with a GAP participating insurer;

(b) Is identified as having a high-cost condition as evidenced by the following:

1. A certified medical statement; and

2. A score of 200 or more points on a completed and scored High-Cost Condition Severity Questionnaire that shall be administered by a GAP participating insurer. The High-Cost Condition Severity Questionnaire is incorporated by reference into this administrative regulation; and

(c) Has paid the applicable premium for a health benefit plan.

(2) A high-cost condition code shall be the code that is identified in Appendix A to this administrative regulation and that relates to a specified high-cost condition listed in KRS 304.17A-005(19)(c).

(3) A person may annually submit a recommendation for modification of the list of high-cost condition codes as established in Appendix A of this administrative regulation.

(4) A recommendation for modification of the list of high-cost condition codes made pursuant to subsection (3) of this section, shall:

(a) Be in writing;

(b) Be received by the commissioner on or before the first business day of March of each year; and

(c) Contain the following information:

1. A detailed reason for the requested modification; and

2. Credible evidence to support the necessity of the requested modification.

Section 3. High-Cost Condition Severity Questionnaire. Upon written approval by the commissioner, a GAP participating insurer may utilize its application for health benefit plan coverage in lieu of Part 1 of the High-Cost Condition Severity Questionnaire.

Section 4. Incorporated by Reference. (1) "High-Cost Condition Severity Questionnaire" (1999 Edition), Department of Insurance, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

APPENDIX A

Acquired immune deficiency syndrome: 042; 079.53;

Angina pectoris: 411.1; 413.0; 413.1; 413.9;

Ascites: 789.5;

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Chemical dependency: 304.00; 304.01; 304.02; 304.03; 304.10; 304.11; 304.12; 304.13; 304.20; 304.21; 304.22; 304.23; 304.30; 304.31; 304.32; 304.33; 304.40; 304.41; 304.42; 304.43; 304.50; 304.51; 304.52; 304.53; 304.60; 304.61; 304.62; 304.63; 304.70; 304.71; 304.72; 304.73; 304.80; 304.81; 304.82; 304.83; 304.90; 304.91; 304.92; 304.93;

Cirrhosis of the liver: 571.0; 571.1; 571.2; 571.3; 571.5; 571.6;

Coronary insufficiency: 410.00; 410.01; 410.02; 410.10; 410.11; 410.12; 410.20; 410.21; 410.22; 410.30; 410.31; 410.32; 410.40; 410.41; 410.42; 410.50; 410.51; 410.52; 410.60; 410.61; 410.62; 410.70; 410.71; 410.72; 410.80; 410.81; 410.82; 410.90; 410.91; 410.92; 411.0; 411.1; 411.81; 411.89; 412; 414.00; 414.01; 414.02; 414.03; 414.04; 414.05; 414.8; 414.9; 414.10; 414.11; 414.19;

Coronary occlusion: 410.00; 410.01; 410.02; 410.10; 410.11; 410.12; 410.20; 410.21; 410.22; 410.30; 410.31; 410.32; 410.40; 410.41; 410.42; 410.50; 410.51; 410.52; 410.60; 410.61; 410.62; 410.70; 410.71; 410.72; 410.80; 410.81; 410.82; 410.90; 410.91; 410.92; 411.81; 411.89;

Cystic fibrosis: 277.00; 277.01;

Friedreich's ataxia: 334.0;

Hemophilia: 286.0; 286.1; 286.2; 286.3; 286.4;

Hodgkin's disease: V10.72; 201.00; 201.01; 201.02; 201.03; 201.04; 201.05; 201.06; 201.07; 201.08; 201.10; 201.11; 201.12; 201.13; 201.14; 201.15; 201.16; 201.17; 201.18; 201.20; 201.21; 201.22; 201.23; 201.24; 201.25; 201.26; 201.27; 201.28; 201.40; 201.41; 201.42; 201.43; 201.44; 201.45; 201.46; 201.47; 201.48; 201.50; 201.51; 201.52; 201.53; 201.54; 201.55; 201.56; 201.57; 201.58; 201.60; 201.61; 201.62; 201.63; 201.64; 201.65; 201.66; 201.67; 201.68; 201.70; 201.71; 201.72; 201.73; 201.74; 201.75; 201.76; 201.77; 201.78; 201.90; 201.91; 201.92; 201.93; 201.94; 201.95; 201.96; 201.97; 201.98;

Huntington's chorea: 333.4;

Juvenile diabetes: 250.01; 250.03; 250.11; 250.13; 250.21; 250.23; 250.31; 250.33; 250.41; 250.43; 250.51; 250.53; 250.61; 250.63; 250.71; 250.73; 250.81; 250.83; 250.91; 250.93;

Leukemia: V10.61; V10.62; V10.63; V10.69; 202.40; 202.41; 202.42; 202.43; 202.44; 202.45; 202.46; 202.47; 202.48; 203.10; 203.11; 204.00; 204.01; 204.10; 204.11; 204.20; 204.21; 204.80; 204.81; 204.90; 204.91; 205.00; 205.01; 205.10; 205.11; 205.20; 205.21; 205.30; 205.31; 205.80; 205.81; 205.90; 205.91; 206.00; 206.01; 206.10; 206.11; 206.20; 206.21; 206.80; 206.81; 206.90; 206.91; 207.00; 207.01; 207.10; 207.11; 207.20; 207.21; 207.80; 207.81; 208.00; 208.01; 208.10; 208.11; 208.20; 208.21; 208.80; 208.81; 208.90; 208.91;

Metastatic cancer: 196.0; 196.1; 196.2; 196.3; 196.5; 196.6; 196.8; 196.9; 197.0; 197.1; 197.2; 197.3; 197.4; 197.5; 197.6; 197.7; 197.8; 198.0; 198.1; 198.2; 198.3; 198.4; 198.5; 198.6; 198.7; 198.81; 198.82; 198.89; 199.0; 199.1;

Motor or sensory aphasia: 315.31; 315.32; 784.3;

Multiple sclerosis: 340;

Muscular dystrophy: 359.0; 359.1;

Myasthenia gravis: 358.0;

Myotonia: 359.2;

Open heart surgery: disease codes- V15.1; V42.1; V42.2; V43.2; V43.3; V45.81;

Open heart surgery: procedure codes - 33.6; 35.10; 35.11; 35.12; 35.13; 35.14; 35.20; 35.21; 35.22; 35.23; 35.24; 35.25; 35.26; 35.27; 35.28; 35.31; 35.32; 35.33; 35.34; 35.35; 35.39; 35.42; 35.50; 35.51; 35.53; 35.54; 35.60; 35.61; 35.62; 35.63; 35.70; 35.71; 35.72; 35.73; 35.81; 35.82; 35.83; 35.84; 35.91; 35.92; 35.93; 35.94; 35.95; 35.98; 35.99; 36.03; 36.10; 36.11; 36.12; 36.13; 36.14; 36.15; 36.16; 36.17; 36.19; 36.2; 36.3; 36.91; 36.99; 37.10; 37.11; 37.31; 37.32; 37.33; 37.35; 37.4; 37.5; 37.6; 37.61; 37.62; 38.14;

Parkinson's disease: 332.0; 332.1;

Polycystic kidney: 593.2; 753.10; 753.12; 753.13; 753.16; 753.17; 753.19;

Psychotic disorder: 291.0; 291.81; 291.89; 292.0; 292.2; 292.9; 292.11; 292.12; 292.81; 292.82; 292.83; 292.84; 292.89; 293.0; 293.83; 293.89; 293.9; 294.0; 294.1; 294.8; 294.9; 295.00; 295.01; 295.02; 295.03; 295.04; 295.05; 295.10; 295.11; 295.12;

295.13; 295.14; 295.15; 295.20; 295.21; 295.22; 295.23; 295.24; 295.25; 295.30; 295.31; 295.32; 295.33; 295.34; 295.35; 295.40; 295.41; 295.42; 295.43; 295.44; 295.45; 295.50; 295.51; 295.52; 295.53; 295.54; 295.55; 295.60; 295.61; 295.62; 295.63; 295.64; 295.65; 295.70; 295.71; 295.72; 295.73; 295.74; 295.75; 295.80; 295.81; 295.82; 295.83; 295.84; 295.85; 295.90; 295.91; 295.92; 295.93; 295.94; 295.95; 296.00; 296.01; 296.02; 296.03; 296.04; 296.05; 296.06; 296.10; 296.11; 296.12; 296.13; 296.14; 296.15; 285.16; 296.20; 296.21; 296.22; 296.23; 296.24; 296.25; 296.26; 296.30; 296.31; 296.32; 296.33; 296.34; 296.35; 296.36; 296.40; 296.41; 296.42; 296.43; 296.44; 296.45; 296.46; 296.50; 296.51; 296.52; 296.53; 296.54; 296.55; 296.56; 296.60; 296.61; 296.62; 296.63; 296.64; 296.65; 296.66; 296.7; 296.80; 296.81; 296.82; 296.89; 296.90; 296.99; 297.1; 297.9; 298.0; 298.1; 298.2; 298.3; 298.4; 298.8; 298.9; 299.00; 299.01; 299.10; 299.11; 299.80; 299.81; 299.90; 299.91;

Quadruplegia: 343.2; 344.00; 344.01; 344.02; 344.03; 344.04; 344.09;

Stroke: 436; 997.02;

Syringomyelia: 336.0; and

Wilson's disease: 275.1.

GALE PEARCE, General Counsel

GEORGE NICHOLS III, Commissioner

RONALD B. MCCLOUD, Secretary

APPROVED BY AGENCY: October 25, 1999

FILED WITH LRC: November 9, 1999 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1999, at 10 a.m. at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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: Charlette K. Hummel, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, PH: (502) 564-6032, FAX: (502) 564-1456.

REGULATORY IMPACT ANALYSIS

Contact person: Sharron S. Burton

(1) Type and number of entities affected: This administrative regulation affects the approximately 1900 insurers and health maintenance organizations authorized to write health insurance in the state of Kentucky. In addition, this administrative regulation affects every individual who, within the previous 3 years has been diagnosed with or treated for a high-cost condition or has had benefits paid under a health benefit plan for a high-cost condition. This administrative regulation will also affect each individual who may, in the future, be diagnosed with a high-cost condition. The number of individuals who have been diagnosed or who will be diagnosed with a high-cost condition cannot be determined by the department.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

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

(c) Compliance, reporting, and paperwork requirements, in-

cluding factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: This administrative regulation requires a Guaranteed Acceptance Program ("GAP") participating insurer to issue coverage to each individual who has been diagnosed or certified by a health care professional as having a high-cost condition that corresponds to the ICD-9-CM codes and severity levels identified in the administrative regulation.

2. Second and subsequent years: GAP participating insurers will be required to issue coverage to each individual who has been diagnosed or certified by a health care professional as having a high-cost condition that corresponds to the ICD-9-CM codes and severity levels identified in this administrative regulation for the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department's primary responsibility with respect to this administrative regulation will be the enforcement of its provisions. The department may incur some expenses for information systems development and administering the GAP Program.

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: The department does not anticipate that there will be any effect on state and local revenues caused by the implementation of this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget for the department of Insurance will be used to implement and enforce this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: The department has received no public comments regarding this issue.

(b) Kentucky: The department has received no public comments regarding this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 304.17A-005(19) requires the commissioner to establish, by administrative regulation, uniform underwriting standards and a score or rating above which a condition is considered to be high-cost by using codes in the most recent version of the "International Classification of Diseases," and a national underwriting guide questionnaire. For this reason, no other 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: This administrative regulation will enable GAP participating insurers to identify those medical conditions that are considered to be high-cost by using the established severity codes and the high-cost condition severity questionnaire.

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

(c) If detrimental effect would result, explain detrimental effect: If this administrative regulation were not implemented there would be no severity rating for high-cost conditions. Absent the severity rating, there is a potential that an individual with a high-cost condition may not be eligible for GAP participation, and thus unable to afford health insurance.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering does not apply since

this administrative regulation applies to all GAP participating insurers issuing health benefit plans in Kentucky. With respect to individuals, tiering does not apply since this administrative regulation applies to every individual who, within the previous 3 years, has been diagnosed with or treated for a high-cost condition, or has had benefits paid under a health benefit plan for a high-cost condition or who may, in the future, be diagnosed with a high-cost condition.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Adult and Child Health
(New Administrative Regulation)

902 KAR 13:140. Emergency medical services educational institutions and emergency medical services testing agencies.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)

STATUTORY AUTHORITY: KRS 194A.030, 211.220, 211.964

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.964 requires the Cabinet for Health Services to promulgate administrative regulations relating to emergency medical technicians (EMTs). The function of this administrative regulation is to establish requirements for an organization to be approved by the cabinet as an emergency medical services (EMS) educational institution or an EMS testing agency.

Section 1. EMS Educational Institution Requirements. (1) A public agency or private corporation that has been approved by the cabinet to establish an EMS educational institution shall be authorized to conduct a training program which shall meet requirements for initial EMT certification.

(2) An applicant shall:

(a) File, with the cabinet, a letter of request for approval to establish an EMS educational institution;

(b) Be located within Kentucky or a contiguous state;

(c) Submit to the cabinet:

1. The estimated number of EMT courses planned for each academic year from July 1 until June 30 of the following year;

2. The tentative starting and ending dates of each course; and

3. A copy of the EMT syllabus for courses to be taught. The syllabus shall be resubmitted to the cabinet if it is revised.

(d) Assign, in the following manner, a seven (7) digit number to each EMT course conducted:

1. The first three (3) digits shall correspond to the EMS educational institution approval number assigned by the cabinet;

2. The fourth and fifth digits shall correspond to the academic year. For example, if a course is taught between July 1, 1998 through June 30, 1999, the academic year number assigned shall be ninety-nine (99); and

3. The sixth and seventh digits shall correspond to the sequential number of courses begun between July 1 and June 30 of each year.

(e) Employ or have available the following key administrative personnel and faculty:

1. A chief administrative officer who shall be responsible for the overall management of an EMS educational institution or the organization of which the EMS educational institution is affiliated;

2. A program coordinator who shall:

a. Be responsible for the planning, administration and oversight of the EMS educational programs;

b. Randomly monitor the activities of the faculty and students during the didactic, skills and clinical or field rotation phases of the educational program;

c. Obtain and maintain records required by the educational institution or the cabinet related to the conduct of prehospital caregiver courses; and

d. Serve as a member of the course faculty, if he holds credentials in accordance with subparagraphs 3 and 4 of this para-

graph, and subsections (3) and (4) of this section. If a program coordinator meets the requirements of subsection (4) of this section, he may also function as the lead instructor.

3. A lead instructor who shall:

a. If teaching an EMT-B instructor candidate United States (U.S.) Department of Transportation (DOT) EMT-B instructor method of instruction (MOI) educational course for a cabinet-approved EMS educational institution, be a:

(i) Kentucky certified EMT-B instructor who has been certified for at least three (3) years and who has taught at least two (2) complete EMT-B training courses;

(ii) Kentucky appointed EMT instructor trainer; or

(iii) Person who holds a Kentucky current EMT-B or EMT-paramedic certification in addition to holding a bachelor's degree in education or a valid Kentucky teaching certificate.

b. If teaching an EMT-B course, be a Kentucky certified EMT-B instructor; or

c. If teaching an EMT-first responder course, be a Kentucky certified EMT-B instructor or EMT-first responder Instructor.

4. An assistant instructor who shall be:

a. Minimally certified at the level for which the course is being conducted;

b. A certified EMT-B instructor for an EMT-B course;

c. A certified EMT-B instructor or an EMT-first responder instructor for an EMT-first responder course; or

d. An adjunct faculty member who shall provide documentation to an EMS educational institution that he has actively lectured on or performed, within the most recent five (5) years, the skills or topic being taught; and

(f) Meet the requirements of the EMS educational institution memorandum of agreement.

(3) The lead instructor or an alternate instructor who meets the requirements of subsection (2)(e)4 of this section shall be present at each lecture and practical skills classroom session.

(4) A person who is certified at or above the level of the course being taught may serve as an assistant instructor during a practical skills lesson.

(5) There shall be present during a scheduled practical skills lesson:

(a) At least one (1) lead instructor for the first ten (10) students; and

(b) Another assistant instructor for each one (1) to ten (10) additional students.

(6) An EMS educational institution shall assure that physical resources as required by the curriculum, such as classrooms, skill practice areas, textbooks, instructional aids, equipment, and supplies are:

(a) In good working condition; and

(b) Adequate in number for the number of students enrolled in the program to have sufficient opportunity for skills practice.

(7) An EMS educational institution shall develop and make available to a prospective student a clearly defined admission policy and procedure which shall include specific requirements for admission such as:

(a) Academic requirements;

(b) Health related requirements; and

(c) Admission prerequisites.

(8) An EMS educational institution shall disclose to an applicant for admission:

(a) Accurate information regarding program requirements;

(b) Tuition and fees including remediation fees or other costs associated with the training program;

(c) A descriptive synopsis of the curriculum for each type of course taught;

(d) Course educational objectives;

(e) Classroom lecture and skill practice schedules;

(f) Clinical or field rotation locations and tentative schedules;

(g) Cabinet certification requirements for the level of training being offered; and

(h) The disciplinary actions described in 902 KAR 13:090 that may be grounds for denial, revocation, suspension, probation, or restriction of EMT certification.

(9) An EMS educational institution shall establish and main-

tain written policies to ensure that:

(a) Announcements and advertising shall accurately reflect the courses offered;

(b) A procedure shall be in place that shall allow complaints and grievances to be processed that are filed by:

1. An applicant;

2. A student; or

3. A faculty member.

(c) There shall be a process for a student to withdraw from a course, and, if allowed, obtain a refund of tuition or fees paid;

(d) The health and safety of a patient, a student or a faculty member shall be protected while participating in educational activities;

(e) A student or a faculty member shall maintain proper personal and professional conduct during classroom and clinical or field rotation activities;

(f) Continuing education requirements for faculty members shall be established and maintained;

(g) Passing requirements for each course offered shall be established and maintained; and

(h) Examination policies are established and maintained.

(10) A student, while participating in a clinical or field rotation shall be clearly identified by name and student status by the use of:

(a) A nameplate;

(b) A uniform; or

(c) Other apparent means.

(11) An EMS educational institution shall maintain, for at least five (5) years beyond the course completion date of the last classroom session of each EMT course:

(a) The student attendance for each course taught including:

1. Lectures;

2. Practical skill lessons; and

3. Clinical or field rotation;

(b) A master copy of written examinations and answer keys administered for each course taught;

(c) A master copy of practical skill examination forms used during each course taught;

(d) A master copy of the current course syllabus for the courses taught;

(e) Faculty records on a participating faculty member that shall include:

1. A complete resume; and

2. A listing of academic preparation, clinical experience, current certifications and licenses;

(f) Health records that may be required by an EMS educational institution or through a written clinical affiliation agreement;

(g) A record of disciplinary action taken against a student or a faculty member. This shall include all responses and actions taken as a result of a complaint or grievance;

(h) Remediation activity for each student enrolled. This shall include how the specific remediation was accomplished and if the process was successful; and

(i) A master file of the objectives and competencies achieved by a student. The file shall be reviewed annually by the EMS educational institution and updated as necessary.

(12) An EMS educational institution shall:

(a) Pay the fees required by 902 KAR 13:130, Section 1(2);

(b) Within two (2) weeks following the EMT course completion date, submit to the cabinet a written summary report that includes the:

1. Name of the cabinet-approved EMS educational institution;

2. Course number;

3. Name of the lead instructor and qualifications, including certification number and the lead instructor's certification expiration date when hired, as well as names and similar qualifications of instructor assistants and adjunct faculty for the EMT course;

4. City in which the course is located;

5. Starting and ending dates, the ending date being the last classroom session;

6. Listing of the names and Social Security numbers of enrolled students for the EMT course;

7. Identifier for the students identified in subparagraph 6 of

this paragraph who successfully passed the EMT training course requirements, with the provision of accompanying completed applications for Kentucky certification and required fees;

8. Identifier for the students identified in subparagraph 6 of this paragraph who continued throughout the course but were unsuccessful in passing the EMT training course requirements, with an identifier for ones yet trying to finish clinical or field rotations; and

9. An identifier for the students identified in subparagraph 6 of this paragraph who did not continue throughout and dropped from the EMT course.

(c) Submit to the cabinet by September 1 of each odd-numbered year a biennial written summary report covering the two (2) previous academic years' data from July 1 of the first year through June 30 of the second year. The biennial written report shall include the data regarding courses conducted within the two (2) previous academic years. A biennial report shall contain, for each course taught the:

1. Course number;
2. Name of the lead instructor;
3. Course location;
4. Starting and ending dates;
5. Number of students enrolled;
6. Number of students who successfully passed the EMT training course requirements;

7. Number of students who continued throughout the course but were unsuccessful in passing the EMT training course requirements; and

8. Number of students who did not continue throughout and dropped from the EMT course.

(13) If courses were not taught during the last reporting period an EMS educational institution shall file a biennial report with the cabinet stating that no courses were taught during the reporting period.

(14) Unless approval is revoked by the cabinet pursuant to Section 3 of this administrative regulation, the approval of an EMS educational institution shall be valid for a period of five (5) years.

(15) At the end of a five (5) year approval period, an EMS educational institution may reapply for approval for an additional five (5) year period.

Section 2. Probation of an EMS Educational Institution Program. (1) The cabinet shall place an EMS educational institution program on probationary status if:

(a) During a twenty-four (24) month period, or after at least two (2) consecutive courses have been taught at the same level, more than twenty-five (25) percent of the course graduates who attempt to complete the certification examination process, fail to successfully pass the certification examination and associated certification process within twenty-four (24) months of the course completion date; or

(b) An inspection or investigation by the cabinet determines that an EMS educational institution has not met the requirements of:

1. Section 1 of this administrative regulation; or
2. The EMS educational institution memorandum of agreement.

(2) If the cabinet intends to place a program on probationary status, it shall notify the chief administrative officer of an EMS educational institution by certified mail.

(3) A program that is placed on probationary status shall not begin a new course within that same level of training during the term of the probationary period.

(4) Upon notification by the cabinet that a program within an EMS educational institution has been placed on probationary status, the chief administrative officer shall conduct an evaluation of the programs offered by the EMS educational institution. The evaluation shall include a review of:

(a) The qualifications, responsibilities, and performance of the program coordinator, medical director, lead instructor, and other course faculty;

(b) Student admission practices;

(c) Syllabi and objectives of courses offered;

(d) Graduation requirements for cabinet approved courses offered by the EMS educational institution;

(e) Faculty classroom involvement;

(f) Clinical or field rotation requirements and activities;

(g) Textbooks, equipment, supplies and ancillary learning aids used by the EMS educational institution during an approved course; and

(h) The ability of the EMS educational institution to meet the stated goals and objectives of the program.

(5) Within sixty (60) days of being placed on probationary status, the chief administrative officer shall provide a written report to the cabinet. The report shall include:

(a) Problems identified during the review process conducted pursuant to subsection (4) of this section; and

(b) A detailed plan for corrective action, including a time frame for the completion of the plan.

(6) After review of the written plan of correction, the cabinet may:

(a) Approve the entire plan;

(b) Approve a portion of the plan and require additional or alternative corrective action; or

(c) Disapprove the plan and restrict or revoke the approval of the EMS educational institution.

(7) Within thirty (30) days of receiving a written plan of correction, the cabinet shall notify the chief administrative officer, by certified mail, of the planned action of the cabinet.

(8) The cabinet shall monitor compliance and may conduct an investigation to determine if a requirement established for corrective action has been met.

Section 3. Denial, Revocation, Suspension, and Restriction of Approval of an EMS Educational Institution. (1) The cabinet may deny, revoke, suspend, or restrict the approval of an EMS educational institution if an EMS educational institution:

(a) Is on probationary status and fails to meet the corrective action required by the cabinet;

(b) Faculty member or staff member reproduces or reconstructs, or attempts to reproduce or reconstruct, a portion of a training or certification examination for the purpose of assisting another to cheat on the examination;

(c) Faculty member or staff member disseminates information for purposes of reproduction or reconstruction of a portion of a training or certification examination in order to assist another to cheat on the examination;

(d) Faculty member or staff member cheats, or assists another to cheat, on an examination for training or certification;

(e) Falsifies a record of training or continuing education;

(f) Fails to pay a fee or issues a check for a fee required by 902 KAR 13:090 on an invalid account or an account that does not have sufficient funds;

(g) Fails to file a written biennial report as required by Section 1(12)(c) or (13) of this administrative regulation; or

(h) Fails to meet the requirements of the EMS Educational Institution Memorandum of Agreement.

(2) If the approval of an EMS educational institution is denied, restricted, suspended or revoked by the cabinet, the EMS educational institution shall be provided an opportunity to appeal the decision in accordance with the provisions of 902 KAR 1:400.

Section 4. EMS Testing Agencies. (1) An EMS educational institution, public agency, or private corporation may be approved to administer the practical skills and written certification examinations if they:

(a) File, with the cabinet, a letter of request for approval to establish an EMS testing agency; and

(b) Meet the requirements of the EMS testing agency memorandum of agreement.

(2) A person shall not proctor for the written portion nor an examiner or an examination representative for the practical skills portion of a Kentucky EMT certification examination for an EMT candidate if he:

(a) Served as a key administrative personnel of an EMT-basic

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course for which candidates are being tested as described in Section 1(2)(e) of this administrative regulation;

- (b) Supervises or is supervised by the candidate;
- (c) Is a family member of the candidate; or
- (d) Has a conflict of interest that could potentially bias the examiner or examination representative of the practical skills portion or the proctor of the written portion of the Kentucky EMT certification examination toward or against the candidate.

(3) The EMS testing agency shall:

(a) Be responsible for securing examiners for the practical skill portion of the Kentucky EMT certification examination who shall:

- 1. Be currently certified or licensed to perform the skills at or above the level of training of the candidate being tested;
- 2. Document that they have had a minimum of two (2) years prehospital patient care experience prior to serving as an examiner; and
- 3. Have completed a cabinet approved practical skills examiner training program conducted by the cabinet or personnel of a cabinet approved testing agency;

(b) Verify the eligibility of a candidate applying to initially test or retest for the Kentucky EMT-B practical skills or written portion of the Kentucky EMT certification examination. Eligibility for subsequent testing or retesting shall follow the guidelines of the:

- 1. "1994 National Registry of EMT-Basic Practical Examination Users Guide" for EMT Basics, incorporated by reference in 902 KAR 13:050;
- 2. "1995 National Registry of EMT First Responder Practical Examination Users Guide", for EMT First Responders, incorporated by reference in 902 KAR 13:110;
- 3. "1994 National Registry EMT-Basic, Examination Coordinator Manual", incorporated by reference in 902 KAR 13:050;
- 4. "1995 EMT First Responder, Examination Coordinator Manual", incorporated by reference in 902 KAR 13:110; and
- 5. EMS Branch requirements of the cabinet pursuant to subparagraphs 1 through 4 of this paragraph; and

(c) Be responsible for securing proctors for the written portion of the Kentucky EMT certification examination who shall comply with the requirements of subsection (2) of this section and who shall not be an EMT training program coordinator or an EMT instructor as established in Section 1(2)(e)2 and 3 of this administrative regulation.

(4) The approval of an EMS testing agency may be probated, denied, revoked, suspended, or restricted if an agency faculty member or representative is found to have committed an offense described in Section 3(1)(b), (c), (d), (e), (f) or (h) of this administrative regulation.

(5) The approval of an EMS testing agency may be probated, denied, revoked, suspended or restricted if an agency proctor, examiner, or other representative is found to have violated a testing guideline established in Section 4(3)(b) of this administrative regulation.

(6) If the approval of an EMS testing agency is denied, restricted, suspended or revoked by the cabinet, the EMS testing agency shall be provided an opportunity to appeal the decision in accordance with the provisions of 902 KAR 1:400.

Section 5. Public Notice of Negative Action. The cabinet shall publish, in the EMS Newsletter, similar publication of the cabinet, or otherwise disseminate the name of an EMS educational institution or EMS testing agency that:

- (1) Is placed on probationary status;
- (2) Is placed on restrictive status;
- (3) Is suspended; or
- (4) Has had approval as an EMS educational institution or EMS testing agency revoked.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) EMS Educational Institution Memorandum of Agreement (EMS Branch 7/99); and
- (b) EMS Testing Agency Memorandum of Agreement (EMS Branch 6/99).

(2) This material may be inspected, copied or obtained at the Department for Public Health, Division of Adult and Child Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

RICE C. LEACH, M.D., Commissioner

JOHN WALKER, Attorney

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: October 26, 1999

FILED WITH LRC: October 26, 1999 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1999 at 9 a.m. in the Cabinet for Health Services Auditorium, Department for Public Health Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 1999. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments to: Kevin Devlin, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 15,500 emergency medical technicians (EMTs) and EMT-first responders who receive EMT training through an EMS educational institution. It is anticipated there may be 65 to 75 entities who apply for approval to become an EMS educational institution. The approval fee of \$100 will generate approximately \$6,500 to \$7,000 for a 5 year approval period.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. This administrative regulation may have an effect on the cost of living and employment in this state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation may have an effect on the cost of EMT training or testing agency in that there are new requirements for medical directors for training agencies, new operating requirements, and new reporting requirements.

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

1. First year following implementation: An annual report is required for all training agencies.

2. Second and subsequent years: As above.

(3) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional reporting or paperwork will be required.

(4) Assessment of anticipated effect on state and local revenues: State revenues will be increased due to fees ranging from \$30 to \$100 established for approval of EMT training and testing agencies.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General and T & A Funds.

(6) To the extent available from the public comments re-

ceived, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation may have an economic impact in areas where EMT training and testing agencies are established due to additional requirements for medical directors for training agencies and approval fees.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were rejected because the National Standard Curricula established for training of EMTs specifically defines medical direction as an essential component of prehospital training to ensure physician involvement and availability for all aspects of EMS training. The additional reporting requirements are established to capture essential data needed to plan for the availability and effectiveness of EMT training and testing in all areas of the state.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will have a positive effect on public health in that there would be medical direction and physician consultation for EMT training conducted throughout the Commonwealth. In addition, the administrative regulation establishes minimum standards and conformity among agencies that conduct EMT training and testing.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes. If this administrative regulation is not implemented, medical direction would not be available to all EMT training agencies and there would be no means to establish minimum standards for training and testing of EMTs.

(c) If detrimental effect would result, explain detrimental effect: Kentucky EMT training programs would not meet national standards which include medical directors for EMT training programs. Without medical direction and minimum standards for EMT training or testing, Kentucky's emergency medical services providers would lag behind the standards of other states.

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

(a) Necessity or proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. Tiering was applied because this administrative regulation relates to training of all levels of EMTs.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes if the local government desires to conduct training or testing of EMTs.

2. State what unit, part or division of local government this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will affect only that part of local government that desires to conduct training or testing of EMTs.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to an aspect of local government that desires to conduct training or testing of EMTs.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. This administrative regulation may affect a local government or any service it provides since if it chooses to conduct EMT training or testing, it must obtain medical direction, develop uniform policies, and

comply with reporting requirements established for all EMT training and testing agencies. Most local governments are not normally involved in the training or testing of EMTs. Since this policy varies across the state, there is no way to determine the impact on local expenditures.

CABINET FOR HEALTH SERVICES Department for Public Health Division of Adult and Child Health (New Administrative Regulation)

902 KAR 13:150. Emergency medical technician-basic course requirements.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)

STATUTORY AUTHORITY: KRS 194A.030, 211.964

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.964

requires the Cabinet for Health Services to promulgate administrative regulations relating to emergency medical technicians (EMTs). The function of this administrative regulation is to establish requirements for the education and training of the emergency medical technician-basic (EMT-B).

Section 1. Training Course Requirements. (1) An EMT-B training course in Kentucky shall be conducted by an emergency medical services (EMS) educational institution that has been approved by the cabinet pursuant to 902 KAR 13:140 to train EMT-Bs.

(2) An EMT-B training course that begins prior to the effective date of this administrative regulation shall be at least 119 hours in duration, and shall:

(a) Follow the 1994 version of the United States Department of Transportation (U.S. DOT), National Highway Traffic Administration, Emergency Medical Technician Basic: National Standard Curriculum, incorporated by reference in 902 KAR 13:050 with the exception of the modified "Elective Advanced Airway Module" established in subsection (6)(b)3 of this section as a Kentucky-required supplemental curriculum, and as established in 902 KAR 13:080, Section 2(1)(d); and

(b) Follow additional Kentucky-required supplemental curriculum established in 902 KAR 13:080, Section 1(1)(a) approved by the cabinet as described in subsections (4) and (6) of this section, and as established in 902 KAR 13:080, Section 2(1)(a), (b) and (c).

(3) Except for an EMT-B training course established in subsection (2) of this section, for an EMT-B training course starting with the effective date of this administrative regulation, classroom sessions, which include the DOT National Standard established in subsection (2)(a) of this section and the Kentucky-required supplemental curricula, established in subsection (2)(b) of this section, shall be at least 114.5 hours in duration. Additionally, the training program shall include the minimum required hours to complete the clinical/field rotation established in Section 2(1) of this administrative regulation.

(4) A Kentucky required supplemental curriculum for an EMT-B initial training course for statewide use shall be that for which the printed curriculum document has been submitted to the Kentucky Emergency Medical Services Council for the council's:

(a) Review for appropriateness in meeting training objectives and EMT-B scope of practice; and

(b) Recommendation to the cabinet for adoption.

(5) The recommendations of the Kentucky EMS Council shall be considered by the cabinet in adoption of a Kentucky EMS Council recommended EMT-B supplemental curriculum for establishment in this administrative regulation, or a 902 KAR 13:110 established EMT first responder supplemental curriculum for statewide implementation.

(6) The Kentucky-required supplemental curricula for use in an EMT basic initial course shall, with the effective date of this administrative regulation, include training in:

(a) Acquired Immune Deficiency Syndrome (AIDS) as required by KRS 214.610 for which the printed curriculum has been

reviewed, approved and assigned an approval number by the HIV and AIDS Branch of the cabinet;

(b) EMT-B training and practice requirements for the following procedures established in 902 KAR 13:080:

1. The use of an automated blood glucose testing device;
2. Prehospital and interfacility maintenance during transportation, monitoring and discontinuation of preestablished intravenous fluids for patient administration;
3. Ventilation and care of a patient who has an endotracheal tube in place, which has been inserted by advanced life support personnel (not an EMT basic); and
4. Appropriate use of noninvasive monitoring equipment.

(7) A service specific provider that follows the requirements of 902 KAR 13:080 and desires to conduct training for EMT-basic personnel who were initially certified before the implementation of the Kentucky supplemental curricula established in subsection (6) of this section may:

- (a) Use the printed documents available from the cabinet EMS Branch associated with the curricula; or
- (b) Use service developed printed curricula documents that have been submitted to, reviewed and approved in accordance with subsections (4) and (5) of this section.

Section 2. Clinical or Field Rotation and Testing. (1) An EMT-B training course shall require its students to complete a clinical or field rotation as described on page twenty-one (21) in the 1994 version of the U.S. DOT National Highway Traffic Administration, EMT Basic: National Standard Curriculum (NSC). In extreme cases when EMT-B students are unable to obtain experiences in a clinical or field setting, the EMS educational institution shall file with the cabinet a request for approval for a variance from the U.S. DOT requirement. Supportive documentation shall include:

(a) Written evidence that a good faith effort has been made to obtain sites for a clinical or field rotation with at least three (3) cabinet-licensed ambulance services or other eligible clinical or field rotation sites within a forty (40) mile radius from location of the EMS educational institution EMT-B course site; and

(b) A description of alternatives to the clinical/field rotation proposed by the EMS educational institution, consistent with those established in the 1994 version of the U.S. DOT National Highway Traffic Administration EMT-Basic: National Standard Curriculum, that meet the educational objectives to be addressed by the clinical/field rotation.

(2) A request for a variance from the clinical or field rotation requirement described in subsection (1) of this section shall be reviewed by the Kentucky Emergency Medical Services Council. The recommendations of the Kentucky Emergency Medical Services Council shall be considered by the cabinet in granting approval for a requested variance.

(3) An EMT-B student may begin the field internship required in subsection (1) of this section after he has completed the patient assessment module of the training course.

(4) An EMT-B student shall complete the last classroom session, the clinical or field rotation requirement of subsection (1) of this section and other EMS educational institution EMT-basic training program requirements, before he may be eligible to take the Kentucky EMT-B certification examination pursuant to 902 KAR 13:050, Section 2.

(5) If an EMT-B student does not successfully pass the certification examination process and become Kentucky certified within two (2) years after the EMT-B course completion date, he shall repeat the entire EMT-B course requirements of Section 1 of this administrative regulation and the field internship requirements of subsection (1) of this section before he may become eligible to apply for EMT-B certification.

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

- (a) The Initial Training Curriculum, "EMT Application of a Pulse Oximetry" (8/99);
- (b) The 1999 Emergency Medical Technician (EMT) Training Curriculum for the "EMT-B in the Monitoring of Preestablished Patient Intravenous Infusions" (8/99);

(c) The Initial Training Curriculum, "EMT-B Advanced Airway Management", as amended from the 1994 DOT EMT-Basic NSC Elective Module on advanced airway management (8/99);

(d) The Initial Training Curriculum, "EMT-B Maintenance and Application of END Tidal CO2 Monitoring" (8/99);

(e) The Initial Training Curriculum, "EMT-B Use of Noninvasive Temperature Monitoring", (8/99);

(f) The Initial Training Curriculum, "EMT-B Application of EKG Electrodes and Monitor" (8/99); and

(g) The "Kentucky Initial Training Curriculum for the EMT-B in Blood Glucose Analysis" (8/99).

(2) This material may be inspected, obtained, or copied at the Department for Public Health, Division of Adult and Child Health, EMS Branch, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

RICE C. LEACH, M.D., Commissioner

JOHN WALKER, Attorney

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: October 26, 1999

FILED WITH LRC: October 26, 1999 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1999 at 9 a.m. in the Cabinet for Health Services Auditorium, Department for Public Health Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 1999. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments to: Kevin Devlin, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 1,500 individuals trained as emergency medical technicians-basic (EMT-B) each year.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. This administrative regulation will have no effect on the cost of living and employment in this state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation may have a minimal effect on the cost of doing business in any geographical area of this state in that the clinical/field internship will require EMS educational institutions to assure that students shall be exposed to direct patient care with a minimum of 5 patient contacts, or show just cause why a variance should be approved by the cabinet.

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

1. First year following implementation: None

2. Second and subsequent years: As above.

(3) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional reporting or paperwork will be required.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General Funds

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

(a) Geographical area in which administrative regulation will be implemented: Based on the public comments, it is not anticipated that this administrative regulation will have an economic impact.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were rejected because this administrative regulation sets minimum training standards for EMT-Bs that meet national standards and the needs of potential employers.

(8) Assessment of expected benefits: This administrative regulation sets minimum training standards for EMT-Bs that meet national standards and the needs of potential employers.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will have a positive effect on public health by preparing new EMT-Bs to better perform their duties in responding to medical emergencies.

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

(c) If detrimental effect would result, explain detrimental effect: If this administrative regulation is not implemented, it will have a detrimental effect on public health because EMT-Bs trained in Kentucky will not meet national standards.

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

(a) Necessity or proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. Tiering was applied because this administrative regulation establishes new requirements for EMT-B training beginning after the effective date of this administrative regulation while permitting EMT-B courses already in progress to continue under requirements of current administrative regulations.

**CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Adult and Child Health
(New Administrative Regulation)**

902 KAR 13:151. Repeal of 902 KAR 13:020 and 902 KAR 13:130.

NECESSITY, FUNCTION, AND CONFORMITY: 902 KAR 13:020 is no longer required because the applicant requirements for emergency medical technician (EMT) training and certification have been included in 902 KAR 13:050 and 902 KAR 13:150. 902 KAR 13:130 is no longer required because the requirements for an EMT-basic to maintain and discontinue a preestablished peripheral intravenous (I.V.) infusion have been included in 902 KAR 13:080.

Section 1. 902 KAR 13:020, Applicant requirements for EMT training and certification, is hereby repealed.

Section 2. 902 KAR 13:130, Emergency medical technician maintenance and discontinuation of a peripheral intravenous (I.V.) infusion, is hereby repealed.

RICE C. LEACH, M.D., Commissioner
JOHN WALKER, Attorney

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: October 26, 1999

FILED WITH LRC: October 26, 1999 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1999 at 9 a.m. in the Cabinet for Health Services Auditorium, Department for Public Health Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 1999. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments to: Kevin Devlin, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 14,000 emergency medical technicians (EMTs).

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. This administrative regulation will have no effect on the cost of living and employment in this state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation will have no effect on the cost of doing business in any geographical area of this state.

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

1. First year following implementation: None

2. Second and subsequent years: As above.

(3) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional reporting or paperwork will be required.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General Funds

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

(a) Geographical area in which administrative regulation will be implemented: It is not anticipated that this administrative regulation will have an economic impact.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were rejected because this administrative regulation complies with the requirements of KRS Chapter 13A.

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity or proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied because this the requirements of these 2 repealed administrative regulations have been included in other administrative regulations.

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(New Administrative Regulation)

922 KAR 5:090. General adult services.

RELATES TO: KRS 209.020(4), (6), (7), (8), (15), 210.290, 403.720(2)

STATUTORY AUTHORITY: KRS 194B.050(1), 209.035, EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: KRS 209.035 requires the Cabinet for Families and Children to promulgate administrative regulations to establish criteria for general adult services. This administrative regulation sets forth the general adult services program aimed at maintaining adults in the community at their highest level of self-sufficiency and autonomy.

Section 1. Definitions. (1) "Abuse" means the definition of "abuse" pursuant to KRS 209.020(7).

(2) "Adult" means the definition of "adult" pursuant to KRS 209.020(4).

(3) "Cabinet" means the Cabinet for Families and Children.

(4) "Caretaker" means the definition of "caretaker" pursuant to KRS 209.020(6).

(5) "Exploitation" means the definition of "exploitation" pursuant to KRS 209.020(8).

(6) "Family member" means the definition of "family member" pursuant to KRS 403.720(2).

(7) "General adult services" means a voluntary preventive service aimed at assisting:

(a) An adult to attain and function at his highest level of self-sufficiency and autonomy; and

(b) In maintaining the adult in the community.

(8) "Neglect" means the definition of "neglect" pursuant to KRS 209.020(15).

Section 2. Criteria for Intake and Assessment. (1) If a social service worker and customer agrees, an individual eighteen (18) years of age or older may be eligible for general adult services:

(a) If he is:

1. Mentally or physically dysfunctional and not in an abuse, neglect or exploitation situation; and

2. Requesting the service or in a situation where service is requested at the direction of an individual through another individual or agency;

(b) If an allegation of abuse, neglect, or exploitation is made and the alleged perpetrator is a:

1. Former spouse;

2. Former cohabiting partner; or

3. Partner with a child in common;

(c) If he requests a transitioning service from out-of-home care within twelve (12) months of release from the cabinet's commitment.

(2) An individual sixty-five (65) years of age or older shall be eligible for general adult services if he is:

(a) Not mentally or physically dysfunctional; and

(b) Allegedly being abused, neglected or exploited by a:

1. Family member;

2. Household member; or

3. Caretaker.

Section 3. Time Frame. The assessment shall:

(1) Be initiated within three (3) working days upon receipt of the request for services; and

(2) Include completion of the Adult Narrative/Investigation/Assessment form within forty-five (45) working days of initiation.

Section 4. Tracking information on general adult services shall be maintained by the cabinet for administrative purposes.

Section 5. Appropriate and necessary service provision shall include:

(1) Information and referral;

(2) The assessment; and

(3) Supportive and on-going services that may include:

(a) Services focusing on prevention;

(b) Social work counseling; and

(c) Arranging transportation.

Section 6. Incorporation by Reference. (1) The Adult Narrative/Investigation/Assessment Form, edition 11/99, 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

CHARLES P. LAWRENCE, Attorney

VIOLA MILLER, Secretary

APPROVED BY AGENCY: November 15, 1999

FILED WITH LRC: November 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 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 December 14, 1999, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judy Trigg, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Director

(1) Type and number of entities affected: Any individual 18 years and over who requests general adult services from the Department for Community Based Services. (This population is currently receiving general adult services, therefore, there will be no increase in service provision. Existing systems resources are being utilized for the tracking of these cases, therefore, we do not see additional funding needed for tracking).

(2) Direct and indirect cost or savings to those affected: None

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received. To be determined after the hearing on this ordinary 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: No public hearing

was requested as a result of the Notice of Intent being published and no written comments were received. To be determined after the hearing on this ordinary 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: None

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: There is no fiscal impact associated with the filing of this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received. To be determined after the public hearing on this ordinary administrative regulation.

(b) Kentucky: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received. To be determined after the public hearing on this ordinary administrative regulation.

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: 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 was not appropriate in this administrative regulation because the provisions apply equally to all regulated individuals or entities.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of November 9, 1999

The November meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, November 9, 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 October 12, 1999 meeting were approved.

Present were:

Members: John Arnold, Chairman; Senators Marshall Long, Richard Roeding, and Joe Pendleton; Representatives James Bruce and Woody Allen.

LRC Staff: Dave Nicholas, Donna Little, Stephen Lynn, Susan Wunderlich, Angela Phillips, Donna Valencia, Edna Lowery, Ellen Benzing, Biff Baker, Cindy Schweickart, Jay D. Hartz.

Guests: Robin Thomerson, KHEAA; Ed Ross, Finance and Administration Cabinet; Nancy Black, Mark Brengelman, Board of Nursing Home Administrators; Michael A. Mone, Board of Pharmacy; Camille Bathurst, Mike Denney, Kentucky Lottery Corporation; Tom C. VanArsdall, Bruce Williams, Bob Ware, Mark Mangeot, Katie Ashcraft, Jack A. Wilson, Bob Logan, Terry P. Anderson, Sherry Pryor, Natural Resources and Environmental Protection Cabinet; Tamela Biggs, Brenda Priestley, Department of Corrections; Sgt. Brad D. Bates, Brenda Caudill-Barnes, Kentucky State Police; Barbara Jones, Justice Cabinet; Pamela McFarland, Keith Horn, Department of Juvenile Justice; Mary Ellen Wiederwohl, Education Professional Standards Board; Jim Nelson, Department of Libraries and Archives; Jay Thompson, Char Hummel, Russell Coy, Sharron Burton, Department of Insurance; Colleen Keefe, Ella Robinson, Ken Pennington, Department of Financial Institutions; Scott Jones, Ray Franklin, Department of Charitable Gaming; Ralph Von Derau, Cheryl Brady, Paul York, Danna Droz, Stuart Owen, Teresa Goodrich, Trish Howard, Caron Tandy, Duane Dringenburg, Karen Doyle, Cabinet for Health Services; Joyce Metts, Glenna Reed, Thelma Cornett, Cliff Jennings, Kathy Adams, Cabinet for Families and Children; Donna S. Early, Legislators Retirement; Pat Miller, Kentucky Teachers' Retirement System; Tony Sholar, Mike Ridenour, Kentucky Chamber of Commerce; Bill Caylor, Kentucky Coal Association; Carl Breeding, Rusty Cress, AIK; Jan Gould, Kentucky Retail Federation; Ted Bradshaw, IIAK; Sam Thomas, Keeneland; Roy Stevens, Ashland, Inc.; Debra Hamblin, Kip Bowmar, Kentucky Association for Community Action; Mike Helton, KAHK; John Cooper, KBA; Dandridge F. Walton, KMH; Larry Maggard; Jim Carlross; Lyle Cobb.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

Finance And Administration Cabinet: Office of the Controller: Travel Expense and Reimbursement

200 KAR 2:006 & E. Employees' reimbursement for travel. Ed Ross, Controller, represented the Cabinet.

Mr. Ross stated that this administrative regulation was amended to: (1) implement the new accounting software program for state government, which was known as MARS; (2) delete requirements that related to the previous program, which was known as STARS; and (3) increase the per diem rates for meals and travel mileage for executive branch employees.

In response to questions by Senator Roeding, Mr. Ross stated that an emergency administrative regulation was filed because: (1) the Cabinet needed to implement the software package on July 1; and (2) information needed to implement the software program was not available until mid-June.

This administrative regulation was amended as follows: (1) Sections 1, 2, 4, 5, 6, 7, 9, 10, and 11 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (2) Section 11 was amended to incorporate by reference required material.

Board of Pharmacy

201 KAR 2:020 & E. Examinations. Michael Moné, Executive Director, represented the Board.

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: (a) correct statutory citations; and (b) delete superfluous language, as required by KRS 13A.222(4)(a); (3) Sections 1 through 6 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (4) Section 5 was amended to delete provisions that contradicted 201 KAR 2:050 regarding examination fees.

201 KAR 2:095. Dispensing responsibilities. Michael Moné, Executive Director, represented the Board. Danna Droz, Branch Manager, Drug Control Program, Cabinet for Health Services, appeared before the Subcommittee.

In response to questions by Chairman Arnold, Senator Roeding stated that: (1) pharmacists had access to the list of drugs dispensed at other pharmacies; (2) a pharmacy: (a) could: 1. call the originating pharmacy to request a copy of a prescription; and 2. refill the prescription; (b) was not required to refill a prescription that originated at a different pharmacy; and (c) might not refill a prescription from a different pharmacy because of competition concerns; and (3) Lortab was a pain medication.

In response to questions by Chairman Arnold, Mr. Moné stated that: (1) drugs were placed into two categories: (a) legend drugs, which included prescription drugs for heart medications and antihistamines; and (b) controlled substances, which included Lortab; and (2) the KASPER system was: (a) established by the Cabinet for Health Services; and (b) designed to alleviate problems of patients going to several doctors and pharmacies for specific prescriptions.

Ms. Droz stated that: (1) legislation enacted during the 1998 Regular Session of the General Assembly authorized the development of an electronic database to monitor controlled substances; (2) the Kentucky All Schedule Prescription Electronic Reporting (KASPER) system required pharmacists to report information: (a) twice a month to the cabinet's high security database; and (b) based on the information entered in their own computers each time a prescription was filled; and (3) the Cabinet used information in the KASPER system to investigate complaints that a patient was misusing doctors and pharmacies to receive prescription drugs.

In response to questions by Representative Bruce, Ms. Droz stated that: (1) the Cabinet referred reports of potential criminal activities to the justice system for criminal prosecution; and (2) the Board of Pharmacy was authorized to take disciplinary action against a person's license for wrong-doing that was not criminal, such as improper record-keeping.

In response to questions by Chairman Arnold, Ms. Droz stated that: (1) Chairman Arnold, or anyone, could call her office to report a complaint; and (2) because local pharmacists did not know what prescriptions a person received from other pharmacists, a person could call her office to check on other prescriptions.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 were amended to comply with the drafting requirements of KRS 13A.222(4); (3) Section 1 was amended to delete the definition of dispensing responsibilities, which summarized the statutory definition of "dispensing" in KRS 315.010(8), as required by KRS 13A.120(2)(e) and (f) and 13A.222(4)(e); (4) Section 2 was amended to specify that pursuant to KRS 315.020(4) a pharmacist intern shall perform professional acts within the prac-

tice of pharmacy under the immediate supervision and direction of a registered pharmacist; (5) Section 4 was amended to clarify that a pharmacist shall be responsible for all the actions of the pharmacist intern; and (6) Section 5, which summarized KRS 315.121, was deleted as required by KRS 13A.120(2)(e) and (f).

Kentucky Lottery Corporation: Corporation

202 KAR 3:020. Procurement procedures. Camille Bathurst, General Counsel, and Mike Denny, Attorney, represented the Corporation.

Representative Bruce stated that, in response to his question regarding whether the Corporation had the authority for slot machines, the Corporation had answered that the Corporation did have the authority.

In response to questions by Representative Bruce and Chairman Arnold, Ms. Bathurst stated that the Corporation: (1) was statutorily prohibited from installing slot machines; and (2) believed that the installation of video lottery terminals was: (a) a related issue that involved a different type of machine; and (b) within their current statutory authority.

Senator Roeding stated that: (1) an administrative agency should check with the legislation's sponsor to determine legislative intent; (2) sometimes, if an agency determines the intent to be different than the sponsor's intent, the agency: (a) promulgates an administrative regulation based: 1. on the agency's determination; and 2. not on the sponsor's intent; and (b) in effect bypasses the intent of the General Assembly; (3) the sponsors of legislation should be contacted regarding legislative intent prior to the Attorney General or courts; and (3) the General Assembly enacted laws that were to be implemented: (a) by the executive branch; and (b) in accordance with the legislative intent.

In response to questions by Senator Roeding, Ms. Bathurst stated that: (1) a request for an Opinion of the Attorney General had been submitted; and (2) the Corporation: (a) had determined through its legal research that the Corporation had the legal authority for video lottery terminals; (b) had submitted its legal reasoning to the Attorney General, as did other entities who had a stake in the issue; and (c) did not request the opinion.

In response to questions by Representative Allen, Ms. Bathurst stated that: (1) the Corporation (a) was statutorily prohibited from installing slot machines; (b) believed that the installation of video lottery terminals was: 1. a separate type of gaming than slot machines; and 2. within their current statutory and constitutional authority; and (c) had not stated that video lottery would actually be implemented without additional legislative direction, including: 1. definitions for division proceeds; 2. criteria for retailers; and 3. other specific areas necessary to implement video lottery; and (2) the General Assembly could enact legislation specifically prohibiting this activity.

Senator Long stated that: (1) he was not sure how this issue related to this administrative regulation; and (2) the Corporation had previously taken the position that it would not implement a video lottery without legislative approval.

Representative Bruce stated that: (1) he had asked about this issue to give legislators information that might be needed for the 2000 Regular Session; and (2) in Representative Allen's district, some rest stops had video machines that: (a) required the player to buy tokens; and (b) offered awards to the players.

Ms. Bathurst stated that the Corporation strongly questioned the legality of those video machines described by Representative Bruce.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to: (a) correct statutory citations; and (b) delete superfluous language; and (2) the material incorporated by reference was amended to: (a) delete "adoption" dates; (b) provide for administrative hearings in accordance with KRS Chapter 13B; and (c) delete improper delegations of authority.

Natural Resources And Environmental Protection Cabinet: Department for Environmental Protection: Division of Water: Water Quality

Bruce Williams, Deputy Secretary; Bob Ware, Division of Water, and Tom VanArsdall, Biologist, represented the Cabinet. Bill Caylor, Vice President and General Counsel, Kentucky Coal Association appeared before the Subcommittee.

Mr. Williams stated that: (1) these five administrative regulations were the result of the Cabinet's triennial review, which: (a) was required by the federal government; and (b) involved reviewing state administrative regulations to determine how protective the administrative regulations were of Kentucky's waters; and (2) the Cabinet had worked closely with: (a) industry representatives and other groups to amend these administrative regulations substantively; and (b) Subcommittee staff to comply with KRS Chapter 13A requirements.

In response to questions by Senator Roeding, Mr. Ware stated that: (1) these administrative regulations were not more stringent than federal regulations because the Clean Water Act required the federal EPA to review and approve or disapprove each state's administrative regulations; (2) in 401 KAR 5:026, the redesignation of waters was agreed to by other people; (3) in 401 KAR 5:029, a zone of initial dilution: (a) was a mechanism which allowed near field mixing of waste water discharges in the receiving waters; and (b) defined how the mechanisms were applied through the KPDES (Kentucky Pollutant Discharge Elimination System) waste water discharge permits, which would either be by: 1. a diffuser; or 2. rapid mixing instrument applied to the outfall; (4) a prohibition: (a) in lakes was eliminated in response to comments received at the public hearing; and (b) for exceptional waters, which generally were not large bodies of water, still existed because the exceptional waters were more sensitive to effluence; and (5) the water quality standards established in 401 KAR 5:031 were: (a) not more stringent than federal standards; and (b) reflective of EPA-derived criteria.

In response to a question by Representative Bruce, Mr. Williams stated that: (1) the changes in these administrative regulations would not affect agriculture differently for the farmer; and (2) he did not remember receiving comments about these administrative regulations from the farming community, Kentucky Farm Bureau, or representatives of the agricultural community.

In response to questions by Representative Allen, Mr. Williams stated that: (1) he: (a) had worked in water quality for a number of years; and (b) believed the nation and Kentucky specifically had made great strides at improving water quality; (2) pollution came from a combination of several sources, including farms, forestry, and industry; (3) the cabinet: (a) had been diligent in looking at, and controlling, sources of pollution; (b) had received a lot of cooperation from industry; and (c) was starting to see more cooperation from the farming community, which had problems with: 1. run-offs; and 2. increased use of pesticides and fertilizers; and (4) he did know the break down on sources of pollution.

In response to questions by Representative Allen, Mr. Ware stated that: (1) the Clean Water Act required the Cabinet to develop a report to Congress every two years on water quality: (a) in five basin management units involved in the watershed management process; and (b) that identified the: 1. major pollutants; and 2. contributors of the pollutants; (2) he would distribute copies of the report to Subcommittee members; (3) municipalities and industry in Kentucky had been very responsible over the last twenty or thirty years in response to the Clean Water Act's requirements; and (4) he believed that with regard to the gross pounds of pollution remaining in Kentucky, the Cabinet would have to look at: (a) agriculture; (b) the development processes that contribute sedimentation; (c) straight pipes; and (d) failing septic systems.

Representative Allen stated that: (1) he: (a) wanted to see the break-down; (b) did not believe everything he heard from the government because government statistics were influenced by money and politics; and (c) believed the agriculture and rural communities were not very strong in political clout, especially compared with big industries and congested cities; (2) when Mud River was contaminated by a big industry in Logan County, the company just had to pay a fine; and (3) he wanted to know if the emphasis was placed in appropriate areas to avoid situations

similar to the regulation of the forestry industry because the industry: (a) accounted for less than two percent of pollution; and (b) was now regulated to alleviate the two percent pollution, when the other ninety-eight percent was not addressed.

Mr. Williams stated that: (1) the Cabinet would provide a copy of its report showing the break-down of pollution sources to the Subcommittee; (2) traditionally discussions on pollution focused on: (a) big smoke stacks; and (b) pipes that went into the river; and (2) he: (a) thought it was easier to implement control technologies to reduce pollution in those situations; and (b) believed that the Cabinet's administrative regulations regulated industries and other major sources of pollution.

Representative Bruce stated that he agreed with Representative Allen's statement that a lot of the pollution and smells: (1) came from cities and industry; and (2) should not be blamed on farmers.

Chairman Arnold stated that he wanted to know the breakdown between corporate and small farms because there was a difference in the amount of pollution produced at each type of farm.

Representative Bruce stated that: (1) other states were: (a) having trouble with cooperative farms; and (b) monitoring cooperative farms; and (2) because there was a difference between farms, they should be discussed separately.

Mr. Caylor stated that: (1) the Kentucky Coal Association: (a) supported these administrative regulations; (b) had a problem with a stream at Sim's Fork that: 1. had an underground coal operation; and 2. was located in a basin designated as an outstanding state resource water; and (c) believed the original designation by the Cabinet was incorrect because: 1. only a branch in the upper reaches had Blackside dace, a federal endangered species; and 2. below the upper reach, there were: a. thirty or forty houses that had straight pipe discharges; and b. a couple of branches that had coal mining, logging, oil and gas operations; (2) designating the entire basin as outstanding state resource waters based only on factors for the upper reaches of the Sims Fork Creek was too tough, especially on: (a) development; (b) future logging or oil and gas operations; and (c) ongoing mining operations; (3) the Association submitted an inappropriate designation form to request the creek be redesignated, but the Cabinet: (a) returned the form because the form did not meet all the requirements; and (b) stated that: 1. the Cabinet believed the designation as an outstanding state resource water was appropriate for the entire basin; 2. it was true that the upper reaches were the areas where the dace were found; 3. in order to provide for genetic diversity, Blackside dace needed to be able to move into those reaches from other creeks by traversing the lower section; and 4. that could occur under existing conditions; (4) the existing conditions included: (a) mining; (b) logging; (c) oil and gas operations; and (d) thirty or forty houses with straight pipes; (5) the Cabinet was reluctant to change the designation because: (a) the designation had been made for many years; and (b) the Cabinet's policy was to designate an entire basin; and (6) the designation of the basin was similar to designating an entire tree as being off limits for development because the upper branches of the tree had Blackside dace.

Mr. Ware stated that: (1) this designation was made about ten years ago; (2) the administrative regulations established a process to request modification of a classification; and (3) at this stage, the Cabinet could commit to reevaluate the status of the designation through the established petition process.

Mr. Caylor stated that: (1) the Cabinet had privately indicated that: (a) the petition would not result in a designation change; and (b) the entire basin needed to be designated the same as its upper branches; and (2) the designation should be changed because the basin had: (a) thirty or forty houses with straight pipes; (b) ongoing mining operations; (c) an underground mine with associated fields; and (d) logging and oil and gas operations.

Mr. Williams stated that: (1) the basin had this designation for ten years; (2) a procedure to request redesignation had been established; and (3) he was not able to make any changes in this designation or the procedures during the Subcommittee meeting.

Mr. Ware stated that: (1) the Cabinet: (a) had not received a

completed petition; and (b) would be able to assist this particular operator in developing a completed petition if asked to do so; and (2) because he was not an aquatic biologist, he was not able to determine whether it was essential that the lower stream reach be designated for migration purposes.

Chairman Arnold stated that he encouraged the Cabinet to work with the operators to solve this problem.

Representative Allen stated that the Cabinet should: (1) not blame the coal companies for the pollution caused by thirty or forty straight pipes in the stream; and (b) determine the source of the pollution.

Mr. Williams stated that: (1) the designations were intended to protect the stream from pollution-causing activities; and (2) because straight pipes were not legal, the Cabinet do something about them when the straight pipes were found.

In response to a question by Representative Allen, Mr. Caylor stated that because he had seen the thirty or forty straight pipes, he knew they were there.

Mr. Ware stated that: (1) the Cabinet: (a) had not taken the position that there was a problem at the basin; (b) was required to protect the federally threatened and endangered species as required by the federal Department of Fish and Wildlife; and (c) may decide to lift the high quality water designation from the stream if Mr. Caylor could prove that the lower segment of the stream: 1. had irreversible damage; and 2. would not support the Blackside dace; and (2) based on the Cabinet's current knowledge, the lower segment of the stream: (a) would support the Blackside dace; and (b) was important to the livelihood of the Blackside dace in that area.

Mr. Caylor stated that: (1) the designation required developers to meet additional requirements: (a) to obtain a permit for oil and gas operations, logging, development, or coal mining; and (b) that were: 1. too difficult; and 2. not justified; (2) the upper reaches: (a) were pristine; and (b) should be designated as outstanding state resource waters; and (3) the lower reaches: (a) were deteriorated; and (b) should never have been designated.

Representative Bruce stated that: (1) the Subcommittee should: (a) approve these administrative regulations; and (b) give the Cabinet and the Association the opportunity to solve the problem using existing procedures; and (2) if the problem could not be resolved using existing procedures, the Subcommittee could reconsider these administrative regulations at a later date.

Senator Roeding stated that he thought Cabinet Secretary James Bickford: (1) had done a remarkable job in reviewing designations that were made ten years ago when the state requirements were more stringent than federal requirements; and (2) would want this specific designation reviewed.

Mr. Williams stated that the Cabinet would work with the Association to resolve this issue.

Chairman Arnold stated that: (1) these administrative regulations would be approved, as amended; and (2) he encouraged the Cabinet to work with Mr. Caylor to resolve the problem.

401 KAR 5:002. Definitions for 401 KAR Chapter 5. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) Section 1(13), (43), (89), (138), and (218) and Section 2 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

401 KAR 5:026. Designation of uses of surface waters. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) Sections 1 through 5 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

401 KAR 5:029. General provisions. 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 3, 4, and 5 were

amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

401 KAR 5:030. Antidegradation policy implementation methodology. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1, 2, and 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

401 KAR 5:031. Surface water standards. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) Sections 1, 3, 4, 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).

Justice Cabinet: Department of Corrections: Division of Adult Institutions: Office of the Secretary

501 KAR 6:030. Kentucky State Reformatory. Tamela Biggs, Staff Attorney, represented the Cabinet.

This administrative regulation was amended as follows: various provisions were amended to comply with KRS 13A.222(4).

Department of State Police: Sex Offender Registration System

502 KAR 31:020 & E. Sex offender registration system. Barbara Jones, General Counsel, represented the Department.

In response to a question by Senator Roeding, Ms. Jones stated that legislation was enacted during the 1998 Regular Session of the General Assembly that required a sex offender to register if he moved into the state.

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 delete superfluous language; and (3) Sections 1 through 6 were amended to: (a) correct references to forms incorporated by reference; and (b) comply with the drafting requirements of KRS Chapter 13A.

Department of Juvenile Justice: Child Welfare

505 KAR 1:040. Policy and procedures manual. Keith Horn, Attorney, represented the Department.

This administrative regulation was amended as follows: (1) DJJ 147 was amended to require that the local coroner's office be immediately notified if a death occurred; (2) DJJ 318.2 was amended to require that the disciplinary review process be suspended if it was determined that criminal charges would be filed against a youth; (3) DJJ 329 was amended to include definitions for the terms "DAP" and "SOAP"; (4) DJJ 335 was amended to provisions that repeated or summarized statute, as required by KRS 13A.120(2)(e) and (f); (5) the definition of "contraband" was amended in DJJ 422; (6) DJJ 422 was amended to delete definitions established by statute; (7) DJJ 603 and 603.1 were amended to include statutory references; (8) DJJ 621 was amended to delete definitions established by statute; and (9) DJJ 106.9, 318.1, 323, 324, and 335 were amended to comply with the drafting requirements of KRS 13A.222(4).

Education Professional Standards Board

704 KAR 20:210 & E. Substitute teachers and emergency school personnel. Mary Ellen Wiederwohl, Legislative Liaison, represented the Board.

In response to questions by Senator Roeding, Ms. Wiederwohl stated that: (1) this administrative regulation: (a) allowed specified districts to apply for approval to hire high school graduates as substitute teachers when regularly-certified substitute teachers were not available; and (b) did not apply state-wide to all school districts; (2) in the initial year, 1998-1999, the program was open to five districts; and (3) the Board: (a) reviewed the program; (b) decided to open the program to twelve districts,

rather than state-wide, to collect additional data relating to the program; and (c) had not decided yet if the program would be available state-wide in the future.

This administrative regulation was amended as follows: Sections 1 and 3 were amended to: (1) clarify that an applicant shall submit a letter of application, rather than a specified application form; and (2) comply with the drafting requirements of KRS 13A.222(4).

Department for Libraries and Archives: Division of Field Services: Libraries

725 KAR 2:060. Certification of public librarians. Jim Nelson, State Librarian, and Tezeta Lynes, Program Manager, represented the Department.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (3) Section 1 was amended to add a needed definition for ALA; (4) Section 5 was amended to specify the name of the required application form; (5) Section 8 was amended to: (a) comply with the format requirements for incorporating material by reference established in KRS 13A.2251(2); and (b) correct the titles of the material incorporated by reference; and (6) Sections 1 through 8 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

725 KAR 2:070. Certification renewal of public librarians. In response to questions by Senator Roeding, Mr. Nelson stated that while each public library had an acceptable public usage policy that included policies on Internet use, the decision to use filtering devices or observation was a local decision made by the community.

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) a new Section was created to specify the procedure for calculating certification renewal points; (4) Section 5 was amended to specify the name of the required application form; (5) a new Section was created to comply with the format requirements for incorporating material by reference established in KRS 13A.2251(2); and (6) 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).

Department of Financial Institutions: Administration

808 KAR 1:140. Bank annual assessment fee. Colleen Keefe, Director, Division of Securities, and Ken Pennington, Director, Division of Financial Institutions, represented the Department.

In response to questions by Representative Bruce, Ms. Keefe stated that: (1) the assessment fee was: (a) based on the amount of assets held by the bank; (b) imposed annually; and (c) established by this administrative regulation; (2) previously, the Department assessed fees based on the number of hours spent performing on-site examinations at the banks; and (3) during the 1998 Regular Session of the General Assembly, KRS 287.480 was amended to require the assessment schedule to be established by administrative regulation.

In response to questions by Senator Roeding, Ms. Keefe stated that: (1) during the process of formulating the schedule, the Department: (a) surveyed: 1. the seven states contiguous to Kentucky; and 2. the Office of the Comptroller of the Currency (OCC), which oversees national banks; and (b) found that Kentucky's fees, including the proposed fees, were substantially lower than what other states and the OCC charged; (2) the Department believed the assessment schedule: (a) was fair; (b) was revenue neutral, with: 1. some banks experiencing an increase; and 2. other banks experiencing a decrease; and (c) would be fairer to individual banks because the fee was: 1. based on the

assessment; and 2. not based on the number of hours spent in an institution; (3) a Kentucky branch of an Ohio bank would not be assessed the fee because the state of Ohio already assessed the Ohio bank; and (4) similarly, an Ohio branch of a Kentucky bank would not be assessed a fee in Ohio because Kentucky assessed the bank.

Representative Bruce stated that the banking industry did not oppose this administrative regulation.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) Section 1 was amended to specify that the annual assessment was due by April 1 unless the Department and bank agreed in writing to a later date due to extraordinary circumstances; 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)

Securities

808 KAR 10:260. Examination requirement for individuals advising the public on securities, broker-dealers, and agents. Representative Bruce stated that: (1) legislation enacted during the 1998 Regular Session of the General Assembly regulated securities; (2) Kentucky had taken action to address problems caused by unscrupulous securities dealers in Kentucky; and (3) he hoped similar action would be taken to protect citizens in areas relating to brokerage and other fields.

This administrative regulation was amended as follows: (1) Section 1 was amended to specify that the passing scores on the examinations were determined by the National Association of Securities Dealers; (2) Section 2 was amended to establish an exemption from the examination requirement for an individual who was registered as an investment adviser or investment adviser representative in Kentucky on the effective date of this administrative regulation; 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).

Cabinet For Health Services: Department for Public Health: Health Services and Facilities

902 KAR 20:240. Comprehensive physical rehabilitation hospital services. Ralph von Derau, Health Planner, represented the Cabinet.

In response to questions by Senator Roeding, Mr. von Derau stated that: (1) this administrative regulation included a section that: (a) described the scope of this administrative regulation and its applicability; and (b) had been deleted because the section was: 1. superfluous; and 2. in violation of KRS Chapter 13A; and (2) the Department was in the process of removing similar scope sections from other administrative regulations.

This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; (2) Section 2 was deleted because it was superfluous; and (3) Sections 1, 3, and 4 were amended for clarity and to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Division of Adult and Child Health: Controlled Substances

902 KAR 55:030. Schedule IV substances. Dana Droz, Branch Manager, Drug Control Program, represented the Division.

This administrative regulation was amended as follows: Various provisions were amended to: (1) correct minor drafting errors; and (2) delete vague reference to "limited quantities" in Section 3.

902 KAR 55:045. Exempt prescription products. This administrative regulation was amended as follows: Various provisions were amended to correct minor drafting errors.

902 KAR 55:090. Exempt anabolic steroid products. This administrative regulation was amended as follows: Various provisions were amended to correct minor drafting errors.

Department for Medicaid Services: Division of Member and Provider Services: Medicaid Services

907 KAR 1:675. Program integrity. Duane Dringenburg, Director, Department for Medicaid Services; Karen Doyle, Commis-

sioner's Office; and Trish Howard, Office of Program Support, represented the Department.

In response to questions by Senator Roeding, Ms. Howard stated that: (1) Section 7(2)(a) of this administrative regulation required the responsible party to be away from home during the entire hearing advance notice time period, which: (a) was sixty (60) days; (b) referred to the notice sent by the caseworker that notified a responsible party that: 1. their case would be discontinued; or 2. their benefits reduced; and (c) did not refer to the notice period when the hearing was scheduled; (2) Section 7 of this administrative regulation required the hearing officer to determine what proof of good cause was necessary in conjunction with KRS Chapter 13A; (3) Section 7(2)(e) of this administrative regulation, which related to a failure to appear for a disqualification hearing that was determined to be no fault of the responsible party, applied to situations in which the responsible party: (a) missed a bus; (b) had car trouble; or (c) provided a legitimate excuse for missing the hearing; (4) Section 7(2)(f) of this administrative regulation, which related to the failure on the part of the responsible party to receive notification, applied to situations in which the responsible party: (a) moved; or (b) for some other legitimate reason, did not receive notification in the mail; (5) Section 8(1)(a): (a) established a penalty for a Medicaid intentional program violation; and (b) required disqualification of the recipient from Medicaid participation: 1. for one (1) year; or 2. until the amount of the benefits, without interest, were repaid; (6) Section 9(2): (a) required the peer review organization to determine if extraordinary circumstances existed that would enable the recipient to continue to participate in Medicaid during the period of disqualification; and (b) applied to a life-threatening situation in which the recipient could not be removed from Medicaid benefits; (7) after the disease was cured, the Medicaid benefits would be discontinued for the remainder of the disqualification period; and (8) the disqualification period: (a) was a stationary amount of time that had a definite begin and end date; and (b) was not adjusted based on benefits received during that period.

Ms. Doyle stated that the Department was required to amend this administrative regulation in response to a federal court order.

In response to questions by Representative Lee, Ms. Howard stated that: (1) notification that a case was being discontinued or benefits reduced was sent by certified mail, return receipt requested; and (2) other notices and information was not sent certified mail.

In response to questions by Representative Lee, Mr. Dringenburg stated that the Department kept the return receipt to show that someone in a provider's office signed for the notice if the provider claims the notice was not received.

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 the definitions of two terms not used in this administrative regulation, as required by KRS 13A.222(4); and (4) Sections 1 through 13 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

The Subcommittee determined that the following administrative regulations complied with statutory authority:

Kentucky Higher Education Assistance Authority: Kentucky Loan Program

11 KAR 3:100. Administrative wage garnishment. Robin Thomerson, Assistant General Counsel, represented the Authority.

In response to a question by Senator Roeding, Ms. Thomerson stated that a large percentage of the Authority's cases involving contested garnishment were: (1) based on financial hardship; and (2) settled, with the Authority getting repayments on the student loans.

Board of Licensure for Nursing Home Administrators

201 KAR 6:020. Other requirements for licensure. Nancy Black, Director, Division of Occupations and Professions, and Mark Brengelman, Assistant Attorney General, represented the Board.

201 KAR 6:060. Fees. In response to questions by Representative Allen, Ms. Black stated that: (1) this administrative regulation did not increase fees; (2) the Cabinet for Health Services inspected nursing homes; and (3) the Board issued licenses for the nursing home administrators.

Justice Cabinet: Department of Corrections: Division of Adult Institutions: Office of the Secretary

501 KAR 6:040. Kentucky State Penitentiary. Tamela Biggs, Staff Attorney, represented the Cabinet.

501 KAR 6:060. Northpoint Training Center.

501 KAR 6:170. Green River Correctional Complex.

Department of Insurance; Agents, Consultants, Solicitors and Adjusters

806 KAR 9:190. Disclosure requirements for financial institution authorized to engage in insurance agency activities. Russ Coy, Counsel, represented the Department.

In response to questions by Senator Roeding, Mr. Coy stated that the material incorporated by reference was amended: (1) because the prior version required personal information from the banks that did not relate to the insurance waiver; and (2) the current version required information specific to insurance.

In response to questions by Representative Bruce, Mr. Coy stated that: (1) he had received little input from banks and insurance agents regarding this administrative regulation; and (2) the Department believed a minor controversy regarding this administrative regulation had been resolved.

Health Insurance Contracts

806 KAR 17:066 & E. Medicare supplement insurance policies. Jay Thompson, Health Policy Specialist, and Char Hummel, Attorney, represented the Department.

In response to questions by Senator Roeding, Mr. Thompson stated that: (1) the Department promulgated an emergency administrative regulation because of time constraints; (2) the National Association of Insurance Commissioners wanted the requirements implemented in May; (3) he did not think this administrative regulation would negatively affect insurance companies, or cause them to leave Kentucky, because the same requirements existed in most states; (4) this administrative regulation: (a) established additional time frames for guaranteed issue requirements for people that lose insurance coverage under specified situations; and (b) was required by the federal balanced budget amendments; (5) prior to this administrative regulation, a person would be without insurance if: (a) an employer decided to stop offering group health insurance; and (b) the employee was not guaranteed a Medicare supplement; (6) this administrative regulation: (a) provided sixty-three (63) days for persons to get a Medicare supplemental policy on a guaranteed issue basis if: 1. a specified situation occurred; and 2. the person lost other coverage; and (b) gave the elderly more options for health insurance; (7) the guaranteed issue provided a twelve (12) month period for individuals to obtain regular health insurance under the guaranteed issuance requirement; and (8) Kentucky had more Medicare supplement insurers selling in Kentucky than individual market insurers.

In response to questions by Representative Bruce, Mr. Thompson stated that: (1) the federal balanced budget amendments required this administrative regulation; (2) the National Association of Insurance Commissioners developed the language in its model regulation, which: (a) Kentucky used in promulgating this administrative regulation; and (b) was to be adopted by all other states; (3) while he was not aware of other states that had not implemented the required changes, he would inform the Subcommittee if the changes were not implemented in other states.

Department of Charitable Gaming: Charitable Gaming

820 KAR 1:015. Permanent licensure. Ray Franklin, Commis-

sioner, and Scott Jones, General Counsel, represented the Department.

In response to questions by Senator Roeding, Mr. Franklin stated that: (1) the distributor's fee was increased: (a) from \$250 to \$1000; and (b) to bring the fee in line with the license fees charged by other states; (2) Kentucky's proposed fees were at the median, or lower than, what most states already charged; (3) the fee for charitable gaming facilities that had no more than eight (8) sessions per week was decreased from \$2500 to \$1250; (4) this administrative regulation: (a) established fees that were: 1. fair; and 2. equitably allocated and distributed; and (b) was amended to provide more equitable allocation of the fees; and (5) the net effect of the amended fee schedule would be revenue-neutral to the Department.

In response to questions by Senator Roeding, Mr. Jones stated that the \$25 processing fee for reissuance of a license was an extra processing fee for organizations that wanted to change their license or application.

Cabinet For Families And Children: Department for Community Based Services: Child Support

921 KAR 1:380. Child Support Program application process. Cliff Jennings represented the Department.

Cabinet For Families And Children: Department for Community Based Services: Energy Assistance Program/Weatherization

921 KAR 4:120E. Summer Cooling Program. In response to a question by Chairman Arnold, Mr. Jennings stated that: (1) the Department received a special allotment of money to address the summer's heat problems; and (2) this administrative regulation established a summer cooling program to provide assistance to low income families with: (a) energy costs for cooling; and (b) the distribution of 1000 air conditioners.

The Subcommittee and promulgating administrative bodies agreed to defer consideration of the following administrative regulations to the November 9, 1999 meeting of the Subcommittee:

Board of Medical Licensure

201 KAR 9:175. Physician assistants; certification and supervision.

201 KAR 9:310. Continuing medical education.

Board of Speech-Language Pathology and Audiology

201 KAR 17:011. Requirements for interim licensure.

201 KAR 17:013. Repeal of 201 KAR 17:010, 201 KAR 17:080, and 201 KAR 17:091.

201 KAR 17:015. Board members, expenses.

201 KAR 17:025. Requirements for an interim license as a speech-language pathology assistant.

201 KAR 17:027. Supervision requirements for a speech-language pathology assistant.

201 KAR 17:041. Professional code of ethics.

201 KAR 17:070. Complaint procedure.

201 KAR 17:090. Continuing education requirements.

Tourism Development Cabinet: Department of Fish and Wildlife Resources: Game

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

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.

Division of Local Facilities: 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.

Kentucky Law Enforcement Council

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

Department of Criminal Justice Training: Law Enforcement Foundation Program Fund

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

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.

Department of Insurance: Health Insurance Contracts

806 KAR 17:205E. High-cost condition codes and severity questionnaire.

Department of Housing, Buildings and Construction: Office of State Fire Marshal: Electrical Inspectors

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

Cabinet For Health Services: Department for Public Health: Health Services and Facilities

902 KAR 20:275. Mobile health services.

Division of Adult and Child Health: Controlled Substances

902 KAR 55:020E. Schedule II substances.

902 KAR 55:025E. Schedule III substances.

Department for Medicaid Services: Division of Member and Provider Services: Medicaid Services

907 KAR 1:011E. Technical eligibility requirements.

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 1:155E. 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.

Cabinet For Families And Children: Department for Community Based Services: Protection and Permanency: Day Care

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

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.

Subcommittee staff stated that: (1) Representative Allen had been in contact with the Department of Public Health regarding the on-site sewage disposal issues; and (2) the Department had requested additional time to resolve the issues.

Without objection, consideration of this item was deferred.

2. Kentucky Teachers' Retirement System: Implementation of KRS 161.5465

Pat Miller, Executive Secretary, appeared before the Subcommittee.

Subcommittee staff stated that: (1) at the Subcommittee's June 8, 1999, meeting: (a) issues were raised concerning policies implemented by the Kentucky Teachers Retirement System (KTRS) regarding: 1. medical insurance benefits; and 2. the purchase of service credits by KTRS members; and (b) the Subcommittee determined those policies: 1. violated KRS Chapters 13A and 161; and 2. were not authorized by the legislation enacted by the General Assembly; (2) following that meeting, the Subcommittee submitted a request to an Opinion of the Attorney General regarding the legality of the actions taken by the Kentucky Teachers Retirement System; (3) on October 14, 1999, the Attorney General issued an Opinion that: (a) concurred with the findings of the Subcommittee; and (b) stated in the conclusion (of OAG 99-7) that: 1. it was his opinion that, as the statutes currently provided, the KTRS was required to provide medical benefits to a retiree even if the service credits entitling the member for retirement were obtained by purchase under KRS 161.5645; and 2. further, the KTRS may neither: a. restrict the purchase of service credits under KRS 161.5465 to only those members who are retiring; nor b. prohibit members from paying for such service credits in installment payments pursuant to KRS 161.597; (4) a copy of Subcommittee staff had provided members with a copy of: (a) the letter sent by the Subcommittee to KTRS; (b) the opinion; (c) the excerpt from the Subcommittee minutes for the June 8, 1999, meeting; and (d) a letter from Ms. Jeanie Fleitz, the teacher who initially brought the issue to the Subcommittee's attention; and (5) the Subcommittee had requested that KTRS: (a) attend today's Subcommittee meeting; (b) respond to the opinion; and (c) inform the Subcommittee as to its current plan of action.

Mr. Miller stated that: (1) he had distributed a memorandum to Subcommittee members that explained the: (a) situation; and (b) their response; (2) the memorandum stated that: (a) the Subcommittee: 1. determined that the KTRS had violated KRS Chapters 13A and 161; and 2. requested the Opinion of the Attorney General; (b) the opinion stated that the KTRS, under current statutes: 1. could not place limits on members when they purchased the service; and 2. was required to: a. permit teachers to make installment payments; and b. provide full medical benefits for the retirees who used or purchased credit under KRS 161.5465; (c) the KTRS: 1. accepted the findings expressed in the opinion which pertained to the objections raised earlier by the Subcommittee; and 2. would take the following actions of compliance: a. KTRS will no longer place limits as to the time that eligible members may purchase service credit as provided in KRS 161.5465; b. KTRS will establish amortized schedules that will permit members to make the payments on an installment basis as provided in KRS 161.597; and c. KTRS will act to consider serv-

ice purchased under KRS 161.5465 the same as normal service credit in a member's qualification for health insurance supplement payments provided by KTRS; (d) to accomplish this, it would be necessary to: 1. amend the actuarial cost factor tables that the Board of Trustees approved in June, 1998, following the passage of the bill because the earlier actuarial cost factors did not provide for amortized installment payments; and 2. remove the deferment of the health insurance supplements from the actuarial cost tables; (e) the next scheduled meeting of the Board was December 20, 1999; and (f) the actions expressed in the memorandum would become effective January 1, 2000; (3) he contacted the board members, who were in agreement with the memorandum; (4) KTRS will make applicable retroactive insurance supplement payments to retirees who had not received full value for service credit obtained under KRS 161.5465; (5) for example, Ms. Fleitz will receive retroactive payments from the time she retired August 1 until the changes become effective in January; and (6) the KTRS believes the outlined response will: (a) satisfy the objections determined by the Subcommittee; (b) conform to the findings expressed in the opinion on this matter; and (c) hopefully bring this matter to closure.

In response to questions by Chairman Arnold, Mr. Miller stated that: (1) he believed the Subcommittee determined at its June 8, 1999 meeting that the KTRS needed an administrative regulation to support its previous actions that were not covered in existing statutory provisions; and (2) because the KTRS was now going to comply with the exact language of the applicable statutes, an administrative regulation would not be needed.

Subcommittee staff stated that: (1) when an agency established policies or requirements that were in addition to statutory requirements, those policies or requirements were required to be established through the promulgation of an administrative regulation; (2) Subcommittee staff would work with the KTRS to determine if amendments to administrative regulations were necessary; and (3) if an existing administrative regulation established the actuarial cost factor tables, that administrative regulation would need to be amended.

Mr. Miller stated that: (1) he would be glad to work with Subcommittee staff; and (2) the KTRS would comply with the statutory requirements established in KRS 161.5465 and 161.597.

Representative Bruce stated that the Subcommittee should congratulate Mr. Miller for: (1) resolving the issue; (2) doing the right thing; and (3) working with the Subcommittee to resolve the issue.

The Subcommittee adjourned at 12:15 p.m. until December 14, 1999, at 10:30 a.m. in Room 131 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 October 20, 1999

The following administrative regulations were available for consideration by the Interim Joint Committee on Health and Welfare during its meeting of October 20, 1999, having been referred to the Committee on September 20, 1999 and October 14, 1999, pursuant to KRS 13A.290(6):

201 KAR 2:010
201 KAR 23:075
201 KAR 32:010
201 KAR 32:020
201 KAR 32:025
201 KAR 32:041
201 KAR 32:045
201 KAR 32:050
201 KAR 32:060
201 KAR 36:060
900 KAR 6:050 & E
902 KAR 17:041
902 KAR 20:160
902 KAR 20:221
907 KAR 1:019
907 KAR 1:021
921 KAR 1:020
921 KAR 1:390
921 KAR 1:410
921 KAR 3:050
922 KAR 2:160

Of these regulations, the following administrative regulation was approved as amended at the Committee meeting pursuant to KRS 13A.320:

902 KAR 17:041

Amend the 1999 Update to the 1998-2000 State Health Plan, incorporated by reference into 902 KAR 17:041, as follows:

On page 12, item 1.a. under Review Criteria, by inserting after "ADD" the following:

"and any other open heart surgery program within a 50 land mile radius of the proposed site"; and

On page 12, item 1.e. under Review Criteria, by inserting after "ADD" the following:

"or any other open heart surgery program within a 50 land mile radius of the proposed site".

Amend the 1999 Update to the 1998-2000 State Health Plan, incorporated by reference into 902 KAR 17:041, as follows:

On page 21, item 1 under Review Criteria, by inserting after "1.", the following:

"Effective January 1, 2000.";

On page 21, item 2 under Review Criteria, by inserting after "2.", the following:

"Effective January 1, 2000.";

On page 21, item 3 under Review Criteria, by inserting after "3.", the following:

"Effective January 1, 2000.";

On page 22, item 4 under Review Criteria, by inserting after "4.", the following:

"Effective January 1, 2000."; and

On page 22, item 5 under Review Criteria, by inserting after "5.", the following:

"Effective January 1, 2000.".

The amendments to this administrative regulation are at-

tached to and made a part of this memorandum.

In addition 900 KAR 6:050 & E was approved at the committee meeting pursuant to KRS 13A.320.

No other motions were made for action on any of the remaining administrative regulations that were available for consideration.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 20, 1999 meeting, which are hereby incorporated by reference.

INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT
Meeting of October 8, 1999

The following administrative regulation was available for consideration by the Interim Joint Committee on Local Government during its meeting of October 8, 1999 having been referred to the Committee on September 16, 1999 pursuant to KRS 13A.290(6).

109 KAR 15:020

The members of the committee present approved the administrative regulation unanimously.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 8, 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 October 27, 1999

The following administrative regulations were available for consideration by the Interim Joint Committee on State Government during its meeting of October 27, 1999, having been referred to the Committee on September 19, 1999, pursuant to KRS 13A.290(6):

200 KAR 5:340

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 regulation was deferred pursuant to KRS 13A.300: 200 KAR 5:340

Committee activity in regard to review of the above-referenced administrative regulation is reflected in the minutes of the October 27, 1999 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or

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comments, if any, are attached hereto.

by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE Meeting of October 28, 1999

The following administrative regulations were available for consideration by the Interim Joint Committee on Appropriations and Revenue during its meeting of October 28, 1999 having been referred to the Committee on October 14, 1999, pursuant to KRS 13A.290(6):

103 KAR 20:020
103 KAR 30:096
200 KAR 14:011
200 KAR 14:081
200 KAR 14:091

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 October 28, 1999 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON EDUCATION Meeting of November 1, 1999

The following administrative regulations were available for consideration by the Interim Joint Committee on Education during its meeting of November 1, 1999,, having been referred to the Committee on October 6, 1999, pursuant to KRS 13A.290(6):

702 KAR 3:075
702 KAR 3:120
702 KAR 3:244
703 KAR 5:080
703 KAR 5:112

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: 703 KAR 5:080

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 November 1, 1999 meeting, which are hereby incorporated

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates F - 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 F - 13

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 F - 20

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.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	25 Ky.R. Page No.	Effective Date	Regulation Number	25 Ky.R. Page No.	Effective Date
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:			201 KAR 18:010		
12 KAR 4:170E	2813	4-22-99	Amended	2928	
Expired		11-18-99	Withdrawn		9-13-99
109 KAR 2:020E	2814	4-19-99	201 KAR 18:050		
Replaced		11-15-99	Amended	2929	(See Volume 26)
109 KAR 15:020E	2816	4-19-99	201 KAR 18:071	2983	10-15-99
Replaced		10-7-99	201 KAR 18:080		
200 KAR 30:010E	2311	2-26-99	Amended	2930	(See Volume 26)
Replaced		9-16-99	201 KAR 18:091	2983	10-15-99
200 KAR 30:020E	2312	2-26-99	201 KAR 18:100		
Replaced		9-16-99	Amended	2931	(See Volume 26)
200 KAR 30:030E	2313	2-26-99	201 KAR 18:110		
Replaced		9-16-99	Amended	2931	(See Volume 26)
200 KAR 30:040E	2314	2-26-99	201 KAR 18:120		
Replaced		9-16-99	Amended	2932	(See Volume 26)
200 KAR 30:050E	2315	2-26-99	202 KAR 3:020		
Replaced		9-16-99	Amended	2933	(See Volume 26)
200 KAR 30:060E	2316	2-26-99	401 KAR 47:110		
Replaced		9-16-99	Amended	2433	(See Volume 26)
200 KAR 30:070E	2316	2-26-99	401 KAR 48:320	2476	(See Volume 26)
Replaced		9-16-99	401 KAR 68:010	1747	
201 KAR 2:020E	2818	4-22-99	Amended	2400	
201 KAR 38:010E	2317	3-4-99	As Amended	2857	10-13-99
Replaced		9-15-99	401 KAR 68:020	1748	
201 KAR 38:020E	2318	3-4-99	Amended	2401	
Replaced		9-15-99	As Amended	2858	(See Volume 26)
201 KAR 38:030E	2319	3-4-99	401 KAR 68:048	1750	
Replaced		9-15-99	Amended	2402	
201 KAR 38:040E	2320	3-4-99	As Amended	2858	10-13-99
Replaced		9-15-99	401 KAR 68:065	1751	
201 KAR 38:060E	2322	3-4-99	Amended	2404	
Replaced		9-15-99	As Amended	2859	10-13-99
415 KAR 1:080E	2529	4-12-99	401 KAR 68:090	1753	
Replaced		10-13-99	Amended	2405	
500 KAR 13:020E	2534	4-5-99	As Amended	2859	10-13-99
Replaced		9-16-99	401 KAR 68:100	1754	
501 KAR 6:020E	2819	5-14-99	Amended	2407	
Replaced		9-16-99	As Amended	2859	(See Volume 26)
501 KAR 6:999E	2821	5-14-99	401 KAR 68:150	1756	
Replaced		9-16-99	Amended	2408	
806 KAR 17:066E	2323	3-12-99	As Amended	2860	10-13-99
900 KAR 6:050E	2536	3-26-99	401 KAR 68:200	1757	
Expired		10-18-99	Amended	2409	
908 KAR 3:160E	2353	3-9-99	As Amended	2860	(See Volume 26)
Replaced		9-15-99	415 KAR 1:120		
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11 KAR 15:040			418 KAR 1:020		
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201 KAR 2:010			Amended	2940	(See Volume 26)
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201 KAR 9:175			Amended	2944	(See Volume 26)
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201 KAR 9:310			Amended	2946	(See Volume 26)
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703 KAR 5:070	2731	(See Volume 26)	Amended	1937	(See Volume 26)
802 KAR 1:010			907 KAR 1:021		
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Amended	880	(See Volume 26)	Amended	1940	(See Volume 26)
902 KAR 20:160			907 KAR 3:035	2732	(See Volume 26)
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902 KAR 20:240			Amended	2017	
Amended	2971	(See Volume 26)	Amended	2632	
907 KAR 1:002			908 KAR 1:311	2484	(Volume 24)
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			922 KAR 7:251	2996	9-15-99

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101 KAR 2:102E	1089	11-4-99	907 KAR 1:044E	1098	10-21-99
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502 KAR 31:020E	24	5-26-99	907 KAR 4:020E	364	6-23-99
503 KAR 1:110E	536	8-10-99	907 KAR 4:030E	1110	10-29-99
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803 KAR 2:306E	29	6-15-99	Amended	85	
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803 KAR 2:313E	35	6-15-99	11 KAR 12:060		
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803 KAR 2:414E	37	6-15-99	As Amended		
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902 KAR 4:040E	958	9-30-99	Amended	790	
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907 KAR 1:011E	355	7-2-99	Amended	411	
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